



TOWN OF BOLTON

ZONING BOARD OF APPEALS

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

2017 APR 24 PM 1:23

Decision to Reverse the Building Inspector's Zoning Determination
Regarding 401 Main Street – Counseling Use

Petition: Administrative Appeal of the Building Inspector's Zoning Determination to allow Cultivate Counseling, LLC to operate at 401 Main Street, Bolton, MA.

Petitioners: Frederick C. Van Bennekom, 421 Main Street, Bolton MA 01740
Linda Skinner Austin, 84 Burnham Road, Bolton MA 01740
Mary McCarthy, 65 Burnham Road, Bolton MA 01740
On behalf of Bolton Plan Neighborhood Group

Premises: 401 Main Street, Bolton, MA 01740
Bolton Assessor's Map 4.D Parcel 20
Residential Zoning District

Owners: Owners of the Premises are Edwin P. and Debra L. Madera. Owners of Cultivate Counseling, LLC and John Sawyer's Mill are Debra L. Madera and Andrew Lapin.

Date Petition filed with Town Clerk: February 6, 2017

PROCEDURAL HISTORY

1. On February 6, 2017, the Petitioners, pursuant to M.G.L. Chapter 40A, Sections 8 and 15, filed an Administrative Appeal with the Zoning Board of Appeals (ZBA) appealing a Zoning Determination by the Bolton Building Inspector to allow Cultivate Counseling, LLC to operate at the Premises.
2. A public hearing on the Petition was noticed for Tuesday, February 28, 2017. Notice of the public hearing was published in The Clinton Item on February 10, 2017 and February 17, 2017. Both notices were posted for 14 days in the Bolton Town Hall, and mailed to parties of interest at least 14 days before the public hearing.
3. The ZBA commenced the public hearing on the Petition on Tuesday, February 28, 2017 at the Bolton Public Library, 738 Main Street, Bolton, MA at 7:05 p.m. at which time all those opposed or in favor could be heard.

4. The ZBA continued the public hearing to March 28, 2017 and April 11, 2017 to provide for additional time to receive supplemental comments and information, and to conduct a site visit of the Premises. The continued hearing on Tuesday, March 28, 2017, was held at the Bolton Public Library, 738 Main Street, Bolton, MA at 7:00 p.m. The continued hearing on Tuesday, April 11, 2017, was held at the Bolton Public Safety Center, 15 Wattaquodock Hill Road, Bolton, MA at 7:00 p.m. The ZBA closed the hearing on April 11, 2017.
5. Members of the ZBA attending all sessions of the public hearing, deliberating and voting on the Petition were Chairman Gerard Ahearn, Jack Sargent, Bradley Reed, Kay Stoner, and Andy Kischitz.
6. The Petitioners or their representatives were in attendance at all sessions of the public hearing. The Petitioners representative were Atty. Jason R. Talerman from Mead, Talerman & Costa, LLC on February 28, 2017, and Atty. Adam J. Costa from Mead, Talerman & Costa, LLC for the remainder of the hearing.
7. The Owners or their representatives were in attendance at all sessions of the public hearing. The Owners' representative was Atty. Robert W. Ancil of Perkins & Ancil.
8. The Building Inspector was in attendance at the public hearing session on February 28, 2017.
9. Town Counsel (Mirick, O'Connell, DeMallie & Lougee, LLP) was in attendance at the public hearing on February 28, 2017 and March 28, 2017.
10. Throughout its deliberations, the ZBA was mindful of the statements of the Petitioners, the Owners, representatives, and the comments of the general public, all as made or received at the public hearing.

RECORD DOCUMENTS

True copies of the Petition and all materials submitted to the ZBA relevant to the Petition by the Petitioners, the Owners, and others, and the notices of the public hearing, are made a part of the record of this decision and listed in Appendix A. These materials are on file with the Office of the Town Planner.

BACKGROUND

1. On December 29, 2016, the Petitioners submitted a Request for Zoning Enforcement pursuant to M.G.L. Chapter 40A, Section 7 with the Building Inspector asserting that Cultivate Counseling, LLC was operating a counseling business at the Premises in violation of the Bolton Zoning Bylaw, and that this use was not protected by the agricultural exemption set forth in M.G.L. Chapter 40A, Section 3 (the so-called "Dover Amendment").

2. The Building Inspector responded to the Zoning Enforcement Request in a letter dated January 9, 2017. The letter stated that the current uses at the Premises had been reviewed per the request and it was determined that all of the uses on the Premises complied with the Bolton Zoning Bylaw or are exempt under Massachusetts General Laws.
3. On February 6, 2017, the Petition was filed with the ZBA entitled "Appeal of Rejection of Request for Zoning Enforcement, Bolton Plan Neighborhood Group, February 6, 2017".

DISCUSSION AND FINDINGS

1. Over the course of the hearing, the ZBA heard testimony as summarized in the discussion and findings set forth below.
2. The Owners and their representatives stated during the public hearing and through written submissions that Cultivate Counseling, LLC is a counseling center that uses Animal Assisted Psychotherapy, Equine Assisted Psychotherapy via Equine Assisted Growth and Learning Association, Horticulture Therapy, Nature Therapy and Farm-Based Gestalt Therapy. The Premises contain: one (1) dog, two (2) rabbits, four (4) horses, four (4) cats, five (5) sheep, ten (10) Goats, and thirty (30) chickens. A typical counseling session with a client is 60 minutes. Currently there are four clinicians with a goal to have eight. No more than 18 total people are permitted on the Premises at any one time. The most common age for a client is 14 years old. The youngest client is 8 years old and the oldest client is in their early 60s. The average age of the clients is 18 years old. As part of therapy, clients make byproducts from the animals on the Premises (e.g., yarn, soap, crafts). Andrew Lapin is the founder and creator of Cultivate Counseling, the Executive Director and an Equine Specialist. Debra Madera is a Licensed Mental Health Counselor and Nationally Certified Counselor, and serves as the Clinical Director and a therapist at Cultivate Counseling.
3. Cultivate Counseling, LLC derives revenue from the counseling services it provides at the Premises. Cultivate Counseling, LLC also derives revenue from the sale of agricultural byproducts produced at the Premises.
4. Section 250-12 of the Bolton Zoning Bylaw provides that "Agriculture, horticulture, floriculture" is a use allowed as-of-right in the Residential District. "Counseling" is not specifically defined as a use for purposes of Bolton Zoning Bylaw, and does not fall within any of the use categories allowed in the Residential District under Section 250-12 of the Bolton Zoning Bylaw.
5. Section 250-11 of the Bolton Zoning Bylaw provides that "[n]o business, commercial, or industrial building or outdoor storage (except for agriculture, horticulture, or floriculture) shall be established on a lot on which a dwelling exists."

6. The Premises contains a single-family dwelling, used by Cultivate Counseling, LLC. A full time caretaker resides at the Premises.
7. The Dover Amendment provides that “[n]o zoning ... by-law shall ... prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture...”
8. The Petitioners and their representatives stated during the public hearing and through written submissions that the counseling business at the Premises extends beyond the limits of the agricultural exemption under the Dover Amendment; that the Owners derive more income from counseling services than from agricultural byproduct sales; that the counseling use is a separate and primary use of the Premises, with the agricultural use serving as secondary to counseling; that the animals on the Premises serve as therapy animals or pets, rather than components of an agricultural operation; that there is no case law providing that counseling and farming may constitute a single agricultural use protected by the Dover Amendment; and that there is no case law providing that counseling is accessory (customary and incidental) to agriculture.
9. The Building Inspector stated during the public hearing that he believes Cultivate Counseling, LLC’s use of the Premises is allowed pursuant to the agricultural exemption under the Dover Amendment. The Building Inspector stated during the public hearing that he conducted a site visit at the Premises where he observed farming activities. Inside a temporary modular building (since removed from the Premises), he observed a spinning wheel to spin yarn from wool collected from the sheep, a rabbit to brush and collect its fur, and soap making from the goats’ milk.
10. The ZBA, joined by members of the Board of Health, conducted a site visit of the Premises on Saturday, March 11, 2017. No deliberations occurred during the site visit.
11. Based on the comments and evidence received, the ZBA members deliberated among themselves before the Chair called for a motion.

DECISION

Following the public hearing on April 11, 2017, Jack Sargent made a motion, seconded by Bradley Reed, that the ZBA reverse the Building Inspector’s January 9, 2017 Zoning Determination to apply the agricultural exemption to Cultivate Counseling, LLC’s use of the Premises. The motion, as seconded, proposed the following reasons for the decision:

1. The counseling business (Cultivate Counseling, LLC) is the primary use of the Premises, not agriculture. The primary revenue generated from Premises is from counseling and not farming.
2. A counseling business is not allowed in the Residential Zoning District in accordance with Section 250-12 of the Code of the Town of Bolton.

3. The counseling business is a separate and distinct use from farming. The agricultural exemption provided under the Dover Amendment does not apply to the counseling business.
4. Counseling is not an accessory use that is customary to agriculture. There are no known court cases that support treating counseling as accessory to agriculture.

RECORD OF VOTE

The ZBA voted as follows: Members Jack Sargent, Bradley Reed, Kay Stoner and Andy Kischitz voted in favor. Gerard Ahearn voted no/against. The Building Inspector's January 9, 2017 Zoning Determination with respect to Cultivate Counseling, LLC's use of the Premises pursuant to the Dover Amendment's agricultural exemption is reversed with a vote of four (4) in favor and one (1) opposed.

Gerard Ahearn – no
Kay Stoner – yes

Jack Sargent – yes
Andy Kischitz – yes

Bradley Reed – yes



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

4/24/17

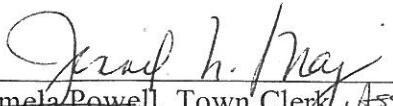
Dated

Appeals, if any, to this decision must be made pursuant to M.G.L. c.40A, Section 17 and must be filed within twenty (20) days after the date of filing of this decision in the office of the Bolton Town Clerk.

This decision shall not take effect until a copy of this decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after this decision has been filed in the office of the Town Clerk, and that no appeal has been filed within said twenty (20) days; or that, if such appeal has been filed, that it has been dismissed or denied.

FILED WITH THE TOWN CLERK

Filed with the Town Clerk on April 24, 2017.



Pamela Powell, Town Clerk, Ass.
Jennifer Marquis

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: _____, 2017.

Pamela Powell, Town Clerk

Copy of Decision mailed to:

Abutters

Surrounding Towns

Bolton Boards and Committees

Petitioners

Owners

APPENDIX A: RECORD DOCUMENTS

1. Zoning Appeal for Building permit BP-2016-0166, Property Owned by Debra and Edwin Madera, 401 Main Street, Bolton, MA. Brought by the Neighborhood of the Bolton Pan, November 28, 2016.
2. Request for Zoning Enforcement, 401 Main Street, Bolton, Mass., dated December 27, 2016 submitted by John E. Tremblay, Mary H. McCarthy, Frederick C. Van Bennekom, and Linda Skinner Austin.
3. Letter from Bolton Building Department written by Michael Sauvageau, Building Inspector, to John E. Tremblay of 5 Long Hill Road, Bolton, MA 01740. Re: 401 Main Street Zoning Determination, dated January 9, 2017.
4. Email from Scott Powell to the Gerard Ahearn, Chairman of Zoning Board of Appeals, Subject: Zoning Appeal for Building Permit BP-2016-0166 (401 Main Street), dated January 12, 2017.
5. Letter to Zoning Board of Appeals, c/o Ms. Erica Uriarte, Town Planner, from Atty. Robert W. Anctil of Perkins & Anctil dated January 9, 2017. Re: Zoning Appeal for Building Permit BP-2016-0166 Property Owned by Debra and Edwin Madera 401 Main Street, Bolton, MA, Brought by the neighborhood of the Bolton Pan November 28, 2016.
6. Appeal of Rejection of Request for Zoning Enforcement, Bolton Pan Neighborhood Group, dated February 6, 2017 submitted by Frederick C. Van Bennekom, Linda Skinner Austin, and Mary McCarthy.
7. PowerPoint Presentation presented by Atty. Robert W. Anctil of Perkins & Anctil on February 28, 2017.
8. Copy of M.G.L. Ch.40A, Section 3 by Michael Sauvageau, Bolton Building Inspector, during hearing on February 28, 2017.
9. Copy of 780 CMR: State Board of Building Regulations and Standards by Michael Sauvageau, Bolton Building Inspector, during hearing on February 28, 2017.
10. Letter to Gerard Ahearn, Chairman of Zoning Board of Appeals, from Robert Ayres of 412 Main Street, Bolton, MA 01740, dated March 3, 2017.
11. Letter from Brad Mitchell, Deputy Executive Director of the Massachusetts Farm Bureau Federation, Inc. dated March 6, 2017.
12. Letter from the Bolton Pan Neighborhood Group to Gerard Ahearn, Chairman of the Zoning Board of Appeals, Re: ZBA Site Visit to 401 Main Street, dated March 7, 2017.
13. Letter to Gerard Ahearn, Zoning Board of Appeals, from Frederick C. Van Bennekom (individually and on behalf of other residents of the Bolton Pan Neighborhood), Re: Timeline of Events at 401 Main Street, dated March 23, 2017.
14. Applicability of Exemption for Agricultural Use Pursuant to G.L. C. 40A, Section 3 Chart provided by Atty. Adam J. Costa from Mead, Talermin & Costa, LLC during hearing on April 11, 2017.
15. Letter prepared by the Bolton Economic Development Committee to the Zoning Board of Appeals received April 11, 2017.

16. Letter to Zoning Board of Appeals, c/o Ms. Erica Uriarte, Town Planner, from Atty. Robert W. Ancil of Perkins & Ancil dated April 11, 2017. Re: Zoning Appeal for Building Permit BP-2016-0166 Property Owned by Debra and Edwin Madera 401 Main Street, Bolton, MA, Brought by the neighborhood of the Bolton Pan November 28, 2016.
17. Letter from the Bolton Agricultural Commission to the Members of the Zoning Board of Appeals Received April 11, 2017.
18. Letter from Martha Remington, Chair of the Bolton Historical Commission, to the Board of Appeals, via Town Planner, Erica Uriarte, dated April 11, 2017.



TOWN OF BOLTON
ZONING BOARD OF APPEALS

2017 APR 24 PM 1:24

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

Decision to Reverse the Building Inspector's Zoning Determination
Regarding 401 Main Street – Congregate Living

Petition: Administrative Appeal of the Building Inspector's Zoning Determination to allow Cultivate Counseling, LLC to operate at 401 Main Street, Bolton, MA.

Petitioners: Frederick C. Van Bennekom, 421 Main Street, Bolton MA 01740
Linda Skinner Austin, 84 Burnham Road, Bolton MA 01740
Mary McCarthy, 65 Burnham Road, Bolton MA 01740
On behalf of Bolton Plan Neighborhood Group

Premises: 401 Main Street, Bolton, MA 01740
Bolton Assessor's Map 4.D Parcel 20
Residential Zoning District

Owners: Owners of the Premises are Edwin P. and Debra L. Madera. Owners of Cultivate Counseling, LLC and John Sawyer's Mill are Debra L. Madera and Andrew Lapin.

Date Petition filed with Town Clerk: February 6, 2017

PROCEDURAL HISTORY

1. On February 6, 2017, the Petitioners, pursuant to M.G.L. Chapter 40A, Sections 8 and 15, filed an Administrative Appeal with the Zoning Board of Appeals (ZBA) appealing a Zoning Determination by the Bolton Building Inspector to allow a congregate housing use by John's Sawyer Mill at the Premises.
2. A public hearing on the Petition was noticed for Tuesday, February 28, 2017. Notice of the public hearing was published in The Clinton Item on February 10, 2017 and February 17, 2017. Both notices were posted for 14 days in the Bolton Town Hall, and mailed to parties of interest at least 14 days before the public hearing.
3. The ZBA commenced the public hearing on the Petition on Tuesday, February 28, 2017 at the Bolton Public Library, 738 Main Street, Bolton, MA at 7:05 p.m. at which time all those opposed or in favor could be heard.

4. The ZBA continued the public hearing to March 28, 2017 and April 11, 2017 to provide for additional time to receive supplemental comments and information, and to conduct a site visit of the Premises. The continued hearing on Tuesday, March 28, 2017, was held at the Bolton Public Library, 738 Main Street, Bolton, MA at 7:00 p.m. The continued hearing on Tuesday, April 11, 2017, was held at the Bolton Public Safety Center, 15 Wattaquadock Hill Road, Bolton, MA at 7:00 p.m. The ZBA closed the hearing on April 11, 2017.
5. Members of the ZBA attending all sessions of the public hearing, deliberating and voting on the Petition were Chairman Gerard Ahearn, Jack Sargent, Bradley Reed, Kay Stoner, and Andy Kischitz.
6. The Petitioners or their representatives were in attendance at all sessions of the public hearing. The Petitioners representative were Atty. Jason R. Talerman from Mead, Talerman & Costa, LLC on February 28, 2017, and Atty. Adam J. Costa from Mead, Talerman & Costa, LLC for the remainder of the hearing.
7. The Owners or their representatives were in attendance at all sessions of the public hearing. The Owners' representative was Atty. Robert W. Ancil of Perkins & Ancil.
8. The Building Inspector was in attendance at the public hearing session on February 28, 2017.
9. Town Counsel (Mirick, O'Connell, DeMallie & Lougee, LLP) was in attendance at the public hearing on February 28, 2017 and March 28, 2017.
10. Throughout its deliberations, the ZBA was mindful of the statements of the Petitioners, the Owners, representatives, and the comments of the general public, all as made or received at the public hearing.

RECORD DOCUMENTS

True copies of the Petition and all materials submitted to the ZBA relevant to the Petition by the Petitioners, the Owners, and others, and the notices of the public hearing, are made a part of the record of this decision and listed in Appendix A. These materials are on file with the Office of the Town Planner.

BACKGROUND

1. On December 29, 2016, the Petitioners submitted a Request for Zoning Enforcement pursuant to M.G.L. Chapter 40A, Section 7 with the Building Inspector asserting that a proposed congregate living home to be operated as John Sawyer's Mill at the Premises would violate the Section 250-12 of the Code of the Town of Bolton and that the Owners have not demonstrated that the congregate living home would be protected by the Fair Housing Act.

2. The Building Inspector responded to the Zoning Enforcement Request in a letter dated January 9, 2017. The letter stated that the current uses at the Premises had been reviewed per the request and it was determined that all of the uses on the Premises complied with the Bolton Zoning Bylaw or are exempt under Massachusetts General Laws.
3. On February 6, 2017, the Petition was filed with the ZBA entitled “Appeal of Rejection of Request for Zoning Enforcement, Bolton Plan Neighborhood Group, February 6, 2017”.

DISCUSSION AND FINDINGS

1. Over the course of the hearing, the ZBA heard testimony as summarized in the discussion and findings set forth below.
2. The Owners and their representatives stated during the public hearing and through written submissions that the single-family dwelling located at the Premises is intended to be operated as John Sawyer’s Mill, providing congregate living of disabled persons in recovery from substances and/or working towards mental health recovery.
3. The Owners have not taken steps to commence the proposed congregate living use, and therefore it is not certain what, if any, reasonable accommodations future residents of the single-family dwelling may request with respect to the Code of the Town of Bolton.
4. A caretaker lives in the single-family dwelling full time and tends to animals located on the Premises.
5. Section 250-12. Schedule of Permitted Uses of the Code of the Town of Bolton does not allow congregate living housing in the Residential District.
6. The ZBA, joined by members of the Board of Health, conducted a site visit of the Premises on March 11, 2017. No deliberations occurred during the site visit. The single-family dwelling located on the Premises was observed to contain equipment related to agricultural uses. The bedrooms of the home were not observed.
7. Based on the comments and evidence received, the ZBA members deliberated among themselves before the Chair called for a motion.

DECISION

Following the public hearing on April 11, 2017, Jack Sargent made a motion, seconded by Bradley Reed, that the ZBA reverse the Building Inspector’s January 9, 2017 Zoning Determination to allow the proposed congregate living use at the Premises. The motion, as seconded, proposed the following reason for the decision:

1. Section 250-12 of the Bolton Zoning Bylaw does not allow congregate living housing in the Residential District.

RECORD OF VOTE

The following members of the Zoning Board unanimously voted in favor: Gerard Ahearn, Jack Sargent, Bradley Reed, Kay Stoner, and Andy Kischitz. The Building Inspector's January 9, 2017 Zoning Determination allowing a congregate living use at the Premises is reversed with a vote of five (5) in favor.

Gerard Ahearn – yes
Kay Stoner – yes

Jack Sargent – yes
Andy Kischitz – yes

Bradley Reed – yes



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

4/24/17

Dated

Appeals, if any, to this decision must be made pursuant to M.G.L. c.40A, Section 17 and must be filed within twenty (20) days after the date of filing of this decision in the office of the Bolton Town Clerk.

This decision shall not take effect until a copy of this decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after this decision has been filed in the office of the Town Clerk, and that no appeal has been filed within said twenty (20) days; or that, if such appeal has been filed, that it has been dismissed or denied.

FILED WITH THE TOWN CLERK

^{ASST}
Filed with the Town Clerk on April 24, 2017.

Jennifer L. May
~~Pamela Powell~~, Town Clerk, ^{ASST.}
Jennifer Mayrus

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: _____, 2017.

Pamela Powell, Town Clerk

Copy of Decision mailed to:

Abutters

Surrounding Towns

Bolton Boards and Committees

Petitioners

Owners

APPENDIX A: RECORD DOCUMENTS

1. Zoning Appeal for Building permit BP-2016-0166, Property Owned by Debra and Edwin Madera, 401 Main Street, Bolton, MA. Brought by the Neighborhood of the Bolton Pan, November 28, 2016.
2. Request for Zoning Enforcement, 401 Main Street, Bolton, Mass., dated December 27, 2016 submitted by John E. Tremblay, Mary H. McCarthy, Frederick C. Van Bennekom, and Linda Skinner Austin.
3. Letter from Bolton Building Department written by Michael Sauvageau, Building Inspector, to John E. Tremblay of 5 Long Hill Road, Bolton, MA 01740. Re: 401 Main Street Zoning Determination, dated January 9, 2017.
4. Email from Scott Powell to the Gerard Ahearn, Chairman of Zoning Board of Appeals, Subject: Zoning Appeal for Building Permit BP-2016-0166 (401 Main Street), dated January 12, 2017.
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10. Letter to Gerard Ahearn, Chairman of Zoning Board of Appeals, from Robert Ayres of 412 Main Street, Bolton, MA 01740, dated March 3, 2017.
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13. Letter to Gerard Ahearn, Zoning Board of Appeals, from Frederick C. Van Bennekom (individually and on behalf of other residents of the Bolton Pan Neighborhood), Re: Timeline of Events at 401 Main Street, dated March 23, 2017.
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15. Letter prepared by the Bolton Economic Development Committee to the Zoning Board of Appeals received April 11, 2017.

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17. Letter from the Bolton Agricultural Commission to the Members of the Zoning Board of Appeals Received April 11, 2017.
18. Letter from Martha Remington, Chair of the Bolton Historical Commission, to the Board of Appeals, via Town Planner, Erica Uriarte, dated April 11, 2017.



TOWN OF BOLTON
ZONING BOARD OF APPEALS

2017 APR 24 PM 1:23

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

Decision to Uphold the Issuance of Building Permit BP-2016-0166
Regarding 401 Main Street

Petition: Administrative Appeal of Building Permit PB-2016-0166 issued by the Building Inspector for a temporary modular building at 401 Main Street, Bolton, MA.

Petitioners: The individuals, listed in Appendix B, on behalf of the Bolton Plan Neighborhood Group

Premises: 401 Main Street, Bolton, MA 01740
Bolton Assessor's Map 4.D Parcel 20
Residential Zoning District

Owners: Owners of the Premises are Edwin P. and Debra L. Madera. Owners of Cultivate Counseling, LLC and John Sawyer's Mill are Debra L. Madera and Andrew Lapin.

Date Petition filed with Town Clerk: November 28, 2016

PROCEDURAL HISTORY

1. On November 28, 2016, the Petitioners, pursuant to M.G.L. Chapter 40A, Sections 8 and 15, filed an Administrative Appeal with the Zoning Board of Appeals (ZBA) appealing the Bolton Building Inspector's issuance of Building Permit BP-2016-0166 for a temporary modular building for agricultural use at the Premises.
2. A public hearing on the Petition was noticed for Tuesday, January 10, 2017. Notice of the public hearing was published in the Bolton Independent on December 23, 2016 and in The Clinton Item on December 30, 2016.
3. On January 10, 2017, the Petitioners and the ZBA agreed in writing to extend the date to open the hearing on the Petition to February 28, 2017 and extend the date to take final action on the Petition to April 24, 2017.
4. The ZBA commenced the public hearing on the Petition on Tuesday, February 28, 2017 at the Bolton Public Library, 738 Main Street, Bolton, MA at 7:05 p.m. at which time all those opposed or in favor could be heard.

5. The ZBA continued the public hearing to March 28, 2017 and April 11, 2017 to provide for additional time to receive supplemental comments and information, and to conduct a site visit of the Premises. The continued hearing on Tuesday, March 28, 2017, was held at the Bolton Public Library, 738 Main Street, Bolton, MA at 7:00 p.m. The continued hearing on Tuesday, April 11, 2017, was held at the Bolton Public Safety Center, 15 Wattaquodock Hill Road, Bolton, MA at 7:00 p.m. The ZBA closed the hearing on April 11, 2017.
6. Members of the ZBA attending all sessions of the public hearing, deliberating and voting on the Petition were Chairman Gerard Ahearn, Jack Sargent, Bradley Reed, Kay Stoner, and Andy Kischitz.
7. The Petitioners or their representatives were in attendance at all sessions of the public hearing. The Petitioners representative were Atty. Jason R. Talerman from Mead, Talerman & Costa, LLC on February 28, 2017, and Atty. Adam J. Costa from Mead, Talerman & Costa, LLC for the remainder of the hearing.
8. The Owners or their representatives were in attendance at all sessions of the public hearing. The Owners' representative was Atty. Robert W. Ancil of Perkins & Ancil.
9. The Building Inspector was in attendance at the public hearing session on February 28, 2017.
10. Town Counsel (Mirick, O'Connell, DeMallie & Lougee, LLP) was in attendance at the public hearing on February 28, 2017 and March 28, 2017.
11. Throughout its deliberations, the ZBA was mindful of the statements of the Petitioners, the Owners, representatives, and the comments of the general public, all as made or received at the public hearing.

RECORD DOCUMENTS

True copies of the Petition and all materials submitted to the ZBA relevant to the Petition by the Petitioners, the Owners, and others, and the notices of the public hearing, are made a part of the record of this decision and listed in Appendix A. These materials are on file with the Office of the Town Planner.

BACKGROUND

1. On September 22, 2016, a Cease and Desist was issued by the Building Inspector regarding a temporary modular building delivered to the Premises prior to the issuance of a building permit.
2. On November 8, 2016, the Building Inspector issued Building Permit BP-2016-0166 for

a temporary modular building for agricultural use at the Premises for a period of no longer than 12 months from occupancy.

3. On November 28, 2016, the Petition was filed with the ZBA entitled "Zoning Appeal for Building Permit BP-2016-0166, Property Owned by Debra and Edwin Madera, 401 Main Street, Bolton, MA, Brought by the Neighborhood of the Bolton Plan, November 28, 2016".

DISCUSSION AND FINDINGS

1. Over the course of the hearing, the ZBA heard testimony as summarized in the discussion and findings set forth below.
2. Section 250-20 the Code of the Town of Bolton allows for temporary trailers for dwelling, commercial, business or industrial purposes for a period of one (1) year.
3. The Building Inspector stated during the public hearing that he conducted a site visit at the Premises where he went into the temporary modular building and observed work stations set up for agricultural activities. The Building Inspector observed within the temporary modular building a spinning wheel to spin yarn from the wool collected from the sheep on the Premises, a rabbit to brush and collect its fur, and soap making from the milk of goats on the Premises.
4. The Owners stated during the public hearing that the temporary modular building was voluntarily removed from the Premises prior to March 28, 2017.
5. On Saturday, March 11, 2017, the ZBA members, joined by members of the Board of Health, conducted site visit at the Premises at which time the ZBA members confirmed that the temporary modular building had been removed from the Premises. No deliberations occurred during the site visit.
6. Based upon the comments and evidence received, the ZBA members deliberated among themselves before the Chair called for a motion.

DECISION

Following the public hearing on April 11, 2017, Jack Sargent made a motion, seconded by Bradley Reed, that the Zoning Board uphold the Building Inspector's decision to issue Building Permit BP-2016-0166 for a temporary modular building for agricultural use at the Premises. The motion, as seconded, proposed the following reason for the decision:

1. Section 250-20 of the Code of the Town of Bolton allows for temporary trailers for dwelling, commercial, business or industrial purposes for a period of one (1) year.

RECORD OF VOTE

The following members of the Zoning Board unanimously voted in favor: Gerard Ahearn, Jack Sargent, Bradley Reed, Kay Stoner, and Andy Kischitz. The Building Inspector's issuance of Building Permit BP-2016-0166 is upheld with a vote of five (5) in favor.

Gerard Ahearn – yes
Kay Stoner – yes

Jack Sargent – yes
Andy Kischitz – yes

Bradley Reed – yes



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

4/24/17

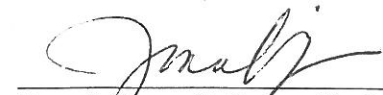
Dated

Appeals, if any, to this decision must be made pursuant to M.G.L. c.40A, Section 17 and must be filed within twenty (20) days after the date of filing of this decision in the office of the Bolton Town Clerk.

This decision shall not take effect until a copy of this decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after this decision has been filed in the office of the Town Clerk, and that no appeal has been filed within said twenty (20) days; or that, if such appeal has been filed, that it has been dismissed or denied.

FILED WITH THE TOWN CLERK

Filed with the Town Clerk on April 24, 2017.



Pamela Powell, Town Clerk, Ass't.
Jennifer Maguis

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: _____, 2017.

Pamela Powell, Town Clerk

Copy of Variance Findings and Decision mailed to:
Abutters
Surrounding Towns
Bolton Boards and Committees
Petitioners
Owners

APPENDIX A: RECORD DOCUMENTS

1. Zoning Appeal for Building permit BP-2016-0166, Property Owned by Debra and Edwin Madera, 401 Main Street, Bolton, MA. Brought by the Neighborhood of the Bolton Pan, November 28, 2016.
2. Request for Zoning Enforcement, 401 Main Street, Bolton, Mass., dated December 27, 2016 submitted by John E. Tremblay, Mary H. McCarthy, Frederick C. Van Bennekom, and Linda Skinner Austin.
3. Letter from Bolton Building Department written by Michael Sauvageau, Building Inspector, to John E. Tremblay of 5 Long Hill Road, Bolton, MA 01740. Re: 401 Main Street Zoning Determination, dated January 9, 2017.
4. Email from Scott Powell to the Gerard Ahearn, Chairman of Zoning Board of Appeals, Subject: Zoning Appeal for Building Permit BP-2016-0166 (401 Main Street), dated January 12, 2017.
5. Letter to Zoning Board of Appeals, c/o Ms. Erica Uriarte, Town Planner, from Atty. Robert W. Anctil of Perkins & Anctil dated January 9, 2017. Re: Zoning Appeal for Building Permit BP-2016-0166 Property Owned by Debra and Edwin Madera 401 Main Street, Bolton, MA, Brought by the neighborhood of the Bolton Pan November 28, 2016.
6. Appeal of Rejection of Request for Zoning Enforcement, Bolton Pan Neighborhood Group, dated February 6, 2017 submitted by Frederick C. Van Bennekom, Linda Skinner Austin, and Mary McCarthy.
7. PowerPoint Presentation presented by Atty. Robert W. Anctil of Perkins & Anctil on February 28, 2017.
8. Copy of M.G.L. Ch.40A, Section 3 by Michael Sauvageau, Bolton Building Inspector, during hearing on February 28, 2017.
9. Copy of 780 CMR: State Board of Building Regulations and Standards by Michael Sauvageau, Bolton Building Inspector, during hearing on February 28, 2017.
10. Letter to Gerard Ahearn, Chairman of Zoning Board of Appeals, from Robert Ayres of 412 Main Street, Bolton, MA 01740, dated March 3, 2017.
11. Letter from Brad Mitchell, Deputy Executive Director of the Massachusetts Farm Bureau Federation, Inc. dated March 6, 2017.
12. Letter from the Bolton Pan Neighborhood Group to Gerard Ahearn, Chairman of the Zoning Board of Appeals, Re: ZBA Site Visit to 401 Main Street, dated March 7, 2017.
13. Letter to Gerard Ahearn, Zoning Board of Appeals, from Frederick C. Van Bennekom (individually and on behalf of other residents of the Bolton Pan

- Neighborhood), Re: Timeline of Events at 401 Main Street, dated March 23, 2017.
14. Applicability of Exemption for Agricultural Use Pursuant to G.L. C. 40A, Section 3 Chart provided by Atty. Adam J. Costa from Mead, Talerman & Costa, LLC during hearing on April 11, 2017.
 15. Letter prepared by the Bolton Economic Development Committee to the Zoning Board of Appeals received April 11, 2017.
 16. Letter to Zoning Board of Appeals, c/o Ms. Erica Uriarte, Town Planner, from Atty. Robert W. Ancil of Perkins & Ancil dated April 11, 2017. Re: Zoning Appeal for Building Permit BP-2016-0166 Property Owned by Debra and Edwin Madera 401 Main Street, Bolton, MA, Brought by the neighborhood of the Bolton Pan November 28, 2016.
 17. Letter from the Bolton Agricultural Commission to the Members of the Zoning Board of Appeals Received April 11, 2017.
 18. Letter from Martha Remington, Chair of the Bolton Historical Commission, to the Board of Appeals, via Town Planner, Erica Uriarte, dated April 11, 2017.

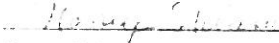
APPENDIX B: LIST OF PETITIONERS


See Attached.


Zoning Appeal for Building Permit BP-2016-0166
Property Owned by Debra and Edwin Madera, 401 Main Street
November 28, 2016

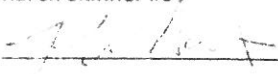
We the undersigned residents of the Bolton Pan are appealing the issuance of building permit BP-2016-0166 for 401 Main Street and more generally the use of the residential property there for a business operation. Our reasoning is contained herein.


Burnham Road


Nancy Skinner #39

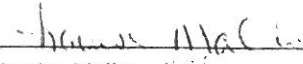

Karen Skinner #64



Linda & John Austin #84




Mary & Peter McCarthy #45

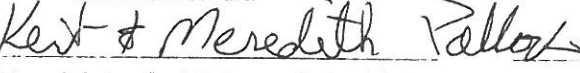



Louise Malloy #43

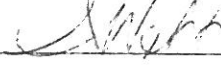



William & Judith Leonard #42

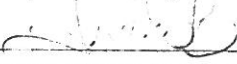



Meredith Stanford & Kent Pollock #41

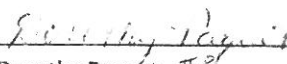


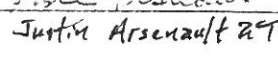

Dave & Ali Webb, #33





Justin & Tracy Arsenault David Webb #33



Justin Arsenault & Tracy Arsenault

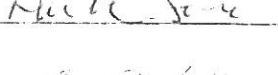

Dorothy Paquet #22

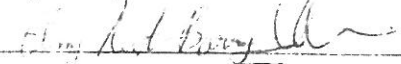


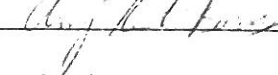

Chris & Nicole Soucie, #103

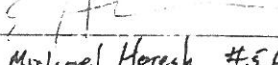



Amy & David Barnes




Michael & Elisabeth Horeish #56




Michael Horeish, #56

Zoning Appeal for Building Permit BP-2016-0166
Property Owned by Debra and Edwin Madera, 401 Main Street
November 28, 2016

We the undersigned residents of the Bolton Pan are appealing the issuance of building permit BP-2016-0166 for 401 Main Street and more generally the use of the residential property there for a business operation. Our reasoning is contained herein.

Burnham Road, p.2

Blanche Waguespack
Blanche and Les Waguespack # 91

Harold Nouri
113 Brookline Rd

Leslie Waguespack
Harold Nouri

Zoning Appeal for Building Permit BP-2016-0166
Property Owned by Debra and Edwin Madera, 401 Main Street
November 28, 2016

We the undersigned residents of the Bolton Pan are appealing the issuance of building permit BP-2016-0166 for 401 Main Street and more generally the use of the residential property there for a business operation. Our reasoning is contained herein.

Main Street

Frederick Van Bennekom 11/27/16 Christine Mudgett 11/27/16

Frederick Van Bennekom, #421

Christine Mudgett, #421

Aaron Kotilainen 11/27/2016

Aaron Kotilainen, #443

Helen Kotilainen 11/27/2016

Helen Kotilainen, #443

William McCarthy 11/27/2016 Dean McCarthy 11-27-16

William McCarthy, #434

Martha Remington 11/28/2016

Martha Remington

Nate & Stephanie Melbourne 11/27/16 Stephan Melbourne 11/27/16

Nate & Stephanie Melbourne, #418

John & Danielle Vanderkeyl 11-27-16

John & Danielle Vanderkeyl, #435

Daniel Vanderkeyl 11/27/16

Zoning Appeal for Building Permit BP-2016-0166
Property Owned by Debra and Edwin Madera
401 Main Street
November 28, 2016

We the undersigned residents of the Bolton Pan are appealing the issuance of building permit BP-2016-0166 for 401 Main Street and more generally the use of the residential property there for a business operation. Our reasoning is contained herein.

We ask that the future hearing be recorded and that we be able to record it.

Long Hill Road

Edward & Carol Schroeder 11-27-16
Edward & Carol Schroeder, #3

John & Lynne Tremblay 11/27/16
John & Lynne Tremblay, #5

Susan Miles 11/26/16
Susan Miles #9

Steve Hastings 11/26/16
Steve Hastings #39

Susan Hastings 11/27/16
Susan Hastings #39