



TOWN OF BOLTON

ZONING BOARD OF APPEALS

Town Hall, 663 Main Street, Bolton, MA 01740
Phone: 978-779-3308 Fax: 978-779-5461

VARIANCE FINDINGS AND DECISION

Petitioner: Davis Farms Trust, d/b/a Bolton Orchards
125 Still River Road
Bolton, MA 01740

Premises: Lot 2A, 125 Still River Road, Bolton, MA 01740
Bolton Assessor's Map 6.A Parcel 4

Owner: Davis Farms Trust, d/b/a Bolton Orchards
125 Still River Road
Bolton, MA 01740

Deed Reference: Worcester District Registry of Deeds, Book 3586 Page 427

Date Petition filed with Town Clerk of Bolton, MA: August 14, 2014

Type of Application: Variance

Applicable Zoning Bylaw of the Code of the Town of Bolton, MA:
Sections 250-26.C.(1) and Section 250-13.B

Hearing Date: October 1, 2014

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

Decision: On October 1, 2014 at 7 p.m., the Board of Appeals voted unanimously to approve the Variance request seeking relief from a side yard setback.

PROCEDURAL HISTORY

1. On August 14, 2014 Davis Farms Trust, a Massachusetts business trust d/b/a Bolton Orchards, (hereinafter, the Applicant), applied to the Zoning Board of Appeals (ZBA) for a Variance for the Premises located on Lot 2A at 125 Still River Road, Bolton, MA 01740 from the dimensional zoning requirement for side yard setback as set forth in Sections 250-26.C.(1) and 250-13.B of the Code of the Town of Bolton. The Premises is identified on the Bolton Assessor's Map 6.A as Parcel 4 located in the Residential Zoning

District. The Applicant sought relief for a side yard setback that abuts Lot 1A as follows:

	Current	Required
A. Side Yard Setback	None	50

2. The Applicant intends to construct a 2MW AC commercial solar photovoltaic renewable energy installation on Lot 2A at 125 Still River Road, Bolton, MA 01740.
3. A duly posted public hearing was held on October 1, 2014 at 7 p.m. at the Bolton Town Hall, 663 Main Street, Bolton, MA 01740. Chairman Gerard Ahearn read the Notice of Public Hearing for the request for Variance pursuant to Section 250-13.B of the Code of the Town of Bolton. The Board closed the hearing the same evening.

RECORD DOCUMENTS

The petition to the Board is dated August 14, 2014. The application contained the following items:

1. Application to ZBA;
2. Letter of Request for Setback Variance at 125 Still River Road, Bolton dated August 14, 2014;
3. Certified Abutters List from Bolton's Assessor's Office;
4. Aerial Photo of First Solar Project, Eastern/Northern Slopes taken November 14, 2013;
5. Aerial Photo of First Solar Project From South Ridge Line taken November 14, 2013;
6. Photo of Northern Slope taken August 8, 2014;
7. Photos of Eastern Slope, taken August 8, 2014;
8. ANR Plan entitled "Plan of Land in Bolton, Mass. Owned by Davis Farms Trust" prepared by David E. Ross Associates, Inc. dated 12/12/12, recorded at the Worcester Registry of Deeds - Plan Book 898, Plan 110;
9. Overall Site Plan entitled "Zoning Board of Appeals Plans Solar Energy Facility 125 Still River Road, Bolton, Massachusetts" prepared by Beals Associates, Inc. for Davis Farm Trust d/b/a Bolton Orchards, dated August 8, 2014; and
10. 60 Scale Site Plan entitled "Zoning Board of Appeals Plans Solar Energy Facility 125 Still River Road, Bolton, Massachusetts" prepared by Beals Associates, Inc. for Davis Farm Trust d/b/a Bolton Orchards, dated August 8, 2014.

FINDINGS

1. The Premises is located on Lot 2A at 125 Still River Road, Bolton, MA 01740, identified on Bolton Assessor's Map 6.A as Parcel 4, and is owned by Davis Farms Trust (d/b/a Bolton Orchards), 125 Still River Road, Bolton, MA 01740. The Premises is located in

the Residential Zoning District. Lot 2A has greater than 1,900 feet of frontage along Main Street and greater than 400 feet of frontage along Still River Road.

2. Lot 2A is part of an existing 100 acre gravel pit located at 125 Still River Road, Bolton MA 01740. The gravel pit consists of two lots labeled as Lot 2A and Lot 1A as shown on the approved ANR Plan entitled "Plan of Land in Bolton, Mass. Owned by Davis Farms Trust" prepared by David E. Ross Associates, Inc. dated 12/12/12, recorded at the Worcester Registry of Deeds - Plan Book 898, Plan 110. Lot 2A is approximately 48 acres and Lot 1A is approximately 53 acres.
3. Lot 1A is currently used for a 4.95MW AC commercial solar photovoltaic renewable energy installation which went on-line in December 2013. The existing solar facility is located on approximately 25 acres of Lot 1A.
4. The Applicant intends to construct a 2MW AC commercial solar photovoltaic renewable energy installation on approximately 12 acres of Lot 2A. For this purpose, the Applicant sought relief from a portion of the side yard setback required along the portion of Lot 2A that directly abuts Lot 1A.
5. Based upon the information submitted at the public hearing, including the record documents and comments received from the public, the Board makes the following specific findings with regard to the request for Variance:

a. VARIANCE

The requested Variance and the requirement set forth in Sections 250-26.C.(1) and 250-13.B of the Code of the Town of Bolton is as follows:

	Current	Required
A. Side Yard Setback	None	50

**CRITERIA AND FULLFILLMENT OF REQUIREMENTS
AND FINDINGS FOR REQUESTED VARIANCES**

The Board finds that the criteria for the grant of Variances, set forth in G.L. c. 40A, Section 10, have been met for the following reasons:

1. **That there are circumstances that exist relating to the soil conditions, shape, or topography of the land or structures that uniquely affect such land or structures but that do not affect generally the zoning district in which such land or structure is located;**

The topography of Lot 2A is comprised of a wide variation in slopes with substantial grades that reach in excess of 30%. The northern slope of Lot 2A is over 30%. The eastern slope is additionally challenging as a solar host site because of the shading impacts suffered when panels are located on an eastern slope that causes the loss of morning sun exposure and solar energy production. In addition to the grade challenges, the eastern slope suffers from major undulations and ledge below the surface, interspersed with runoff areas that are sufficiently unstable. Development of a commercial solar photovoltaic renewable energy installation cannot be completed in the current condition of these areas. In conclusion, solar installation cannot proceed on either of the northern or eastern slopes of Lot 2A without a large and costly re-grading effort to level the topography and meet the solar installation standard of no greater than a 15% grade.

2. Literal enforcement of the provisions of the bylaw would involve substantial hardship financial or otherwise to the Applicant;

The middle of Lot 2A is a predominantly flat and sun-exposed area that extends over all of the land directly abutting the boundary line with Lot 1A. To require a second 50 foot setback on Lot 2A (i.e., in addition to the existing 50 foot setback on Lot 1A) would remove a substantial portion of Lot 2A's flat, sun-exposed area from its valuable use as a host for solar panels. Denying the location of solar panels in Lot 2A's setback area would cause a significant economic harm to the Applicant because it would require the Applicant to grade a large swath of the northern and eastern slopes down to a 15% grade in order to meet the solar installation standards. The cost of this re-grading was estimated by the Applicant's long term and on-site earth moving contractors to be in excess of \$130,000. Requiring this substantial six-figure cost would be an unnecessary hardship that poses a threat to the economic viability of the proposed project, which unlike the existing commercial solar photovoltaic renewable energy installation located on Lot 1A does not benefit from its large economies of scale (2MW vs. 4.95MW) nor the favorable 2013 state solar energy incentives that benefited the facility on Lot 1A.

3. The desired relief may be granted without substantial detriment to the public good.

The existing 50 foot setback along the perimeter of Lot 1A provides the necessary setback land area that is needed to protect the Town's interests in terms of emergency responder access and land use zoning conformity.

Both Lots 1A and 2A will have solar energy panels located in the middle of the gravel pit. There will be no differentiation in development types between the two abutting lots. None of the typical development density concerns will apply that might otherwise be presented if these lots were being developed for residential use. In addition, the entire gravel pit area is out of view from most abutters due to the existing hillside and tree cover. The only abutter with any direct visual or property impact is the Applicant who owns both lots.

Finally, the development of a 2MW AC commercial solar photovoltaic renewable energy installation on Lot 2A provides substantial tax revenues over the 25-30 year life of the project under the terms of a personal property tax agreement. In addition, a meaningful portion of Lot 2A would be reassessed to reflect the new solar installation and its impact on the real property value of the approximately 12 acres that would be developed on Lot 2A.

The Board finds the interests of the Town, the abutters and the public are sufficiently protected by the existing 50 foot setback on Lot 1A such that there is no zoning need to enforce an additional 50 foot setback on Lot 2A.

4. The desired relief may be granted without nullifying or substantially derogating from the intent and purpose of the Bolton Zoning Bylaws.

The desired relief will not nullify or substantially derogate from the intent and purpose of the Bolton Zoning Bylaws. Allowing the pre-existing 50 foot setback on Lot 1A to serve as the de facto joint setback for both Lots 1A and 2A is supported for the following reasons:

- The existing setback on Lot 1A runs the entire length of Lot 2A;
- Essentially identical solar photovoltaic facilities are to be constructed on both lots, with the effect that from a larger perspective the entire site comprising both lots will be one large solar host site;
- The solar facilities on both lots are hidden from view in all directions due to the existing hillsides and tree cover;
- Both lots are owned by the Applicant, which consents to a single setback;
- There is substantial setback of both solar facilities from all frontage areas on Still River Road and Main Street; and
- The Town public safety interests are adequately protected through access to the existing 50 foot setback on Lot 1A (as well through the main security gates at the entrances to each lot).

DECISION

Pursuant to G.L. c. 40A, Section 10 and Section 250-6 of the Code of the Town of Bolton, the Board, after public hearing and findings of fact, hereby grants the Petitioner's request for Variance, as follows:

Variance from Sections 250-26.C.(1) and 250-13.B of the Code of the Town of Bolton to permit the construction of a new commercial solar photovoltaic renewable energy installation on Lot 2A at 125 Still River Road, Bolton, MA allowing for the following dimensional Variance from the zoning bylaw:

	Current	Required
A. Side Yard Setback	None	50

2014 OCT 15 PM 12: 21

RECORD OF VOTE

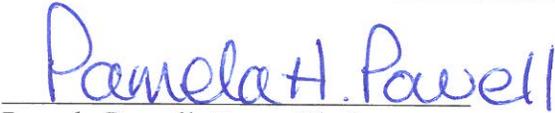
The following members of the Zoning Board unanimously voted to grant the subject to the above-stated terms: Chairman, Gerard Ahearn, Andy Kischitz, Bradley Reed, Kay Stoner, and Jack Sargent.



Gerard Ahearn, Chairman
(On behalf of the Zoning Board of Appeals)

FILED WITH THE TOWN CLERK

Filed with the Town Clerk on October 15, 2014.

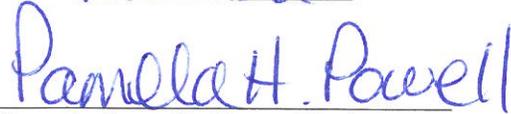


Pamela Powell, Town Clerk

CERTIFICATE OF NO APPEAL

The undersigned, being the Town Clerk of the Town of Bolton, certifies that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Date: November 15, 2014.



Pamela Powell, Town Clerk

Copy of Variance Findings and Decision mailed to:

- Abutters
- Surrounding Towns
- Bolton Boards and Committees
- Applicant