

**TOWN OF BOLTON – ZONING BOARD OF APPEALS MINUTES**

Meeting Held at the Houghton Building on **April 18, 2019** at 7:00 PM

Members Present: Gerard Ahearn (Chairman), Kay Stoner, Andy Kischitz, Bradley Reed and Bryan Holmes

Also Present: Erica Uriarte (Town Planner), David McKay (Mirick, O'Connell, DeMallie & Lougee, LLP – Town Counsel) and Joe Peznola (Hancock Associates – MHP Consultant)

Call to order: 7:00 PM

- HEARINGS
  - None.
- Business
  - Still River Commons - 40B Development Project on Still River Road
    - The Bolton Zoning Board of Appeals deliberated on the Comprehensive Permit application of Still River Road Development, LLC for a proposed housing development to be located in Bolton's Residential Zoning District on Still River Road identified on Assessor's Map 8.B as Parcel 32 (6.68 acres). The applicant is seeking to construct eight (8) units of homeownership housing pursuant to M.G.L. c.40B. The development will consist of four (4) two-unit duplex style buildings located on two lots each containing two (2) duplex buildings. In conformance with M.G.L. c. 40B, the development will contain two (2) affordable units. During the Board's deliberations the following key issues were identified:
    - The proximity of the project within the 100 ft. wetland buffer. It is concerning that the entire project is located within Bolton's Aura.
    - The proximity of the project to surrounding flood plain. The Applicant is required to provide compensatory flood storage. The area for storage is targeted within Bolton's 25 ft. no disturb.
    - The Project is located within an area of endangered and threatened species as well as an area known for wildlife passage for Still River and conservation lands. Blanding turtles and amphibians have been documented on the site.
    - Horsley Witten Group (Peer Review Consultant) questioned the wetland delineation. EcoTec (Consultant hired by the Applicant to verify the wetlands) would not provide the data forms for a portion of new wetland flags. It is concerning that the wetland delineation was not completed. The property's environmental sensitivity is unique and a complete wetland delineation is crucial to ensure protection of bylaws & regulations.
    - The stream located on the property needs to be delineated to verify if it is intermittent or perennial. It is unclear if the project is located within the 200 ft. Riverfront area. Impacts were not evaluated.
    - The Applicant failed to adequately demonstrate that the development will not be detrimental to wetland resource areas.
    - The project is intense and located within limited upland area surrounded by critical sensitive land. It was questioned whether this project was the best way to satisfy the need for affordable housing by creating two units on an environmentally sensitive property. This site is very tight with little flexibility in layout. Other 40B projects have been less restrictive.
    - The project pushes the envelope with Board of Health and Wetland waivers. Data forms were not provided from EcoTec which would have helped the Board to deliberate on waivers.
    - The site was previously approved for a single family dwelling. Development impacts to wetland resource areas are substantial in comparison to a single family home.
    - There are significant groundwater concerns. The Board provided opportunity for the Applicant to provide further documentation including the wetland delineation, data forms for the wetland flags and to agree to a water sampling program. It has not been proven that there will not be a negative impact to the property.
    - Bolton's Open Space & Recreation Plan targeted this property for conservation.

**Approved at April 7, 2020 meeting via Zoom participation by  
GH, BH, AK, BR, KS (EU)**

- The Sudbury Valley Trust (SVT), Town of Harvard and neighborhood abutters are concerned with the environmental sensitivity of the site. The Bolton Flats area is targeted for preservation by the SVT.
- Protection of the land is not a top priority for the owner. The burden is forced on the abutters to police encroachment into sensitive areas.
- Septic and well need to support 18 bedrooms. If these systems fail, there is no a public water or sewer as backup. Failure would lead to impact to wetland resource areas. Bolton is one in 50 communities in MA that doesn't have public water supply. A water supply plan for protection of wells was not provided. What is the legal impact on the Town if the wells/septic systems fail?
- Board of Health recommended that the project meet local regulations.
- Overflow of the stormwater management system would impact drainage in Still River Road as well as downstream wetland resource areas. Section of Route 110 has flooded in the past and there is potential for more flooding with this development.
- The Board requested a permeability test to confirm infiltration rates, but the Applicant denied the request.
- The homeowners association will be charged with maintaining the project's infrastructure and will need to make sure they have the resources to maintain the systems. These residents will not have the background to maintain or deal with failures.
- Access to Still River Road is a public safety concern. The development will generate an additional 24 cars to and from a state numbered route during peak hours. The growing number of vehicles on the road is concerning.
- No additional parking is provided for visitors or for when it snows and the plows need to clear the driveway. Parking is limited to one space in the garage and one space in the driveway.
- There is archaeological significance to the property as identified by Bolton's Historical Commission.
- The Zoning Board of Appeals voted on a list of waivers dated April 2, 2019 as provided by the Applicant:
  - **Andy Kischitz motioned to approve waiver from Groundwater Protection Bylaw §147-1.B(3) to allow multiple units. 2<sup>nd</sup> by Bryan Holmes. All in favor 5/0/0.**
  - **Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow Unit 1 to be located 35' from the edge of wetlands and the deck of Unit 1 to be located 31' from the edge of wetlands. 2<sup>nd</sup> by Bradley Reed. All in favor 5/0/0.**
  - **Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow Unit 2 to be located 26' from the edge of wetlands and the deck of Unit 2 to be located 18' from the edge of wetland. 2<sup>nd</sup> by Kay Stoner. All in favor 5/0/0.**
  - **Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow Unit 3 to be located to be located 30' from the edge of wetlands and the deck of Unit 3 to be located 32' from the edge of wetlands. 2<sup>nd</sup> by Bryan Holmes. All in favor 5/0/0.**
  - **Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow Unit 4 to be located 38' from the edge of wetlands & Unit 4 deck to be located to be located 34' from the edge of wetlands. 2<sup>nd</sup> by Kay Stoner. All in favor 5/0/0.**
  - **Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow Unit 5 to be located 31' from the edge of wetlands & Unit 5 deck to be**

located to be located 25' from the edge of wetlands. 2nd by Bradley Reed. All in favor 5/0/0.

- Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow Unit 6 to be located 44' from the edge of wetlands & Unit 6 deck to be located to be located 40' from the edge of wetlands. 2nd by Bradley Reed. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow Unit 7 to be located 65' from the edge of wetlands & Unit 7 deck to be located to be located 75' from the edge of wetlands. 2nd by Bryan Holmes. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow Unit 8 to be located 48' from the edge of wetlands & Unit 8 deck to be located to be located 53' from the edge of wetlands. 2nd by Kay Stoner. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow the proposed well on Lot 2B to be located 41' from the edge of wetlands as allowed by the Town of Bolton Well Regulations. 2nd by Kay Stoner. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow the proposed well on Lot 2C to be located 60' from the edge of wetlands as allowed by the Town of Bolton Well Regulations. 2nd by Bryan Holmes. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow the sewage disposal system (leaching area and tanks) on Lot 2B to be located 50' from the edge of wetlands as allowed by 310 CMR 15. 2nd by Bradley Reed. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow the sewage disposal system (leaching area & tanks) on Lot 2C to be located 56' from the edge of wetlands as allowed by 310 CMR 15. 2nd by Bradley Reed. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow the access driveway to be located 36' from the edge of wetlands, to allow retaining walls to be located 25' from the edge of wetlands, to allow subsurface utilities to be located 15' from the edge of wetlands and to allow stormwater infrastructure to be located 38' from the edge of wetlands all as depicted on the Comprehensive Permit Plan. 2nd by Bradley Reed. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow grading and clearing on Lot 2B to occur 2' from the edge of wetlands to allow construction of the sewage disposal system and dwelling units as depicted on the Comprehensive Permit Plans. 2nd by Bryan Holmes. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow grading and clearing on Lot 2C to occur 25' from the edge of wetlands to allow the construction of the sewage disposal system and dwelling units as depicted on the comprehensive permit plans. 2nd by Kay Stoner. All in favor 5/0/0.

- Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow grading for compensatory flood storage to occur 12' from the edge of wetlands. 2<sup>nd</sup> by Bradley Reed. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from Wetlands Bylaw §233-2 to allow 2,500 SF of field to be naturalized as scrub/shrub forested habitat in accordance with NHESP 12-3491. 2<sup>nd</sup> by Bryan Holmes. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from Wetlands Bylaw Section §233-7 to waive the Bolton Wetlands Bylaw Regulations to allow only the definitions of the Wetlands Protection Act (310 CMR 10) to apply. 2<sup>nd</sup> by Kay Stoner. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from the Requirements for Subsurface Disposal of Sanitary Sewage Regulation 4 to allow leaching facilities to be located 10' from a property line as allowed by 310 CMR 15 (10' proposed) as allowed by 310 CMR 15. 2<sup>nd</sup> by Bradley Reed. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from the Requirements for Subsurface Disposal of Sanitary Sewage Regulation 4 to allow leaching facility to be located within 35' of access driveway (13' provided, note: retaining wall is located between driveway and leaching facility) and to allow septic tanks and pump chambers to be located within unit driveways (tanks to be rated for H2O loading) as allowed by 310 CMR 15. 2<sup>nd</sup> by Bradley Reed. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from the Requirements for Subsurface Disposal of Sanitary Sewage Regulation 4 to allow Lot 2B leaching area to be located within 100' of a bordering vegetated wetland (50' provided) as allowed by 310 CMR 15. 2<sup>nd</sup> by Kay Stoner. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from the Requirements for Subsurface Disposal of Sanitary Sewage Regulation 4 to allow Lot 2c leaching area to be located within 100' of a bordering vegetated wetland (75' provided) as allowed by 310 CMR 15. 2<sup>nd</sup> by Bradley Reed. All in favor 5/0/0.
- Andy Kischitz motioned to approve waiver from the Requirements for Subsurface Disposal of Sanitary Sewage Regulation 4 to allow leaching facilities servicing a separate building to be located within 30' of each other (20' provided) as allowed by 310 CMR 15. 2<sup>nd</sup> by Bryan Holmes. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from the Requirements for Subsurface Disposal of Sanitary Sewage Regulation 4 to allow the septic tank to serving units 1 & 2 to be located within 50' of wetlands (41' provided) as allowed by 310 CMR 15. 2<sup>nd</sup> by Bradley Reed. All in favor 5/0/0.
- Andy Kischitz motioned to deny waiver from Bolton Well Regulation §4.1 to allow Lot 2B well to be located within 150' of a leaching facility in soils with percolation rates of two minutes per inch or less (120' provided). 2<sup>nd</sup> by Kay Stoner. All in favor 5/0/0.
- Andy Kischitz motioned to approve waiver from Bolton Zoning Bylaws §250-12 as multiple structures as proposed in the Comprehensive Permit is a permit/use that is not specifically stated as being allowed in the Bylaws. 2<sup>nd</sup> by Bryan Holmes. All in favor 5/0/0.

- Andy Kischitz motioned to approve waiver from Bolton Zoning Bylaws §250-13 to allow a sideline setback (interior to the lots that are being created) of 6.0' on Lot 2B and 12.8' on Lot 2C. 2<sup>nd</sup> by Kay Stoner. All in favor 5/0/0.
- Andy Kischitz motioned to approve waiver from Bolton Zoning Bylaws §250-13.C to allow for multiple principle structures on a lot. 2<sup>nd</sup> by Bryan Holmes. All in favor 5/0/0.
- Andy Kischitz motioned to approve waiver from Bolton Zoning Bylaws §250-13.G to allow Lot 2B to have a shape factor of 0.4 where 0.5 is required. 2<sup>nd</sup> by Bradley Holmes. All in favor 5/0/0.
- Andy Kischitz motioned to approve waiver from Bolton Zoning Bylaws §250-17 to allow a shared driveway to access eight (8) dwellings on two (2) lots. 2<sup>nd</sup> by Kay Stoner. All in favor 5/0/0.
- Bradley Reed moved to recommend to deny the Comprehensive Permit application for the following reasons:
  - As designed, the project would endanger the natural environment due to the proximity of sensitive wetlands resource areas that may only be adequately protected through a proper delineation of wetlands and riverfront areas and compliance with the Town's Wetlands Bylaw.
  - As designed, the project would endanger the natural environment and the protection of private drinking water wells and wetlands resource areas that may only be adequately protected through compliance with the Board of Health's Regulations for Requirements for the Subsurface Disposal of Sanitary Sewage.
  - As designed, the project would endanger the natural environment, as the stormwater system was not designed based upon a permeability test, raising a significant risk that stormwater will overflow to Still River Road and impact road drainage and downstream wetlands.
  - The project would endanger the natural environment and undermine the Town's Open Space & Recreation Plan as a result of the project's design and its close proximity to protected land owned by Bolton Conservation Trust, Harvard Conservation Trust and Bolton Flats Wildlife Management Area.
  - 2<sup>nd</sup> by Bryan Holmes. All in favor 5/0/0.
- Bradley Reed moved to authorize Gerard Ahearn, Town Officials and Town Counsel to write the decision on behalf of the Board. 2<sup>nd</sup> by Andy Kischitz. All in favor 5/0/0.

- ADMINISTRATIVE
  - None.

Bradley Reed motioned to adjourn the Zoning Board of Appeals meeting at 8:16 PM. 2<sup>nd</sup> by Kay Stoner. All in favor 5/0/0.