

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

Remote Meeting held on August 10, 2020 at 6:00 p.m. via Zoom Communications, Inc.

Members Present: Gerard Ahearn (Chairman), Bryan Holmes, Andy Kischitz, Bradley Reed, and Kay Stoner  
Also Present: Erica Uriarte (Town Planner), David McKay (Town Counsel)

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, this public meeting of the Town of Bolton Planning Board was conducted via remote participation. No in-person attendance of members of the public were permitted, but the public can access this meeting while in progress using **Zoom Video Communications, Inc. (Zoom)**. Members of the public attending this meeting virtually were allowed to make comments if they wish to do so, during the portion of the hearing designated for public comment, by telephone, cell phone or personal computer using Zoom.

Directions to connect to the public meeting were provided on the agenda.

The Zoning Board of Appeals conducted a roll call of all members present including Gerard Ahearn, Bryan Holmes, Andy Kischitz, Bradley Reed, and Kay Stoner.

### **PUBLIC 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, August 10, 2020, at 6:00 p.m. via Zoom Video Communications, Inc. (Zoom) to hear and act upon the application of John & Mary Robinson. The applicant seeks a Variance to install a 12 ft. by 16 ft. shed at 48 Manor Road in Bolton's Residential Zoning District identified on Assessor's Map 4.C as Parcel 15.A. The applicant seeks partial relief from the 20 ft. side yard and rear yard setbacks pursuant to Section 250-13.B of the Code of the Town of Bolton.

- Gerard Ahearn open the public hearing for 48 Manor Road by reading the legal notice.
- John and Mary Robinson, the "Applicants", were in attendance of the public hearing.
- The Applicants intend to purchase and place a 12 ft. by 16 ft. shed on the Premises. The Variance request is to locate the shed within 6.5 ft. of the side yard setback and 12 ft. within the rear yard setback.
- The lot is pre-existing nonconforming.
- The Applicants suggested the lot shape of their property uniquely affects the placement of a shed making it difficult to meet the necessary offsets to property lines. To the front of the Applicants' dwelling is their septic system and to the southerly back corner of the premises is the Applicants' well. To the northerly side of the premises is the existing driveway. The rear of the Applicant's dwelling includes a walkway, patio, deck, and addition. The location of the proposed shed would maintain access along the side and rear of the premises from the existing driveway to the Applicants' well.
- Literal enforcement of the bylaw would involve substantial hardship as the Applicants have no other location on their property to place the shed without impacting access to their existing well.
- Lawn equipment is currently stored in the garage where the Applicants seek to store their vehicles.
- The Applicants do not anticipate any substantial detriment to the public good as the proposed shed's design and color will complement the existing dwelling.
- The Applicants do not intend to nullify or substantially derogate from the intent and purpose of the Bolton Zoning Bylaws. The Applicants seek to place the proposed shed at a location that continues to

allow access to their existing well. The Applicants seek to reduce the side and rear setbacks to 13.5 ft. and 8 ft. respectively.

- The Applicants received a letter of support from the abutter at 42 Manor Road for the location of the shed. The abutter at 42 Manor Road shares the property lines in which the Applicants seek reduced side yard and rear yard setbacks. The Applicants will send the letter of support to the Board as part of record.
- **Gerard Ahearn motioned to continue the public hearing for 48 Manor Road to August 25, 2020 at 5:45 p.m. via Zoom. 2nd by Bryan Holmes. All in favor by roll call: Gerard Ahearn – Yes, Bryan Holmes – Yes, Andy Kischitz – Yes, Bradley Reed – Yes, and Kay Stoner – Yes.**

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, August 10, 2020 at 6:30 p.m. via Zoom Video Communications, Inc. (Zoom) to act upon an Amended Decision regarding a Revised Comprehensive Permit Plan on Remand from the Housing Appeals Committee for the Still River Commons 40B Project. The Applicant, Still River Commons, LLC, seeks to build four (4) single family dwelling units located in Bolton's Residential Zoning District on Still River Road identified on Assessor's Map 8.B as Parcel 32. The modified development will contain one (1) affordable unit in conformance with M.G.L. c. 40B.

- Erica Uriarte (Town Planner) provided an overview of the Zoning Board of Appeal's Public Meeting Remote Participation Guidelines.
  - Zoom meetings can be accessed from your personal computer, cellphone and/or telephone.
  - All participants entering the meeting via a personal computer ("computer participants") are required to rename themselves with their official first and last name.
  - All participants (excluding Board members) will be muted throughout the meeting unless called upon by the Chairman.
  - All participants are required to state their name and address when called upon by the Chairman. Participants called upon more than once should restate their name.
  - When the Chairman opens the hearing for public comments, participants can "raise hand" or type their comment in the "chat" feature. Attendees participating by telephone can dial \*6 to mute/unmute and dial \*9 to "raise hand".
- Mr. Ahearn provided a background summary:
  - This matter originally came before the Board in August of 2018 when Still River submitted an application for a Comprehensive Permit to construct eight (8) condominium dwelling units on the property. The original application proposed a condominium development consisting of four (4) two-unit duplex style buildings located on two (2) lots containing two (2) affordable units.
  - In April 2019, after the close of the public hearing process for this application, the ZBA voted to deny the permit. Still River appealed the ZBA's Decision to the Housing Appeals Committee (HAC) in May of 2019.
  - Bolton has not yet achieved the 10% threshold of affordable housing to obtain a "safe harbor" from Chapter 40A developments. As a result, the burden on the Town to sustain the denial of a Chapter 40A comprehensive permit application is high.
  - In the HAC appeal, the issue is whether this Board's denial of the Comprehensive Permit is "Consistent with Local Needs" as defined under Chapter 40B, § 20.
  - To sustain a denial of a 40B application at the HAC, and ultimately in Court, the Town would need to show "a health or other local concern that (i) supports the denial, (ii) is not adequately addressed by compliance with State standards, and (iii) outweighs the regional housing need."
  - As the appeal was pending in 2019 and into 2020, Town's Law Committee, in consultation with Town Counsel, Town Officials, and the Town's technical consultants, analyzed the strengths and weaknesses of the Town's position in the HAC appeal. After weighing the costs and potential

benefits of further litigation and with input from the Town's scientific and technical consultants and Town Counsel, the Law Committee and ZBA agreed to negotiate a potential resolution of the HAC appeal with the Applicant.

- Both the Town and the Developer were required to make difficult concessions in order to achieve a resolution. Although it may not be the preferred choice of some residents, the Law Committee and the ZBA believed the settlement was ultimately in the best interests of the Town and the residents. The Town entered into a Settlement Agreement with Still River in June of this year.
- Under the terms of the Settlement Agreement, Still River submitted a Revised Comprehensive Permit Plan consisting of (4) four single-family homes, each home with three (3) bedrooms. One (1) of the single-family homes will be affordable. The revised project reduces the size of the septic system needed for the project from 18 to 12 bedrooms. It also reduces the stormwater and wetlands impacts of the project and the number of local waivers needed from 32 to eight (8).
- Pursuant to the Settlement Agreement, Still River and the Town requested a remand from the HAC so that the Board could conduct this public hearing and consider the Revised Plan.
- You may also recall that the Applicant chose to delay the filing of a Notice of Intent with the Conservation Commission. Under the Settlement Agreement, the Applicant will still need to do so and obtain an Order of Conditions from the Conservation Commission. In addition, the Settlement Agreement does not infringe upon the appeal rights of any abutter.
- Attorney Adam Costa, on behalf of Still River Commons, LLC, and Seth Donohoe from Ducharme & Dillis Civil Design Group, Inc. provided a presentation of the Revised Plan.
  - Seth Donohoe provided two (2) exhibit plans shared/viewed via Zoom during the hearing.
  - The Revised Plan reduces the number of units (from 8 duplex units to 4 single-family homes).
  - The Revised Plan reduces the number of bedrooms (from 18 to 12), which also reduces the septic system requirements and the size of the septic system.
  - The Revised Plan reduces the overall footprint of the buildings. The exhibit plans show a reduction of 5,000 sq. ft. of impervious area and reduces parking requirements. The driveway footprint will meet Bolton's shared driveway requirements.
  - The Revised Plan provides for an increased offset between wetlands and dwellings. All dwellings are positioned outside the locally regulated 25' wetland buffer zone while allowing all units to meet the front, side and rear yard setbacks specified by the Bolton Zoning Bylaw. The original plan proposed eight (8) the dwelling units within the 25' buffer zone to wetlands and required waivers from lot line setback requirements, which are not required by the Revised Plan.
  - The original plan required thirty-two (32) waivers from local bylaws and regulations, while the Revised Plan reduces the number of waivers to eight (8).
  - The Revised Plan will result in an increase in the available flood storage at the site through the construction of a compensatory flood storage area (added at a ratio of 1:1) to be located outside the locally regulated 25' buffer zone to wetlands.
  - The Revised Plan incorporates Low Impact Development (LID) techniques to treat stormwater runoff including vegetated basins (similar to bioretention areas) for the treatment and retention of runoff from the driveway. The basins have high visibility for easy maintenance compared to the unground chambers previously proposed for the eight (8) duplex units.
  - The Revised Plan will improve the vegetation along the Still River Road frontage through the implementation of an invasive species removal plan not included in the 8-unit plan. The Revised Plan also calls for additional landscaping to be added to the site.
  - The Applicant continues to provide drainage improvements along Still River Road as requested by Bolton's DPW. These improvements will collect runoff from the road along the frontage of

the property, convey through a culvert under the driveway and discharge the runoff to a small detention area before releasing to the neighboring wetlands.

- Proposed conditions of the draft Amended Decision include:
  - Approximately 5.58 acres of wetlands and open meadows will be protected through a Declaration of Restriction and subsequent Conservation Restriction.
  - Stormwater management and erosion control measures will be carefully managed during construction. A site supervisor will be on site to check controls including during and after storm events.
  - The single-family homes will be sprinklered.
  - No parking associated with the development will be allowed on public streets. Additional garage spaces and driveway spaced have been provided.
  - Design Review Board recommendations are incorporated into the architectural design.
  - The removal of large trees along the frontage will be minimized to maintain street buffer to the maximum extent practicable.
- Mr. Ahearn called upon the Board and members of the Law Committee in attendance to provide comment.
  - Stan Wysocki, member of the Law Committee, noted that the Committee went through an exhaustive list of options including looking at an alternative property during settlement negotiations. Understanding that the Town would not likely prevail at the HAC, the Committee sought to reduce environmental impacts. The Revised Plan was a reasonable compromise for both the Town and the Applicant.
- Mr. Ahearn opened the hearing to public comment.
- Rona Balco of Green Road asked if money would be set aside for the future flooding of homes.
  - Attorney David McKay noted that flood assurance is not a typical condition of a 40B project or of a similar project. Flooding was not negotiated as part of the settlement. It would be difficult to require a developer to ensure indemnification (compensation for harm or loss).
  - Attorney McKay noted that the Applicant has not yet filed a Notice of Intent with the Conservation Commission for an Order of Conditions.
- Bob Martel of 402 Vaughn Hill Road commented on the septic tank locations under the pavement/grass. He questioned the weight of vehicles and snow storage over the tanks. He questioned if calculations had been performed to confirm the tanks could handle the load.
  - Attorney Costa indicated that the Applicant will be required to go before the Board of Health to meet Title V. The entire septic system design will be reviewed by the Board of Health. However, the Applicant, under the Comprehensive Permit process, seeks the necessary waivers before going before Board of Health.
  - Mr. Donohoe noted that the septic tanks have a H-20 rating and therefore can handle the load. The Fire Department had similar concerns under the eight (8) unit duplexes, but were satisfied that the H-20 rating could handle the weight of emergency vehicles. Calculations have not been completed since the H-20 rating in itself verifies the structures ability to handle the loads.
- Stacia Downey of Still River Road asked who would be responsible for the Declaration of Restriction and also asked if the new wetland delineation line was approved by Conservation Commission.
  - Attorney Costa noted that the Applicant will be required to file the Declaration of Restriction which typically takes three (3) to five (5) months, however, with COVID it could take longer.
  - Attorney Costa indicated that the Applicant intends to submit a complete application to the Conservation Commission once the Comprehensive Permit is issued and the waivers to the local wetland bylaws/regulations are approved. The wetland delineation has not yet been completed.

- Mr. Martel of 302 Vaughn Hill Road asked whether a homeowner's association or condominium association would be organized.
  - Attorney Costa noted that the Applicant is early on in the permitting process. Some form of organization will be established to oversee the shared septic system, driveway, stormwater maintenance, etc.
  - Attorney McKay noted that there is a condition in the draft Amended Decision requiring that condominium documents be submitted to the Board and Town Counsel for review. These documents will need to be recorded at the registry of deeds.
- Robin Picariello of Vaugh Hill Road noted that the portion of open space to be restricted is already restricted because of the conditions established under NHESP previous approval for the eight (8) unit duplexes.
  - Attorney Costa noted that some of the area is restricted under NHESP, but does not require the entire area to be protected. The Applicant will seek NHESP approval for the four (4) single family homes so the scope of their approval is unknown (likely similar to previous projects).
  - Mr. Donohoe noted that the previous single-family home approved for the property did not have a Declaration of Restriction on it and therefore was not as comprehensive in protection.
  - Attorney McKay agreed that the area to be protected had not been completely resolved and therefore became a condition under the draft Amended Decision.
- Martha Remington of Main Street (and Historical Commission) Asked if the Town of Harvard had approved using their fire pond for this development. She also noted that the property is archeology sensitive and asked if any artifacts found during construction could be set aside for the Historical Commission to review/document.
  - Mrs. Uriarte noted that the use of the fire pond was no longer necessary since the homes would be sprinklered.
  - Attorney Costa noted that there is no explicated condition in the decision for archeological finds. The Applicant is willing to make a general commitment to set aside any items they find during the construction.
- Mrs. Downey of Still River Road asked who should be contacted during construction if issues should arise.
  - Mrs. Uriarte indicated that residents could notify her or Rebecca Longvall from Conservation.
- Heather Myler of Still River Road noted that the property is under water most times of the year.
- Mr. Martel asked if details of the negotiation between the Town and Applicant could be shared with the public.
  - Attorney McKay was hesitant to get into the details of the negotiations, but indicated that the Town considered an alternate site for development in combination with this site in the spirit of exploring all opportunities. Discussions included developing a single family on another lot, but there were too many obstacles and the Town decided to focus on this property only.
- Kathy Anestis of 448 Still River Road asked if trees to be removed would be marked. She also asked who should be contacted if neighboring wells are impacted.
  - Mr. Donohoe indicated that trees along the ROW would be coordinated with the Tree Warden through a Shaded Tree Hearing. Conservation will likely walk the site and review the vegetation to be removed. The driveway is not in the exact location of the existing cart path.
  - Attorney Costa noted that if neighboring wells are impacted, it would be the same procedure as any other project under construction. Conditions of the permit must be met and if issues arise, complaints can be directed to the Building Inspector and Zoning Board of Appeals for enforcement.

- Attorney McKay noted that the Board could hold back building permits/certificates of occupancy as part of enforcement.
- In the Board's deliberation of the Amended Decision, members were in favor of adding language into the Amended Decision requiring the Applicant to set aside any artifacts discovered during construction for the Historical Commission to document.
  - Attorney Costa noted that the Applicant is willing to do so under standard construction operations with no expectation of hand digging.
  - Attorney Costa, Attorney McKay and the Board were in agreement that this requirement be captured under the "additional testimony" section of the draft Amended Decision.
- The Board was in agreement that Chairman Ahearn would sign off on final language of the Amended Decision.
- **Bryan Holmes motioned to close the public hearing for Still River Commons. 2nd by Bradley Reed. All in favor by roll call: Gerard Ahearn – Yes, Bryan Holmes – Yes, Andy Kischitz – Yes, Bradley Reed – Yes, and Kay Stoner – Yes.**
- **Bradley Reed motioned approve the Amended Decision for Still River Commons subject to the inclusion of updates by Town Counsel and review by Chairman Gerard Ahearn and Town Planner, Erica Uriarte. 2nd by Bryan Holmes. All in favor by roll call: Gerard Ahearn – Yes, Bryan Holmes – Yes, Andy Kischitz – Yes, Bradley Reed – Yes, and Kay Stoner – Yes.**

#### **ADMINISTRATION**

- The approval of meeting minutes was moved to the next meeting date.

**Bradley Reed motioned to adjourn the meeting at 8:25 p.m. 2nd by Kay Stoner. All in favor by roll call: Gerard Ahearn – Yes, Bryan Holmes – Yes, Andy Kischitz – Yes, Bradley Reed – Yes, and Kay Stoner – Yes.**