

TOWN OF BOLTON – ZONING BOARD OF APPEALS MINUTES

Meeting Held at the Houghton Building – Board of Selectmen’s Room on **July 13, 2015** at 7:00 PM

Members Present: Gerard Ahearn (Chairman), Kay Stoner, Andy Kischitz, Bradley Reed (Members), Jack Sargent (Associate)

Also Present: Erica Uriarte (Town Planner), Jack Maloney (Ducharme & Dillis), Rick Mlcak, Lisa Dahl, Martha Remington (Historical Commission)

Call to order: 7:00 PM

Hearings:

- In accordance with Massachusetts General Laws, Chapter 40A, Section 11, notice was hereby given that the Bolton Zoning Board of Appeals held a public hearing on Monday, July 13, 2015 at 7:00 p.m. to hear and act upon the application of Rick Mlcak, 68 Hudson Road, Bolton, MA 01740 located in Bolton’s Residential Zoning District identified on Assessor’s Map 4.D as Parcel 12. The Applicant is seeking to construct an addition to their pre-existing nonconforming single family dwelling. The proposed addition will encroach within the side yard setback pursuant to Section 250-13.B of the Code of the Town of Bolton.
 - o The project was presented by J. Maloney, R. Mlcak and L. Dahl.
 - o The Applicant is seeking to construct a proposed addition to their existing single family dwelling at 68 Hudson Road. They are seeking relief for a side yard setback. The lot is a pre-existing nonconforming lot built in 1972. The existing house was built in the 1920’s. The proposed addition will provide 2,800 square feet of floor area. The proposed side yard setback would be reduced from the required 20 feet to 16 feet; a four (4) foot encroachment.
 - o The direct abutter to be impacted by the side yard setback encroachment approves of the project. The abutter, Lewandowski, sent an approval email dated May 23, 2015 to the Applicant.
 - o The Applicant stated that the direct abutter would prefer an encroachment within the side yard setback versus purchasing a portion of their land to meet the required property offsets.
 - o The Applicant submitted a Notice of Intent to the Conservation Commission. A site walk was recently conducted with the Commission and a second meeting is scheduled with the Commission on July 14, 2015.
 - o The Board questioned why the Applicant did not try to meet the current Zoning Bylaws. In reviewing the site plan submitted as part of the application, the Board determined that the proposed addition could be reconfigured to meet the required property setbacks while maintaining the square footage of the addition. The proposed addition will continue to encroach within the wetland buffer regardless if the proposed addition encroaches within the side yard setback or is reconfigured to further extend within the backyard to meet the offset requirements.
 - o The Applicant stated that the intent for encroaching within the side yard setback was to try to maintain the existing floor layout of the house and provide an addition that would square off the outside of the dwelling. The Applicant is trying to maintain the presence of the existing architecture. The Applicant also stated that they would be preserving the existing vegetation (trees) in the backyard.
 - o The Board stated it was difficult to determine from the site plan which trees would be impacted by the proposed addition.
 - o The Board questioned whether a single finding (related to Gale v. Zoning Board of Appeals of Gloucester, et al., 80 Mass. App. Ct. 331_2011) was the appropriate action or to require a Variance. The single finding would be to determine whether the alteration to the pre-existing nonconforming single family dwelling was substantially more detrimental to the neighborhood. The Board agreed they would be setting a precedence by allowing a new nonconformity on a pre-existing nonconforming lot with an existing dwelling that currently meets all the required property offsets. The Board requested Town Counsel to confirm.
 - o M. Remington, speaking as a Bolton resident, stated she respected the Applicant for saving the mature trees and liked the design of the proposed addition. M. Remington, speaking as Chair of the Bolton Historical Commission, stated that 68 Hudson Road is part of the registry for the pan section of Bolton. These summer homes were converted as four season homes since the 1920’s

when they were built. Many of these homes are disappearing. M. Remington reminded the Applicant that there is a demolition delay associated with the building permit and the Historical Commission would need to weigh in regarding the demolition of the portion of house that is being demolished for the proposed addition.

- o **The Board requested the Applicant to consider a modified layout that would meet the offset or weigh in from the architect as to why the current layout meets the findings for a Variance.**
 - The Applicant stated that they do not have the financial means to change the architectural plans.
- o **E. Uriarte to contact Town Counsel whether a Variance is required since a new nonconformity will be created.**
- o **G. Ahearn motioned to continue the hearing to July 20th at 7 p.m. in the Houghton Building, Bolton, MA. 2nd by J. Sargent. All in favor 5/0/0.**

- In accordance with Massachusetts General Laws, Chapter 40A, Section 11, notice was hereby given that the Bolton Zoning Board of Appeals held a public hearing on Monday, July 13, 2015 at 7:20 p.m. to hear and act upon the application of Town of Bolton Department of Public Works (DPW), 12 Forbush Mill Road, Bolton, MA 01740. The Applicant is seeking Variances for a property and proposed addition to the existing municipal office building located in Bolton's Business Zoning District at 12 Forbush Mill Road identified on Assessor's Map 6.B as Parcel 1. The Applicant is seeking Variances for front and back yard setbacks pursuant to Section 250-13.B of the Code of the Town of Bolton.
 - o E. Uriarte presented the project to the Board on behalf of the DPW.
 - o The parcel is a pre-existing nonconforming lot. The proposed addition will encroach within the front and rear yard setbacks. The proposed addition will be 18 feet by 16 feet providing 288 square feet of new office space.
 - o **Finding No.1 related to soil, shape or topography** - The premises at 12 Forbush Mill Road is peculiar in lot shape and topography unique to the property. The lot is a pre-existing nonconforming lot not meeting the required lot area for the Business Zoning District. The property is approximately 1.16 acres whereas the required lot area is 1.5 acres in accordance with Section 250-13.B of the Code of the Town of Bolton. Due to the unique lot shape and non-conforming nature of the premises, the Applicant cannot expand the existing municipal office building without encroaching into the required setbacks. When calculating the Lot Shape from the formula $(16(A)/P^2)$, the factor results in 0.4 which is less than the required number of greater than 0.5 in accordance with Section 250-13.G. In addition, the topography of the site is such that a large portion of the premises is sloped with dense vegetation and trees. Encroaching within this wooded area would be a detriment to the environment and further cost to the Town.
 - o **Finding No.2 related to substantial hardship financial or otherwise** - Literal enforcement of the provisions of the bylaw would involve operational and financial hardship for the Applicant. The non-conforming building is already minimal in nature encompassing approximately 400 square feet. The new structure would provide an additional 288 square feet sufficient for improved daily office activities. Without this necessary expansion, an operational hardship would be placed on the highway yard in conducting its daily activities. The Town of Bolton could seek alternative locations for their office building. The first alternative could be to purchase a new property and construct an office building. However, the cost associated with this alternative would be a substantial hardship to the Town. The second alternative would be to move the office building to another municipal property. However, none of the other municipal properties have the available space to accommodate the needs of the highway yard. In addition, separating the office building from the yard would reduce the overall efficiency of the department.
 - o **Finding No.3 related to granting without substantial detriment to the public good** - Expansion of the existing municipal office building will improve the function of the highway yard providing better service to the residents. Therefore, the new addition to the building will not be a substantial detriment to the public good. It is anticipated that the proposed addition will be a betterment to the public.

- o **Finding No.4 related to granting without derogating from the intent of the Bolton Zoning Bylaws** - The use of the premises as municipal is an allowed use by right in all zoning districts in accordance with Section 250-12 of the Code of the Town of Bolton. It is important to note that if the highway yard were located in the Residential Zoning District, it would be meeting the required dimensional offsets. The required dimensional offsets associated with the Business Zoning District were intended for business uses only and not municipal. Therefore, it is without nullifying the purpose of the bylaws to grant the necessary relief.
- o **B. Reed motioned to close the hearing. 2nd by J. Sargent. All in favor 5/0/0.**
- o **B. Reed motioned to approve the Variance request for front and rear yard setbacks for a proposed addition to the DPW office building located at 12 Forbush Mill Road and for the addition to be in substantial conformance with the site plans submitted. 2nd by A. Kitschitz. All in favor 5/0/0.**

Business:

- None.

Administrative:

- None.

K. Stoner motioned to adjourn the Zoning Board of Appeals meeting at 8:15 PM. 2nd by A. Kitschitz. All in favor 5/0/0.

5/10/16

A. Kitschitz II
member
James
Bradley Reed