

TOWN OF BOLTON – ZONING BOARD OF APPEALS MINUTES

Remote Meeting held on September 22, 2020 at 6:00 p.m. via Zoom Communications, Inc.

Members Present: Gerard Ahearn (Chairman), Kay Stoner, Bradley Reed, Andy Kischitz, and Bryan Holmes
Also Present: Erica Uriarte (Town Planner), Joe Peznola (MHP Consultant for The Woods at Farm Rd 40B)

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 is hereby given that the Bolton Zoning Board of Appeals held a continuation of a public hearing via remote participation on Tuesday, September 22, 2020, at **6:00 p.m.** to hear and act upon the application of The Woods at Farm Road, LLC and Deschenes & Farrell, PC. The applicant seeks a Comprehensive Permit for a proposed housing development entitled “**The Woods at Farm Road**” to be located in Bolton’s Residential Zoning District at the corner of Farm and Berlin Roads identified on Assessor’s Map 3.C as Parcel 72 (2.47 acres). The proposed development consists of four (4) single-family detached homeownership units. Three (3) of the units will be sold at market rate and one (1) of the units will be sold as affordable to those who earn 80% or less of the area median family income to be counted on the Town of Bolton’s affordable housing inventory in accordance with G.L. c. 40B.

- Gerard Ahearn read the legal notice aloud to open the public hearing.
- Mr. Ahearn reviewed comments received from abutter, Tom Kashuba, at 173 Berlin Road on September 21, 2020 via email.
 - Mr. Kashuba is concerned that the abutter comments are not being addressed. Mr. Ahearn noted that many of the abutter comments are similar to Board member comments and comments received from other boards, commissions, and even the Peer Reviewer which have been vetted through the process.
 - In regards to COVID, construction procedures will be guided by State requirements as various phases open up (including use of PPE).
 - Erica Uriarte is unaware of any conditions/operations that other Boards (i.e., Planning Board) have implemented relating to COVID. If special conditions were required on this project, it might single this project out.
 - Noncompliance during construction by the Applicant will be handled similar to all other projects through enforcement by the Building Inspector/Town (i.e., fines, cease & desist orders).

- Hours of operation will be standard construction hours for the Town of Bolton.
- Standard construction operations (unless otherwise temporarily changed by the State due to COVID) will be followed.
- Similar to other projects, the blockage of roads when moving equipment/materials may need oversight from the Police Department.
- Abutters can notify the Building Inspector or other Town officials to report infractions.
- Douglas Deschenes from Deschenes & Farrell, PC provided a written response dated September 22, 2020 to Mr. Kashuba's comments.
 - The Applicant is required and will adhere to all state requirements relating to COVID.
 - The Applicant agrees to be held to all terms/conditions under the Comprehensive Permit. Work hours, staging, parking, etc. will be compliant with the Town/building permits.
- Mr. Deschenes noted that he was unable to participate in the hearing after 7 p.m. He indicated that Melissa Robbins from his office was also on Zoom and would be able to answer any questions from the Board upon his exit.
- Mr. Deschenes provided written comment dated September 22, 2020 to the most recent Conservation Commission's comments dated August 25, 2020.
 - As part of this response a plan entitled "Exhibit Plan, Well Access Route" prepared by Ducharme & Dillis Civil Design Group, Inc. was submitted dated September 18, 2020.
- Relating to the Commissions' comments, Bradley Reed asked why multi-family dwelling units are considered uneconomical by the Applicant?
 - Mr. Deschenes noted that single-family homes are consistent with the neighborhood and duplexes are not. The Applicant reviewed the project numbers prior to submission to make sure it is economical.
 - Joe Peznola, MHP Consultant to the Board, stated that the Board could only question the economics of the project after the Applicant appeals a decision to the HAC because said decision renders the project uneconomical (based on 2008 regulation changes). The Board could condition the permit to require multi-family dwelling units. The Board could take a poll whether multi-family dwelling units are preferred over current design.
 - Robert Pace, the Applicant/Owner, noted that it is five months into the process and that this should have been brought up sooner. He believes the current layout is a good project and fits with the neighborhood.
- Mr. Ahearn called for poll of the Board to see if members were in favor of the current project or changing to a multi-family dwelling unit project.
 - Mr. Ahearn, Andy Kischitz and Bryan Holmes were in favor of the current project (single-family homes).
- Mr. Deschenes updated the waiver list for front yard setback of Units 3 and 4 (41.1 ft. and 42.9 ft. respectively).
- Chairman Ahearn opened the hearing to the public.
- Mr. Kashuba of 173 Berlin Road noted that it is not an attractive project and thinks it would be better with duplexes (reduced impervious area and structures).
- The Board reviewed a draft decision which includes sections for procedural history, findings of fact, waivers, conditions, etc.

- Mr. Peznola noted that the waivers could be voted on during the hearing or after the hearing within the 40 days to render a decision.
- The Board agreed to review the waiver list. If inclined to do so, the Board would vote on waivers.

- **Andy Kischitz motioned to approve a waiver request from Section §147-1B (3) – Groundwater Protection to allow for the construction of this Development, which includes (4) single-family style structures. 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.**
- **Bryan Holmes motioned to approve waiver requests from Bolton Wetlands Bylaw §233-2. Jurisdiction and associated regulations to allow Unit 1 to be located 50 feet from the edge of wetlands and to allow Unit 4 to be located 76 feet from the edge of wetlands. 2nd by Andy Kischitz. All in favor by roll call: Gerard Ahearn – Yes, Bryan Holmes – Yes, Andy Kischitz – Yes, Bradley Reed – Yes, and Kay Stoner – Yes.**
- **Bryan Holmes motioned to approve waiver requests from Bolton Wetlands Bylaw §233-2. Jurisdiction and associated regulations to allow the proposed well to be located 51 feet from the edge of wetlands and to allow the proposed well pump house to be located 52 feet from the edge of wetlands. 2nd by Andy Kischitz. All in favor by roll call: Gerard Ahearn – Yes, Bryan Holmes – Yes, Andy Kischitz – Yes, Bradley Reed – Yes, and Kay Stoner – Yes.**
 - Prior to voting, Bradley Reed and Kay Stoner indicated reservations regarding waivers; there was particular concern for polluting wetlands.
 - No negative comments were received from the Board of Health (BOH) regarding waivers. The BOH recommended nitrogen reduction treatment (being provided) and stated that the water supply would need to be determined by DEP to be either private or public.
 - The subsurface sewage disposal system will conform to Title V requirements.
 - The water supply is considered private (need 25 or more people, counting two per bedroom, for public water supply)
 - Seth Donohoe from Ducharme & Dillis Civil Design Group, Inc. noted that the BOH Well Regulations allow wells to be as close as 25 feet to wetlands.
 - Periodic inspections of the nitrogen reduction treatment system will need to be completed by the future home owners. This maintenance can be addressed by the condominium documents. Mrs. Uriarte will update the related condition in the draft decision.
- **Andy Kischitz motioned to approve waiver request from Bolton Wetlands Bylaw §233-2. Jurisdiction and associated regulations to allow the sewage disposal system (leaching area and tanks) to be located 72 feet from the edge of wetlands as allowed by 310 CMR 15. 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.**
- **Bryan Holmes motioned to approve waiver request from Bolton Wetlands Bylaw §233-2. Jurisdiction and associated regulations to allow the shared driveway for Units 1 and 2 to be located 63 feet from the edge of wetlands and to allow subsurface utilities to be located 52 feet from the edge of wetlands as depicted on the Site Plans. 2nd by Andy Kischitz. All in favor by roll call: Gerard Ahearn – Yes, Bryan Holmes – Yes, Andy Kischitz – Yes, Bradley Reed – Yes, and Kay Stoner – Yes.**
 - Bradley Reed noted concerns of oil spills impacting wetlands.

- Mr. Donohoe noted a system of checks and balances. The stormwater management system would be inspected and corrected as needed in accordance with the Operation & Maintenance Plan for the drainage system.
- **Bryan Holmes motioned to approve waiver request from Bolton Wetlands Bylaw §233-2. Jurisdiction and associated regulations to allow grading and clearing to occur 33 feet from the edge of wetlands to allow for fire access around Unit 1, construction of the sewage disposal system, and construction of dwelling units as depicted on the Site Plans. 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.**
- **Bryan Holmes motioned to approve waiver request from Bolton Wetlands Bylaw §233-2. Jurisdiction and associated regulations to allow for the removal of existing structures within the 25' buffer zone and improvements of the 25 ft. buffer zone as depicted on sheet C7.0 of the Comprehensive Permit Plan. 2nd by Andy Kischitz. All in favor by roll call: Gerard Ahearn – Yes, Bryan Holmes – Yes, Andy Kischitz – Yes, Bradley Reed – Yes, and Kay Stoner – Yes.**
- **Bryan Holmes motioned to approve waiver request from Bolton Board of Health Regulations Requirements for the Subsurface Disposal of Sanitary Sewage Regulation 4: Distances to allow leaching facilities to be located within 100 feet of a bordering vegetated wetland (72 feet provided) as allowed by 310 CMR 15. 2nd by Andy Kischitz. All in favor by roll call: Gerard Ahearn – Yes, Bryan Holmes – Yes, Andy Kischitz – Yes, Bradley Reed – Yes, and Kay Stoner – Yes.**
- **Andy Kischitz motioned to approve waiver request from Bolton Zoning Bylaw, §250-12. Schedule of Permitted Uses to allow Multiple single-family structures as proposed in the Comprehensive Permit is a permit/use that is not specifically stated as being allowed in the Bylaws. 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.**
- **Bryan Holmes motioned to approve waiver request from Bolton Zoning Bylaw, §250-13. Dimensional Regulations to allow for a front yard setback of 41.1 feet for Unit 3 & 42.9 feet for Unit 4. 2nd by Andy Kischitz. All in favor by roll call: Gerard Ahearn – Yes, Bryan Holmes – Yes, Andy Kischitz – Yes, Bradley Reed – Yes, and Kay Stoner – Yes.**
 - Prior to voting, Andy Kischitz noted that the Board did not make a determination whether the setback is front yard or side yard.
- **Bryan Holmes motioned to approve waiver request from Bolton Zoning Bylaw, §250-13. C. One Building Per Lot to allow for multiple principle structures on a lot. 2nd by Andy Kischitz. All in favor by roll call: Gerard Ahearn – Yes, Bryan Holmes – Yes, Andy Kischitz – Yes, Bradley Reed – Yes, and Kay Stoner – Yes.**
- **Bryan Holmes motioned to approve waiver request from Bolton Zoning Bylaw, §250-17. Driveways and Parking to allow two (2) shared driveways on one lot, each providing access to two (2) single family dwellings. 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.**
- **Andy Kischitz motioned to approve waiver request from Bolton Zoning Bylaw, §250-24. Scenic Roads to allow one (1) shared driveway off Berlin Road (a scenic road) without receiving written consent from the Bolton Planning Board. 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.**

- Prior to voting, Mr. Peznola indicated that this waiver is considered a “process waiver”. By granting the permit, the waiver is granted anyway. However, for clarity, the Board can vote to grant the Waiver. The Tree Warden will still need to approve the removal of trees within the road right of way.
- Mr. Peznola believed that the Board had received all necessary information needed to render a decision through the hearing process. He noted that the Board could choose to either leave the hearing open or close the hearing. If the Board chooses to leave the hearing open, it allows the Applicant to weigh in on draft conditions of the decision.
- The hearing must be closed by October 5, 2020 (within 180 days of the start of the hearing).
- Melissa Robbins noted that the Applicant would be amenable to extending the date in which the hearing needs to be closed to allow for discussion of conditions.
- It is anticipated that the draft decision will be reviewed by the Board and the Applicant prior to the next hearing date.
- **Andy Kischitz motioned to continue the public hearing for The Woods at Farm Road to October 5, 2020 at 6 p.m. via Zoom. 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.**

ADMINISTRATION

Approval of meeting minutes.

- **Bryan Holmes motioned to approve meeting minutes from August 25, 2020. 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.**

Bryan Holmes motioned to adjourn the meeting at 8:15 p.m. 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.