

**BOLTON BOARD OF APPEALS**  
**Minutes**  
**November 17, 2009**  
**Town Hall**

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

**Not Present: Brad Reed was not present**

**HEARING**

**7:30 p.m. Identified by Bolton Assessor's as Map 1.C, Parcel 27 and Hudson Assessor's as Map 16 Parcel 3, located at 333 Central Street, Hudson - Special Permit to expand or alter a pre-existing non conforming use for Beatle Bug III.**

**Applicant: Terzo A J Trombetta Jr. of 492 South Bolton Road, Bolton.**

The Applicant is seeking:

Issuance of a Special Permit to expand or alter a Pre-existing Nonconforming Use (PENC) pursuant to Section 2.1.3.3 of the Bolton Zoning Bylaw to allow Beatle Bug III to continue as a PENC and for the applicant to obtain a Class II License to allow the sale of used autos.

The Board received the following:

1. An email submitted by Margaret Campbell of 5 Spectacle Hill Road with environmental concerns of the site;
2. A letter dated November 10, 2009 from M.J.O'Neil Excavating, Inc., of 327 R Central Street, Hudson MA indicating support for the business;
3. A letter dated November 11, 2009 from Town Counsel;
4. An email dated November 17, 2009 from Ken Troup, Board of Selectmen in support of the Special Permit;
5. A letter dated November 17, 2009 from Carol Gumbart Conservation Administrator expressing environmental concerns;
6. A letter dated September 17, 2009 and June 3, 2009 from the Town Planner giving a history and summary of the property.

A duly posted hearing was held on November 17, 2009 at 7:30 pm. Members present were Gerard Ahearn, Kay Stoner, Alexander Kischitz and Jacqueline Smith. Also present were Jennifer Burney Town Planner and Michael Sauvageau Building Inspector.

The meeting was called to order on November 17, 2009 at 7:30 p.m. by Chairman, Gerard Ahearn. The Chairman explained that one member was not present and four votes were required to grant a Special Permit. The Applicant was given the option of continuing the hearing to another date or proceeding forward. The Applicant stated that he would like to proceed forward with the hearing. The Chairman read the hearing notice and read the letters and emails submitted for the record.

The Board heard testimony from the Building Inspector, Michael Sauvageau and Town Planner, Jennifer Burney who gave a history of the pre-existing non conforming use on the property. The Applicant Terzo A J Trombetta Jr then gave testimony. Mr. Trombetta is seeking a Special Permit to expand a pre-existing non conforming use (PENC). The property is a PENC because it has been used as a commercial use since 1956, and is located in a residential district. The property is located in both Hudson and Bolton. Zoning for Hudson is Industrial and Bolton is residential.

***History:***

- Prior to 1972 Bolton did not have zoning districts. The town has property assessment records that date from 1956 to 1972 that assess the property for use by Lyman Oil & Knight Oil by Richard Knight & Charles Ventura. A copy of a lease agreement recorded at the Registry of Deeds dated November 1969, Book 11768 Page 642 indicate that the property was leased to Knight Fuel Co. and a land court Decree recorded January 13, 1966 Book 4635 Page 331 indicate that the property was used as “Tanner’s Auto Paint Supplies, Inc.” This property was never used as a residential use that the town is aware of. Records indicate that it was always used as a commercial use.
- The Applicant states that the property was leased for automotive starter rebuilding and manufacturing prior to 1971. The Town has no record supporting this. However, the assessor’s office and town clerk have limited access to archived material.
- In May of 1973 through 1992, business certificates were issued by the Town for Beetle Barn to Kenneth Wheeler and Brian Wheeler. Beginning In 1990, the applicant, Terzo A.J. Trombetta bought the business and was issued business certificates for automotive repairs and sales for Beetle Bug III. From 1975 to the present the Board of Selectmen began issuing Class II licenses to Beetle Barn with restrictions. The Town Clerk does not have any business certificates on record for any of the businesses at this property prior to 1973. However, the Town Clerk has stated that she has very limited archived material.
- In 2004, Section 2.5.5.2(j) was adopted at Town Meeting, prohibiting the sale of new or used motor vehicles. The Board of Selectmen cannot continue to issue a Class II license unless the current use is determined to be a pre-existing non conforming use and a Special Permit is granted.
- Procedurally, a Special Permit should have been sought in 1973 when the commercial use of Knight Fuel/Lyman Oil and Tanner’s Auto Paint Suppliers changed to a new use, Beetle Bug, an auto repair and sales business. The Town has no record that this occurred

and the Special Permit request before the Board is to correct what should have occurred when the use changed from Knight Fuel to Beetle Barn. No new use or expansion of use is being requested by the Applicant than what was existing in 1973.

#### A. Special Permit Criteria

Statutory criteria for granting a Special Permit to expand or alter a pre-existing non-conforming structure under M.G.L. Chapter 40A, Section 6 is as follows:

1. Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

All criteria must be met to grant the Special Permit. During its deliberations, the Board of Appeals considered whether all of the above-referenced criteria were met in the application.

#### B. Specific Findings

1. The expansion and alteration of the use as described by the applicant would not change the property as it has been being used as a commercial use since 1956 first by Knight Fuel and Lyman Oil Company as a commercial use. Additionally the Town has been aware that the property has been used as an auto repair/sales use because it has been granting business certificates since 1973 and class II licenses since 1975, and has assessed the property as a commercial use and collected taxes for Beetle Bug since 1973. This property was never used as a residential use that the town is aware of. Records support that the property has always been used as a commercial use.
2. The current use that has been in existence since and 1973 would have limited visual, traffic, heat, or light impact to the surrounding neighborhood from use that was there from 1956. No use change or expansion is being requested than what was in existence from 1973.
3. The expansion and alteration of the use from 1973 is not substantially more detrimental to the neighborhood than the use that was there from 1956. No use change or expansion is being requested than what was in existence from 1973.

### DECISION

In view of the foregoing, the Board of Appeals hereby decides that the application meets all requisite criteria under MGL Chapter 40A Section 6. Therefore, the Board voted to grant a Special Permit with the caveat that no expansion or alteration of the business is being requested at this point in time. The Board would like to reiterate that the request for change should have occurred as necessary in 1973 in order to comply with zoning based on evidence

that the property has been used as a commercial use since 1956. The following condition applies:

1. The Applicant must address concerns of the Conservation Commission in a letter dated November 17, 2009 by Conservation Administrator, Carol Gumbart;

*A motion was made by Gerard Ahearn, seconded by Kay Stoner to close the hearing.*

*Vote: 4/0/0*

*A motion was made by Alexander Kischitz, seconded by Jackie Smith to approve the request For a Special Permit.*

*Vote: 4/0/0*

**8:30 p.m. 739 Main Street, Dennis F. Murphy Insurance - Special Permit to expand or alter a pre-existing non conforming structure.**

**Applicant: Dennis Murphy of 50 Main Street, Hudson.**

The Applicant is seeking:

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 applicant to expand the existing structure to construct a 16' x 20' addition to the rear portion of the building for additional office space to house additional equipment to comply with the Department of Environmental Protection Public Water Supply regulations.

Comments received:

7. A letter dated November 11, 2009 from Town Counsel;
8. A letter dated November 17, 2009 from Carol Gumbart Conservation Administrator expressing stormwater management concerns;
9. A letter dated September 17, 2009 from the Town Planner giving a history and summary of the property;

A duly posted hearing was held on November 17, 2009 at 7:30 pm. Members present were Gerard Ahearn, Kay Stoner, Alexander Kischitz and Jacqueline Smith. Brad Reed was not present. Also present were Jennifer Burney Town Planner. Present for the Applicant was Attorney Randall D. Hicks.

#### FINDINGS

A. General

The subject property is located at 737 Main Street, Bolton MA 01740, and identified on Bolton Assessor's Map 4.C Parcel 29 and is owned by Dennis Murphy of 50 Main Street, Hudson, MA 01747 (deed reference Book 6699, Page 366). The property is a pre-existing non conforming use in a residential district.

1. The Applicant submitted a complete application in accordance with the Board's Rules and Regulations.

The meeting was called to order on November 17, 2009 at 7:30 p.m. by Chairman, Gerard Ahearn. The Chairman explained that one member was not present and four votes were required to grant a Special Permit. The Applicant was given the option of continuing the hearing to another date or proceeding forward. The Applicant stated that he would like to proceed forward with the hearing. The Chairman read the hearing notice and read the letters and emails submitted for the record.

The Board heard testimony from the Attorney Hicks who is seeking a Special Permit to expand a pre-existing non conforming structure (PENC). The property is a PENC because it a commercial use and is located in a residential district.

Applicant is seeking a Special Permit to alter a pre-existing non conforming structure/use. The business is PENC because it is a business use in a residential district. Any expansion of the structure or use would require a Special Permit by the ZBA. It was first used as a Post Office and in 1979 the Insurance Agency was added. Lot size is 5.85 acres. The applicant is also proposing to add 6 new parking spaces and a new 4' walkway and seeded area to rear of building. The addition, walkway and seeded area will replace an aisle of the parking lot. The structure meets residential setbacks. The request is for a 22.3 x 22.9 addition for additional personal office space for the owner who currently uses a second floor at another location. The office space would not be used to expand the business.

***History:***

- 1972 Zoning Districts were adopted in Town making it a PENC use/structure.
- 1979 Special Permit granted to alter existing structure (Post Office) to add additional occupancy of an Insurance Agency.
- 1988 Special Permit granted to alter existing structure to add on a 24x28 addition.
- 2009 22.3 x 22.9 (510.67 sq. ft for a total of 3358.67 sq. ft this is 506.67 over the 100%.

	Size	Sq. ft	Total sq. ft	% of increase from original footprint
Original Building	31 x 46		1426 sq. ft	
First Addition	25 x 30	750 sq ft.	2176 sq. ft	65%

?1979				
Second Addition 1988	24 x 28	672 sq ft	2848 sq. ft	99.7%
Third Addition 2009 request	22.3 x 22.9	510.67 sq ft	3358.67	135%

A. Special Permit Criteria

Statutory criteria for granting a Special Permit to expand or alter a pre-existing non-conforming structure under M.G.L. Chapter 40A, Section 6 is as follows:

2. Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. All criteria must be met to grant the Special Permit. During its deliberations, the Board of Appeals considered whether all of the above-referenced criteria were met in the application.

B. Specific Findings

1. The Board felt that although the expansion represents a total increase of more than 100% from the property's original floor area, the ZBA does not consider this change to be substantially detrimental to the neighborhood.
2. The Board also considered that the maximum lot coverage would not exceed the 8% maximum allowed. The requested expansion would only be 3%.

Total lot	111,513	100%
Exist building w/ proposed addition	3358.67	3%

3. The Board determined that the request to expand the preexisting structure would have limited visual, traffic, heat, or light impact to the surrounding neighborhood from the current structure. The Board determined that because there were less impervious surfaces with the addition and seeded area there would be less drainage. Drainage for the building is being projected into stormwater collection areas around the parameter of the addition. The board reviewed parking requirements and determined that the parking is more than adequate. The Board also reviewed the impermeable surfaces and noted that less than 6% would be impermeable. The bylaw allows from no more than 50%.

Parking: 1 sq. ft of business space to 1 sq. ft of parking

Commercial Space	3358.67 = 17 spaces
Parking Space	Currently has 24 spaces & 3

	in front. Adding 6 for a total of 33 spaces (no new impervious surfaces for parking, just relocated spaces).
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The sum of all impermeable surfaces shall not exceed 50% of the total lot area.

Total lot area	111,513
Total impermeable surfaces	Less than 18,900 (6%)

*A motion was made by Gerard Ahearn, seconded by Kay Stoner to approve the request for a Special Permit for expansion of a pre-existing non conforming structure .*

***Vote: 4//0/0***

Therefore, the Board voted to grant a Special Permit with the following conditions which shall be clarified with the Building Inspector and Town Planner:

2. Clarification on detail of plan showing subsurface structures;
3. Clarification that exterior entry way must comply with the state and local building code;
4. The Applicant must provide sufficient details on appropriate lighting for parking lot and walkway.

**GENERAL BUSINESS**

**8:15 p.m. David Burney – Associate Member discussion**

The Board met with David Burney to discuss his interest in serving on the Board. He stated that he no longer has to travel giving him more free time and the Riverside project appeal is over.

**Next Meeting**

TBD

Meeting adjourned at 9:05 pm

*Minutes submitted by Jennifer Atwood Burney, Town Planner*