

## TOWN OF BOLTON – ZONING BOARD OF APPEALS MINUTES

Meeting Held at the Town Hall – Board of Selectmen's Room on **July 28, 2014** at 7:00 PM

Members Present: Gerard Ahearn (Chairman), Kay Stoner, Andy Kischitz, Matthew Hurd, Bradley Reed (Members); Jack Sargent, Bryan Holmes (Associates)

Also Present: Erica Uriarte (Town Planner), Michael Tenaglia (Clinton Savings Bank), David Philbin (Attorney), Richard Hayward (Clinton Savings Bank), Bryan Poisson (Approach Architects), Robert Oliva (David E. Ross Associates), R. Lee Bracy (Owner, 562 Main Street), George Bracy (562 Main Street), Martha Remington (Historical Commission)

Call to order: 7:00 PM

### Re-organization of Board (first meeting since Town Meeting)

- **A. Kischitz motioned to nominate G. Ahearn as Chairman. 2nd by B. Reed. All in favor 5/0/0.**
- **A. Kischitz motion to nominate B. Reed as Clerk. 2nd by M. Hurd. All in favor 5/0/0.**

### Hearings:

- In accordance with Massachusetts General Laws, Chapter 40A, Section 11, notice is hereby given that the Bolton Zoning Board of Appeals is holding a public hearing on Monday, July 28, 2014 at 7:00 p.m. in the Board of Selectmen Room of the Town Hall, 663 Main Street, Bolton, MA to hear and act upon the application of Wachusett Realty, LLC (parent company of Clinton Savings Bank), 200 Church Street, Clinton, MA 01510. The applicant is seeking Variances and a Special Permit for a property and structure located in Bolton's Limited Business Zoning District at 562 Main Street identified on Assessor's Map 4.C as Parcel 35. The applicant is seeking Variances for the non-conformance of lot size, front and side yard setbacks, width of lot, and lot frontage pursuant to Section 250-13B of the Code of the Town of Bolton. The applicant is also seeking a Special Permit to alter and extend the non-conforming structure, to be demolished and rebuilt, pursuant to Section 250-3C of the Code of the Town of Bolton.
  - o Mr. David Philbin, Attorney for Clinton Savings Bank, presented the applicant's request for zoning relief to the Zoning Board of Appeals (ZBA).
    - Clinton Savings Bank is requesting relief to modify the 90 yr. old house, a nonconforming structure, on the nonconforming lot located at 562 Main Street. Clinton Savings Bank is seeking a Special Permit to alter and extend the nonconforming structure.
    - Clinton Savings Bank is also seeking Variances for lot size (0.85 acres provided, 1.5 acres required), street frontage (129.42 ft. provided, 150 ft. required), lot width at 100 feet back from street line (129.03 ft. provided, 150 ft. required), front yard setback (43 ft. proposed, 150 ft. required), and side yard setback (35 ft. proposed, 50 ft. required).
    - The nonconforming structure is historically significant. Clinton Savings Bank has complied with the Historical Commission's demolition delay.
  - o Mr. Philbin stated that Clinton Savings Bank received approvals from the Board of Health, Conservation Commission, and Design Review Board.
    - Mr. Philbin submitted copies of the following approvals to the ZBA:
      - Letter/Decision from Bolton Board of Health dated July 16, 2014 with attached Sewage Disposal Works Construction Permit from the Nashoba Associated Boards of Health issued July 8, 2014
      - Determination of Non Applicability by Bolton Conservation Commission dated July 21, 2014
      - Letter/Decision from Bolton Design Review Board dated July 28, 2014
  - o Mr. Philbin submitted revised Site Plans to the ZBA that were approved by the Design Review Board on July 21, 2014.
  - o Mr. Philbin reiterated that the criteria for granting a Special Permit to alter a nonconforming structure is that the alteration should not be substantially more detrimental to the neighborhood than the existing nonconforming structures or uses. Generally any increase of no more than

- 100% of the floor area for a structure existing prior to April of 1972 or 50% of the ground area in use shall be considered not substantially more detrimental to the neighborhood.
- o Mr. Philbin discussed with the ZBA the findings outlined in the application for Special Permit:
    1. The neighborhood is zoned Limited Business.
    2. The existing residential structure has existed as nonconforming structure for many years and prior to the adoption of zoning.
    3. The properties adjacent to and across the street are currently used for business use.
    4. Use of the premises for a branch bank will be consistent with that of the abutting properties.
    5. The existing structure has 1,360 square feet of space. Expansion of the existing structure to 1,982 square feet of interior space will be less than 100% of the existing floor space of the current structure and therefore such addition and extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.
      - **The ZBA stated this finding needed to be revised to include the area for the existing garage and the proposed drive-up ATM canopy. The existing total floor space needs to be revised to 2,849 square feet and the proposed total floor space needs to be revised to 2,609 square feet.**
    6. The proposed increase in square footage being less than 50% of the existing square footage of the current building is not substantially more detrimental to the neighborhood.
    7. The proposed improvements to the premises will have no negative impact on the environment.
    8. Applicant currently operates a branch bank directly across the Street from 562 Main Street and currently has a drive-up window and ATM at the existing facility.
    9. There would be no significant increase in vehicular traffic on Main Street as result of the Applicant's use of 562 Main Street for banking purposes as many of its customers will simply be changing the location on Main Street as to where they conduct business with the Applicant.
      - **The ZBA stated this finding was misleading. The ZBA indicated that there could be an increase in vehicular traffic with a new business entering at their current location.**
    10. The proposed improvements will be aesthetically pleasing from Main Street.
    11. The proposed improvements to the property will have no negative fiscal impact but should instead result in an increase in tax revenue for the Town.
  - o Mr. Philbin reiterated that the criteria for granting Variances included circumstances related to the soil, shape, or topography of the land; substantial hardship to Clinton Savings Bank incurred by enforcing the zoning bylaw; no substantial detriment to the public good; and harmony with the intent of the zoning bylaw.
  - o Mr. Philbin discussed with the ZBA the findings outlined in the application for Variances:
    - The lot size and preexisting nature of the structure are unique to it. It is impossible for this lot and any structure on it to conform to the present zoning requirements for the district. The Town by adopting those requirements made it impossible to construct any structure on the property to comply with zoning without the issuance of Variances.
      - The ZBA indicated that when zoning was first passed in the 1970's, it was understood that certain lots (including 562 Main Street and the two neighboring lots) would eventually require ZBA approval. This was the case for the veterinary clinic at 556 Main Street.
    - The Property has a failed septic system. The soil conditions would not support a new septic system under Title V to service a residence. The current owner of the property would suffer great financial loss if he could only sell his home to a buyer intending to use the property for residential purposes.
    - Improvements to the septic system will cost Clinton Savings Bank approximately \$120,000 to comply with Title V requirements which poses a financial hardship.

- The relief sought will not pose a threat to the public good. Clinton Savings Bank has operated a branch in Bolton for more than twenty years at a location directly across the street. The proposed use is allowed by the zoning bylaw for the Limited Business Zoning District upon issuance of a Special Permit from the Planning Board. The design of the building will be consistent with the historical nature of Main Street. The proposed structure will not be located any closer to the street or sideline boundaries than the existing dwelling. The new building will result in higher tax revenue to the Town.
- The request for Variances is historically consistent with ZBA's past approvals within the past twenty years for other business within the Limited Business Zoning District.
- Mr. Robert Oliva, Professional Engineer from David E. Ross Associates, indicated the following site features to the ZBA:
  - There will be one way traffic through the site, a boulder retaining wall along the easterly side of the property to accommodate site grading, and an underground infiltration system to collect stormwater runoff.
  - The septic system will be located towards the back of the property and will require a pump chamber. The location of the septic system meets the required setback to the existing well, but required a Variance from the Board of Health for proximity to the neighboring wetlands.
- Mr. Bryan Poisson, Architect from Approach Architects, indicated to the ZBA that a drive-up ATM machine and two stalls will be provided at the back of the building. For security purposes, the outdoor lighting for the ATM machine will be lit 24 hours a day. The site will also be ADA compliant.
- Ms. Martha Remington from the Historical Commission indicated that the demolition delay expired on June 18, 2014. She also noted that the Commission was generally pleased with the design of the project. Ms. Remington noted she would like the street trees to be protected during construction and for this provision to be provided as a requirement.
- **B. Reed motioned to grant the Special Permit based upon the 11 findings listed in the application for Special Permit as amended with the correct square footages. 2nd by M. Hurd. All in favor 5/0/0.**
- **B. Reed motioned to grant Variances for zoning relief of lot size, street frontage, lot width, front setback and side setback as outlined in the application for Variances based upon the findings related to soil conditions, economic hardships, no harm to the public good, and harmony with the intent of the zoning bylaw. 2nd by K. Stoner. All in favor 5/0/0.**

**Business:**

- 8:15 p.m., Mr. Vin Gately, Heritage Properties – Sunset Ridge Condominiums
  - Request bond reduction of \$77,410 from \$119,326 for work completed to date at Sunset Ridge.
    - Refer to email sent from Vin Gately to E. Uriarte on July 13, 2014.
  - ZBA's Consultant, Nitsch Engineering, conducted a site visit on July 24, 2014 to confirm work was completed in compliance with the Code of the Town of Bolton as well as applicable Rules and Regulations. Nitsch Engineering prepared a cost estimate to confirm the bond reduction amount was in conformance with current 2014 construction prices.
  - Mr. Vin Gately indicated he is working with Board of Health and Presby Environmental to correct an odor problem with the septic system.
    - Nitsch Engineering held a portion of money to ensure the issue with the septic system is resolved.
  - **B. Reed motioned to reduce bond to \$49,831 as determined by Nitsch Engineering's Report dated July 28, 2014. 2<sup>nd</sup> by A. Kischitz. All in favor 5/0/0.**

**Administrative:**

- Approval of Minutes from January 16, 2014.

**J. Sargent motioned to adjourn the Zoning Board of Appeals meeting at 8:29 PM. 2<sup>nd</sup> by B. Reed. All in favor 5/0/0.**

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