

BOLTON BOARD OF APPEALS
Minutes of Meeting
May 27, 2008 at 7:00 p.m.
Bolton Town Hall

Present: Brad Reed, Jacqueline Smith, Alexander Kischitz, Kay Stoner and Town Planner, Jennifer Atwood Burney

Not Present: Chairman, Gerard Ahearn

HEARING

7:00 p.m. Variances and Special Permit – Bolton Public Library, 738 Main Street
Applicant: Town of Bolton

Present: Library Owner's Project Manager (OPM) Richard Marks, Architect Drayton Fair, and Library Construction Committee members Co-Chairman Roland Ochsenbein and Co-Chairman, Pam Czekanski.

At 7:05pm, the acting ZBA Chairman, Brad Reed opened up the public hearing for the library. Mr. Reed explained that Chairman, Gerard Ahearn was not present at tonight's meeting and gave the presenters various options on how they could proceed. After a brief discussion it was decided to proceed with the hearing. With the town's adoption of the Mullin Rule, Gerard Ahearn could listen to an audio tape of the meeting and read the minutes if the hearing was continued.

Applicant is seeking:

1. A Variance for relief from a provision of the Bolton Zoning Bylaws, Section 2.3.5.6 (b) which requires a building height of no more than thirty-two (32) feet above the average ground elevation. The proposed addition to the existing structure is 3'6" above the height restriction.
2. A Variance for relief from a provision of the Bolton Zoning Bylaws, Section 2.3.5.6 (a) which requires the surface of the top occupiable floor be no more than fifteen (15) feet above the average ground elevation. The proposed addition to the existing structure exceeds this restriction.
3. 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.

OPM, Richard Marks gave a brief history of the library project and funds received. In 2006 the library received a state grant of 2.7 million dollars, 3.5 million from town funds and \$900,000 from funds raised through citizen donations. Mr. Marks explained a study was done to decide whether or not to stay on the current site, located in a residential district on a little over 60,000 square feet or build on an entirely new site. The Town decided that the best course of action was

to stay at the existing site. Mr. Marks explained that the Selectmen are seeking a variance to construct the top of the roof +/-3-1/2' higher than what is allowed in the bylaws to provide for storm water management and to match the current level of the first floor of the existing library. By doing so, this would allow the addition to be handicap accessible without building ramps. The average grade is 399.3 and the existing first floor is 402.8. The height of the building would be 36-1/2' and the first floor would be 16-1/2' from the average grade. The existing library was constructed 3-1/2' higher than the street level sidewalk to provide for storm water management. Due to the slope of the lot the library lost 3.5 feet before reaching the existing floor level.

Mr. Fair explained that the 3-1/2' accommodates steel beams required to carry the weight of the second floor, concrete, a sprinkler system and heating and air conditioning ductwork. The roof line was reduced using steel beams to bear snow weight and is not a traditional gable. The second floor height accommodates the 1-1/2 feet required space from the top of the 7' book stack to the recessed lighting and another 1-1/2 feet from the lights to sprinkler system. The exterior of the building will consist of red cedar shingles and complementary architecture to the existing building. The building will include a children's program, a young adult and adult fiction section and a 65-person meeting room that could be used after library hours. Mr. Marks stated that both the Board of Selectmen and Planning Board have shown unanimous support for the addition as well as the fire chief and building committee.

Brad Reed read section 2.1.3.3 of the Bolton Bylaws, Pre-existing Nonconforming Uses and Structures and explained that one issue he had was the section of the bylaw that states that an increase of not over 100% of the original floor area and 50% of the ground area is not considered substantially more detrimental to the neighborhood and the expansion is an increase of 400% of floor. Brad inquired about the number of parking spaces provided for the 65 room meeting room. Mr. Marks responded that 37 spaces were now provided and the number of spaces was maxed out to accommodate the requirement of green space and trees. The Library Building Committee had discussed public safety concerns with both the fire department and police department and the possibility of future expansion of parking by a curb cut which would provide 4 additional spaces.

Board member, Jacqueline Smith asked if the 2 trees would be saved if the parking expansion was ever considered. She was told yes. Ms. Smith expressed concern over the safety of pedestrians on the walkway between the library and the fire safety building. Mr. Marks replied that safety and the potential of fast moving emergency vehicles was one of the reasons to relocate the parking lot to its current location.

Mr. Reed stated that he liked the building, but thought it was too high and too large for the lot. He wondered why the architect was sticking to the tudor design and why the size of the building couldn't be reduced. Mr. Marks replied that the size of the building was a requirement of the Mass Board of Library Commissioners (MBLC) which was designed to accommodate a certain volume of books based on the number of residents, the current number of books and a projection for future growth as required by the terms of the MBLC grant. In addition the library can't be designed with 3 floors or 1 floor without meeting the needs of the people of Bolton and Mass Board of Library Commissioners, and be handicap accessible. Mr. Reed asked why another site couldn't be considered. Mr. Marks replied that another site was considered as part of a feasibility study conducted but it was decided to expand the current library and some of the benefits were

the ability to connect to the sewer treatment plant and share the public water supply with the public safety building.

Ms. Smith asked if the current library has a basement and if the addition would have one and if the space was being utilized. Mr. Marks replied that because the water level is high, books could not be stored in the basement due to potential mold. However, equipment that was once designed to be located in the attic space was going to be relocated in the basement allowing the height of the building to be reduced from 48 feet. Mr. Marks explained that the addition would have a cathedral ceiling and exposed truss work that would complement the design elements of the current library.

Jake Foote of 40 Century Mill Road stated that he felt the addition included great design elements and was spacious but it didn't meet the bylaws. He expressed concern that if a variance was granted then everyone in town would want bigger houses. He asked why the design team built a building without any regard to the bylaws. Architect, Drayton Fair replied that the intention of the bylaw was to limit commercial and business to two stories. Residential and agriculture were not limited in height and civic buildings weren't even included. Mr. Foote responded that if civic buildings weren't bound to the bylaws then why is the request before the Board. Mr. Fair replied that because all buildings fall under section 2.3.5.6 of the zoning bylaws.

Mr. Reed requested comments from the abutters to the project.

Mr. Jonathan Keep of 752 Main Street expressed that he supported the mission of the library but was concerned about the size of the addition and the issue of car doors slamming and lights from cars from after hour events held in the meeting room. He thought the Houghton building would be more a more suitable place to hold meetings. Mr. Reed replied the hours of the meeting room could be limited so it would be less disrupting to neighbors. Mr. Reed asked if the meeting room would be locked off from the library. He was told a door would be locked between the library and the meeting room. Mr. Keep said he was concerned about parking for 30 cars and the potential activity at night and asked to reconsider the size lot for parking. He asked what the hours were for other businesses on Main Street such as Murphy's Insurance.

Mr. Reed replied that derogating the neighborhood was a concern. Mr. Fair replied that the library is considered more than just a library and is a place for communication. The meeting room is a requirement of the state grant.

Morty Tarr from 36 Manor Road stated that he supports the library and the current library is too small, but feels the hardship is by choice. He stated that no meetings took place with abutters especially in regards to parking. He felt that the only meetings that occurred were with those in support of the library. He felt that the library should be required to meet more than the 20 foot setback and expressed concern over damage to the stone wall during construction as well as the parking lot lighting and head lights from the cars coming and going to the meeting room. He stated that the abutters will have no choice but legal recourse and the Board's decision should be delayed until after a meeting takes place with the abutters and the building is redesigned to reflect abutter concerns.

Cia Boynton of 703 Main Street stated that she lives across from the Houghton building and witnesses a lot of action from the various buildings on Main Street such as Town Hall and the Houghton Building and the extended hours for meetings is not an issue but expected if living in the area.

Jake Foote stated that opinions do not matter but law does and should be adhered to.

Pam Kaminski, Co-Chairman of the Friends of the Bolton Public Library stated that the library meeting room will hold family oriented events, art shows, book clubs and other library events that the library can't currently hold. It will not be a town meeting space.

Larry Delaney, former Planning Board Chairman stated that the Board is ignoring what is being requested. A variance is being requested for a unique situation that is related to the ground level. The height could be reduced but a variance allows for better design and for handicap accessibility. The public building is unique. He explained because of a January 2008 state ruling, that all houses and buildings that are pre-existing and nonconforming will require a special permit in order to expand. He wanted to remind everyone that a super majority voted on a library designed this way.

Wayne Wetzel of 42 Harvard Road stated that the library should be required to meet the 50' setback for business and not 20' for residential.

David Lindsay, Chairman of the Advisory Committee expressed support in Mr. Delaney's comments and wanted to remind everyone that on two occasions the town passed support for the library expansion and was the most discussed project than any before it and there must be a compelling reason not to grant the variances or special permit. He suggested that the Board approve the variance and consider limiting the meeting room hours to the library hours if there was concern.

Jake Foote expressed concern over the increase of the building size of 400%. Larry Delaney replied that the requirement in the bylaw that states that a building should not be increase by more than 100% is just a guideline and when a building exceeds the 100% increase then all bets are off and a decision must be based on the merits of the increase. He also wanted to point out that the term "shall" is used in the bylaw.

Board member, Kay Stoner asked what type of lighting was being used and the times it would be on. Mr. Marks replied that lights would be shut off after the last event by either an automatic timer or could be turned off manually. In addition the headlights of cars would be obstructed by the grading below the stone wall that would include a 2' 6" grade with sloping and trees. Because Mr. Tarr had previously expressed concern over the potential damage to the stone wall Mr. Marks agreed to work with him before obtaining a building permit.

Board member, Alexander Kischitz asked if the state required a minimum or maximum for library hours. Mr. Marks replied that a minimum of 41 hours per week was required with the library being open one weekend day and one evening.

Kay Stoner asked about the water level. Mr. Marks replied that the water table was 12' below ground and the structure is 14' below.

Mr. Foote asked if the funding sources knew about the necessity of seeking variances and what the hardship was. Mr. Marks replied that the Mass. State Library Commission was aware of the variances and the hardship being sought was for floor consistency and for handicap and elderly access.

Larry Delaney stated that an Approval Not Required (ANR) plan could be done to eliminate the need for a special permit. The lot line change would be done between the library and fire department.

Mark Giunta a member of the Public Safety Building Committee stated that he was in support of the request for the height variance because it would be ADA compliant and because the fire department has no fire safety concerns. His only concern was the size of the building on the existing lot.

Martha Remington, Chairman of the Historical Commission stated that the Board has voted unanimously that the height restriction was not significant and not detrimental to the historical integrity of the current library but expressed concern over the roof tile color.

Ms. Smith asked about the setbacks. Mr. Marks replied that the front set back is 60', rear set back is 20', side set back near the parking lot is 71-1/2' and the other side set back is 140'.

Mary Delaney Co-chairman of the Friends of the Library stated that the current library is in need of repair for leaks and is not ADA compliant and that the town is benefitting by getting money from the state.

Board of Selectmen Chairman Curtis Plante reminded the Board that the majority of the town voted to approve the project at town meeting and by ballot vote and that if the ZBA approves or denies the request the applicant can appeal. He stated that the Board of Selectmen voted to approve the two height variances and the fire chief approved the variances as well. He stated that the bylaws were originally enacted as a precaution for fire fighting and the building was going to have a sprinkler system. He stated that parking and lighting would be addressed later through the design review process which would include community input. He suggested that the ZBA postpone their vote until a full board is present and to allow time to address abutter concerns.

Morty Tarr said he supports the library design but it will be the four abutters who will have to look at the library every day.

Richard Marks reminded the Board that over 20 meetings were publicized and presentations given at both the Board of Selectmen and Planning Board meetings.

Christine Sterling of 245 Still River Road stated that in a meeting with Mr. Tarr, the Board of Selectmen and an attorney had discussed concern about parking being located on the left of the library. In response to Mr. Tarr's concerns the parking was moved to the right. Mr. Tarr replied that parking was not his only concern.

With all three Board of Selectmen members present, the Board voted requesting that the Board of Appeals postpone voting and continue the hearing to another date.

A motion was made by Brad Reed, seconded by Alexander Kischitz to postpone voting until the next hearing.

Vote: 4/0/0

GENERAL BUSINESS

1. 8:30 pm Modification of Comprehensive Permit - Regency of Bolton, Main Street Applicant: Toll Brothers – Shawn Nuckolls, Project Manager and Jason Witham, Assistant Vice President

Present: Applicant: Toll Brothers – Shawn Nuckolls, Project Manager and Jason Witham, Assistant Vice President

The Applicant is requesting to modify the Residential Use and Occupancy restriction of the Comprehensive Permit which restricts all units to persons 55 years and older. At least 80 percent of the occupied units would be occupied by at least one person who is 55 years of age or older and no person eighteen years of age and younger may be a permanent resident of any unit. This restriction is based on the Federal Fair Housing Act (FHA) guidelines. The Applicant explained that they are requesting this to increase the marketability of the development and open the market to 50 year olds.

Mr. Reed expressed concern about 29 year olds moving in and then later on deciding to have children. He asked who would enforce them to move out. Mr. Nuckolls replied that the condo board would which would be made up of residents.

Mr. Kischitz asked if the development was purchased as an approved project. He was told it was.

Mr. Witham from Toll Brothers explained that the Toll Brother's has used this concept before in a development in Lincoln, Rhode Island.

Mr. Reed asked how many units have been sold. Mr. Nuckolls replied that one affordable and one market rate have been sold, and two market rate and one affordable are under agreement. All the buyers are aware of the request to modify the over 55 requirement.

Ms. Smith asked if it's legal to bar children from units. Mr. Nuckolls replied that the concept is based on FHA and makes it okay to discriminate.

A motion was made by Brad Reed, seconded by Alexander Kischitz that the requested modification to the Comprehensive Permit are deemed substantial.

Vote: 4/0/0

The Applicant was told a Hearing would be required. A tentative date of June 17th, 2008 was discussed.

Selectmen Ken Troup questioned the legality of not allowing children 18 and under to reside in the development. He asked the Board to reconsider the number of affordable units when considering this request.

Mr. Kischitz stated that the deed presented needs tighter language specifying which units were for over 55 and which units were for under 55 in order to make it more manageable.

**2. 9:15 pm Proposed Walkway - Regency of Bolton, Main Street
Applicant: Toll Brothers, Land Development Manager, Eric Carlson and
Greg Roy from Ducharme & Dillis**

Present: Applicants Toll Brothers, Land Development Manager, Eric Carlson and Greg Roy from Ducharme & Dillis and the Public Ways Safety Committee members.

The Applicants presented a plan for construction of the proposed walkway along Main Street. The committee members, Public Ways Safety Committee and the Applicants had a discussion on the trees, grade, fill and guardrail. After discussion it was decided that the walkway should be paved. It was decided in the best interest of sloping that the walkway would not be meandering as suggested by the Conservation Commission. The details would be worked out with the Conservation Commission at a June 3rd meeting where they were before the Conservation Commission for an amended Notice of Intent that would include the sidewalk work. The Public Ways Safety Committee requested that the beginning and end of the walkway drop off to the road. Mr. Carlson stated this was difficult to do in the easterly section because of the headwall and guardrail.

A motion was made by Kay Stoner, seconded by Brad Reed to approve the walkway as proposed with paving.

Vote: 4/0/0

The Applicants also requested to discuss modifying parking around the 8 unit dwelling by moving the parking to the side of the building. The Board decided since the Applicants did not formally submit this request to the Board and be placed on the agenda that the applicant would have to return to a future meeting after making a formal request.

3. Approval of Minutes – The Board approved minutes.

NEXT MEETING

June 17, 2008

The meeting adjourned at 9:40p.m.

Minutes submitted by Town Planner Jennifer Atwood Burney