

**BOLTON BOARD OF APPEALS**  
**MINUTES**  
**April 28, 2009**  
**Bolton Town Hall**

**Present: Chairman, Gerard Ahearn, Brad Reed, Jacqueline Smith, Alexander Kischitz, Kay Stoner, Town Planner, Jennifer Atwood Burney.**

**HEARING**

**7:30 p.m.      Variance and Special Permit to expand a Pre-existing Nonconforming structure located at Old Bay Road**  
**Applicant: Tim Murphy**

The applicant is seeking:

1. A Variance for relief from a provision of the Bolton Zoning Bylaws, Section 2.3.5.2 which requires a front yard set back of fifty (50) feet. The proposed addition to the existing structure is twenty-five (25) feet from the front yard set back.
2. Issuance of a Special Permit to expand or alter a Pre-existing Nonconforming Structure pursuant to Section 2.1.3.3 of the Bolton Zoning Bylaw to allow the expansion of the existing structure.

Present: Applicant, Tim Murphy and Martha Remington, Historical Commission Chairperson.

The Hearing was called to order on April 28, 2009 at 7:30 p.m. by Chairman, Gerard Ahearn. The Board heard testimony from the Applicant, Timothy Murphy. Mr. Murphy explained that the proposed location of the addition did not meet current zoning regulations because it encroaches within the 50 foot front yard setback and is a pre-existing non conforming structure. The existing house is twenty-five (25') from the front yard set back and the addition would be no closer to the set back. The Applicant explained that it would be financially difficult to locate the addition to the rear of the house due to the location of the well. Other locations would change the roof configuration, and egress. The Applicant would be removing a small portion of the entry way. The Applicant provided the Board with letters of support from six abutters. The Board also received a letter on April 22, 2009 from abutter Norman Babcock of 361 Old Bay Road not supporting the request. Mr. Babcock also provided a letter of support provided by the Applicant. Chairperson, Martha Remington from the Historical Commission told the applicant that he should determine the age of the entry way prior to removing it because the town has a Demolition Bylaw that requires that all structures 75 years or older file an application for review with the Historical Commission. Ms. Remington asked if the Applicant was considering windows and roof pitch that will fit in with the historical integrity and architecture of the house.

***A motion was made by Alexander Kischitz, seconded by Jackie Smith to close the public hearing.***

***Vote: 5/0/0 unanimously approved***

After discussion on the Special Permit the Board found:

1. The proposed expansion and alteration of the structure and use would have limited visual, traffic, heat, or light impact to the surrounding neighborhood.
2. The proposed expansion and alteration of the structure and use is not substantially more detrimental to the neighborhood than the existing one.

***A motion was made by Brad Reed, seconded by Kay Stoner to grant a Special Permit to the applicant to expand or alter a non-conforming use or structure.***

***Vote: 5/0/0 unanimously approved***

After discussion on the Variance the Board found:

1. There are circumstances that exist relating to the soil conditions and topography that uniquely affect such land but do not affect generally the zoning district in which such land is located. The house is a pre-existing non conforming structure and is located within the fifty (50”) foot set back.
2. Literal enforcement of the provision of Section 2.3.5.2 would involve substantial financial hardship to the applicant if the applicant had to locate the addition in another part of the house. The well is located in the back of the house and would have to be relocated.
3. The desired relief from the documented provision of Section 2.3.5.2 may be granted without substantial detriment to the public good. The majority of the abutters expressed support.
4. The request may be granted without nullifying or substantially derogating from the intent and purpose of the Bolton Zoning Bylaws.

***A motion was made by Brad Reed, seconded by Jackie Smith to grant a variance that provides relief from the provision of Zoning Bylaw Section 2.3.5.2 that sets a minimum front yard set back of 50 feet. This Variance is granted in accordance with the terms and conditions stated below.***

1. ***The Applicant shall determine the age of the front entry way prior to removing it. If it is determined that it is 75 years or older the Applicant must file a demolition application with the Historical Commission.***

***Vote: 5/0/0 unanimously approved***

**8:15 p.m. Bolton Orchard – 125 Still River Road  
Applicant: Robert S. Davis, Davis Farms Trust**

The Applicant is seeking a Special Permit to expand a pre-existing non conforming use to allow the sale of hot and cold drinks, chips and salads to the existing ice cream service window located on the property

Present: Applicant Sarah O'Toole

The meeting was called to order on March 31, 2009 at 7:30 p.m. by Chairman, Gerard Ahearn. Prior to the Hearing on November 20, 2007, the applicant came before the Board of Appeals on April 24, 2007 and was granted a temporary trial period until September 3, 2007 to sell ice cream through a window and would need to return before the Board of Appeals after the trial period for a Special Permit. The applicant received a building permit from the building inspector to construct windows for the purpose of selling ice-cream and on November 20, 2007 to grant a Special Permit subject to terms and conditions.

The Board heard testimony from the Applicant Sarah O'Toole, requesting a Special Permit to add the sale of hot dogs and kielbasa to be sold through the existing ice cream service windows at Bolton Orchards. Prior to the Hearing the Board of Appeals solicited input from the various Boards and Departments. There were no comments. There were also no comments from abutters or the general public.

***A motion was made by Alexander Kischitz, seconded by Jackie Smith to close the public hearing.***

***Vote: 5/0/0 unanimously approved***

After discussion the board found:

1. The proposed expansion and alteration of the structure and use as described by the applicant would not change the current building structure and add two food items for sale through the existing ice cream service windows.
2. The proposed expansion and alteration of the structure and use would have limited visual, traffic, heat, or light impact to the surrounding neighborhood. The Applicant states no changes have been made outside. Service is available until 9:00 p.m. seasonally.
3. The proposed expansion and alteration of the structure and use is not substantially more detrimental to the neighborhood than the existing one.

***A motion was made by Brad Reed, seconded by Kay Stoner to grant a Special Permit to the applicant to expand or alter a non-conforming use or structure. All conditions and waivers as part of the original Special Permit approved by the Board on November 20, 2007 shall remain in full force and effect.***

*Vote: 5/0/0 unanimously approved*

**GENERAL BUSINESS**

**7:50 p.m.      Sunset Ridge – Wattaquaddock Hill Road**  
**Applicant: Vin Gately**

Present: Applicant Vin Gately

The Board reviewed comments from the Affordable Housing Partnership (AHP) and Housing Authority (HA) in regards to the size, style and location of the affordable units. The AHP and HA would like 2 units of the 7 affordable to have a 2 car garage and two affordable units to be located along the ridge at unit numbers 1 and 6 The applicant agreed to move two affordable units to the ridge building numbers 1 and 6 but did not agree to the 2 car garage. The Board stated that they are okay with the affordable units being 1 car garages since there are market rate units that are the same as the affordable units.

The Board also discussed the status of the guardrail and wanted Nitsch Engineering comment on the guardrail and whether it met Mass Highway standards.

**8:35 p.m.      Bolton Manor– Sugar Road**  
**Applicant: Bolton Manor, LLC**

No one was present representing Bolton Manor for this discussion. The applicant is requesting that the Comprehensive Permit be extended for two years. The Town Planner consulted w2ith Town Counsel and the opinion is that because the Conservation Commission granted an extension to an Order of Conditions in May of 2008 and assuming this was the last permit/approval granted, the Comprehensive Permit would not expire until May 2010. However, this does not allow for a firm date for expiration. Town Counsel suggests that the Sweeny’s attorney contact the ZBA or come into the next ZBA meeting to discuss the ability to amend the Comprehensive Permit for a firm expiration date. Town Counsel will speak to Mr. Sweeny who has been speaking to the Town Planner on multiple occasions.

**Next Meeting**

TBD

Meeting adjourned at 9:30 pm

*Minutes submitted by Jennifer Atwood Burney, Town Planner*