

**BOLTON BOARD OF APPEALS**  
**MINUTES**  
**June 17, 2008 at 7:00 p.m.**  
**Bolton Town Hall**

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

**HEARING**

**7:00 pm      Continued Hearing for Variances and Special Permit – Bolton Public Library, 738 Main Street  
Applicant: Town of Bolton**

Although Chairman, Gerard Ahearn was not present at the May 27, 2008 hearing, with the town's adoption of the Mullin Rule and as required by M.G.L. c. 39, § 23D, he was allowed to vote at tonight's continued hearing since he had listened to an audio tape of the meeting and read the minutes from May 27, 2008.

Board of Selectmen, Chairman Curtis Plante requested the withdrawal of the Special Permit application for a Pre-existing Nonconforming Structure pursuant to Section 2.1.3.3 of the Bolton Bylaws and stated that the Selectmen had obtained an ANR which was endorsed by the Planning Board on June 11<sup>th</sup>, and recorded with the Worcester Registry of Deeds on June 13, 2008. Mr. Plante stated that the ANR makes the library lot conforming and eliminates the need for a Special Permit. Mr. Plante stated that the Selectmen had recently met with the Public Safety Committee to determine whether a lot line change between the library and public safety building would impact the public safety building in any way. The proposed lot line change received a vote of support from the public safety committee (9 in support and 1 opposed). The Selectmen stated that they are still seeking the two variance requests.

Board member, Jacqueline Smith asked if the lot coverage requirement under the Dimensional Schedule would apply to the library. Larry Delaney, former planning board chairman, stated that town counsel had previously determined that this requirement did not apply to the library since the library was considered a residential lot. Mrs. Smith also asked if the library were to be no longer used as a library would the land resort back to the donors, the Whitney family. Roland Ochsenbein, Chairman of the Library Construction Committee stated that he was not aware of this stipulation. Chris Sterling a library trustee stated that no Whitney heirs existed. The Town Planner presented a copy of the library deed to Ellen Doucette, town counsel who reviewed it and stated that there was no mention of this requirement. Mrs. Smith also asked if Mass Historical Commission had approved the expansion of the library since she thought a historical preservation restriction for the library was approved at a 2003 town meeting. Mr. Ochsenbein stated that the committee was not aware of a restriction on the library and Mass Historical was notified as a requirement of the grant application process. Mr. Plante stated that if a preservation restriction was in place then this would be part of the building permit process. The Town Planner provided town counsel with the Town Meeting Warrant from May 6, 2003 and counsel indicated that if a historical preservation restriction was in place it would have been recorded and approved

by Mass Historical Commission. Counsel also stated that the fire department land was deeded to the town of Bolton and could be used for any municipal purpose.

Wayne Wetzel of 42 Harvard Road asked if the Board could grant the Selectmen's request to withdraw the special permit application after the hearing date was posted. Town Counsel replied that this was allowed and Chairman, Gerard Ahearn stated that under Chapter 40C, Section 16 a board could vote to grant this request. Mr. Wetzel stated that he was concerned about the setback requirements and the town's maneuver to do an ANR as well as the amount of money the town has spent. Larry Delaney responded that the Selectmen were doing what any applicant would have done, by making a nonconforming lot or structure conforming, in order to eliminate the need for a special permit.

Jake Foote of 40 Century Mill Road asked what the criteria were for granting a variance. Mr. Ahearn responded by reading the criteria required:

- a) There are circumstances that exist relating to the soil conditions, shape, or topography of the land or structures that uniquely affect such land or structures, but that do not affect generally the zoning district in which such land is located;
- b) Enforcement of the provisions of the bylaws would involve substantial hardship, financial or otherwise;
- c) The desired relief may be granted without substantial detriment to the public good; and
- d) The desired relief may be granted without nullifying or substantially derogating from the intent or purpose of the bylaw.

Mr. Ahearn asked if the Board had any further questions. There were no further questions or concerns brought up by the Board.

***A motion was made by Alexander Kischitz, seconded by Jacqueline Smith to accept the withdrawal of the Special Permit application for a Pre-Existing Nonconforming Structure without prejudice.***

***Vote: APPROVED 5/0/0***

Chairman Gerard Ahearn reread the hearing notices for the two variances and the criteria required in granting a variance as explained earlier in response to Mr. Foote's inquiry.

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.

Mr. Ahearn stated that the Board had received two letters sent from abutters, Marty Tarr of 36 Manor Road and Jonathan Keep of 752 Main Street. Since Mr. Tarr had indicated in his letter that he would not be present at this evening's hearing, Mr. Ahearn read Mr. Tarr's letter. In Mr. Tarr's letter to the Board, Mr. Tarr stated that he was in support of the library expansion since the library was too small, but felt that his concerns were not being heard or met by the Library Building Committee and Library Construction Committee, even though public meetings were held. He stated that he felt his property was directly impacted due to parking and requested that the Board delay its decision until the committee meets with the abutters to address their concerns. He stated in his letter that if the board approves the project then his only recourse will be legal action. Town Counsel stated that the Board is under a time constraint due to the requirement by law to make a decision for the variance requests within a certain number of days of receiving an application.

Mr. Ahearn gave Mr. Keep the option of reading the letter or for Mr. Keep to explain the contents of the letter himself. Mr. Keep stated that he is concerned over the character change and use change of the library which includes a meeting room which accounts for 1/5<sup>th</sup> or 1/6<sup>th</sup> of the total square feet. He stated that the meeting room would be equipped with a kitchen, 60 seats and is concerned about after hours, cars and car lights, building illumination and voices from people coming and going. He stated that he is used to the library closing at 8:00 pm and is concerned about hours being extending to 9:00 pm or 10:00 pm. He questioned the library's mission and the fact that the library is located in a residential district. He sees the meeting room as a new use that is both a zoning issue and a nuisance issue and should be addressed.

The Chairman asked if the board members had any questions or concerns.

Mr. Reed, a member of the board stated that abutter consideration would be given since it is the abutters who have to live with the library. He suggested to the Library Committee that at some point they meet with the abutters to mitigate their concerns. Mr. Ahearn stated that abutter concern can't stop the process but encouraged the Library Committee to work with the abutters.

Martha Remington, chairman of the Historical Commission and resident of Bolton stated that the meeting room space was always part of the plan since the beginning and not something new. She stated that on street parking should be considered as well as limiting the evenings the meeting room is open to only to one to two evenings per week.

Chris Sterling a member of the library trustees stated that on December 21, 2006 a meeting with Mr. Tarr and his attorney took place and an agreement was reached on parking being relocated to its present location. They had also agreed that the stone wall would not be encroached on. Mr. Ahearn stated that particular concern was a point in time and if concerns still exist then the library needs to continue to work with the abutters as new concerns arise. A continuous working relationship is needed between both the library and the abutters.

Mr. Foote stated that the ZBA needs to uphold the bylaws and a decision should not be based upon monetary concerns or results of previous town warrants. The board should consider abutter comments.

Mr. Ahearn responded that the Board is required to hear each request case by case and is a process of due diligence and it was up to the board to determine if the variances were detrimental to the public good. The board would not base their decision on the fact that the library received free grant money. Mr. Foote stated that the meeting room was huge. Mr. Ahearn reminded those in attendance that the hearing needed to get back on track for what was before the board and not debate the merits of the meeting room. Mr. Plante stated that the focus of the hearing was for the two variances before the board and that the hearing should not be to debate the use of the library.

Mr. Reed agreed that the hearing was for variances but it would be unfair to the process if the board did not hear all concerns.

Mr. Ahearn wanted clarification on the exact height of the building and the floor and asked Mr. Marks the Library Owner's Project Manager (OPM) what the additional 3'6" provided. Mr. Marks explained that the proposed 16'6" floor height design accommodated HVAC, lighting, sprinkling system, structural support and book stacks. He also stated that the library is a unique structure in a residential district because it not a house.

Mr. Marks and Architect Drayton Fair gave a slide presentation of the proposed library project and stated that the library met the criteria required for granting variances:

1. Mr. Marks stated that because the current library is built 3'6" above the street grade and the topography of the land makes this unique and doesn't affect the general zoning district.
2. Enforcing the height of the building to conform to the height requirement would cause hardship because it wouldn't allow the addition to be handicap accessible, would require the addition of staff to cover the various height levels because one person would not be able to see the entire floor. He also stated the library would be poorly designed if a variance was not granted.
3. The addition of 3'6" would not be substantial and would not be detrimental to the neighborhood and the height of the building would be below the tree line. Mr. Marks asked how 3'6" would be detrimental to the public.

Andrew Burnett of 730 Main Street stated that his concerns had been addressed by the library committee and was confident that in the future abutter concerns would continue to be addressed. He stated that as the closest abutter to the library he wants a library built with the best possible design and anything less would impact his property value.

Wayne Wetzel stated that the library previously has indicated that no variances were going to be required and questioned why the library couldn't be built within the height limit. If suggested that if the additional height needed was to accommodate lighting and sprinklers, then a different lighting and a dry sprinkler system should be used.

Mr. Marks replied that the library was designed to accommodate many issues not just height constraints. Many factors were considered such as designing the best facility while working with parking issues; meeting the requirement of a meeting room, entrance issues, snowplowing, fire department requirements and creating an efficient library that would use minimal staffing. Mr. Marks explained that an alternative sprinkler system such as a dry sprinkler couldn't be used and both a wet and dry are the same size, use the same pipes, the only difference being that the dry sprinkler uses an air compressor and is more costly.

Bob Zak, Library Trustee chair, stated that the library has always released information and had made an assumption that the library could be constructed without the need for a variance but as the project progressed with more detailed designed that addressed issues it was determined that variances would be required after all.

Kay Stoner, a member of the board asked what was on top of the addition. Mr. Fair replied and stated that the addition was designed to compliment the gable, roof and motif of the existing library. Wood trusses exposed in the existing library would also be designed in the new addition. Mr. Fair stated that that if the building was lowered to meet the 32' requirement it would become a 2-story flat building.

Mr. Ahearn reiterated that the height design was not only for aesthetics but for function as well. Mr. Fair added that the addition was once designed at 48 feet and was reduced 15 feet. Mr. Ahearn also pointed out that the addition would be ADA accessible and Mr. Fair added that an elevator would be installed for access to the second floor.

Mr. Keep stated that the addition could be constructed reducing the height by 3-1/2' and still be ADA compliant and have a sprinkler system. Mr. Keep felt the variance request was for a design issue and indicated that the trusses could be lowered. Mr. Ahearn asked Mr. Keep if he was an engineer or had a professional background to support his opinion. Mr. Fair replied and stated that the roof could be lowered but the building would look like a McDonalds. He stated that the current design is driven by the existing building and if something else were to be designed it would be unfortunate for the town.

Lynn Meheran of 223 Green Road stated that a heavier snow load would be supported by the trusses and redesigning the trusses to be lower would be a detriment to the town. She stated she did not want a flat roof.

Mr. Keep stated that the height of the building is only one of many issues. He expressed concern that the library is located in a residential neighborhood and the square footage will be increased by 600%. His other concerns are parking and after library hours for the meeting room.

Randy Dinjian of 310 Wattaquodock Hill Road asked the abutters how 3-1/2' over the required height limit would impact them.

Mr. Delaney stated that prior to tonight's hearing height was never an issue and expressed that Mr. Keep knew the library was going to have an addition before he bought his house. Mr. Delaney told the board that the library more than meets the criteria required for granting a

variance and meets more of the criteria than any other variance request before it. Mr. Delaney stated that the uniqueness of being 3-1/2' above the street level and being an old building make it a unique situation. If the library had to be redesigned hardship would be imposed due to the cost to redesign the addition. Also the library would not be ADA and allow for strollers and elderly. By granting the variances it would be for the public good. He reminded the board that in 1991 the International was granted a variance to allow 4' above the height requirement for a new pro shop and in 1996, Future Electronics was granted a height variance. The library is the most compelling case in town and should be approved.

Mr. Reed agreed that in the past there were some flimsy decisions but that was the past and the current board doesn't want to dismiss abutter concerns. Mr. Reed stated that the board needs to balance the public good and mitigate what is before the board now.

Mr. Delaney stated that library minutes show that abutters were included in the process and Mr. Tarr doesn't have a standing to sue. Mr. Delaney stated that he felt the height would not affect the value of Mr. Tarr's property.

Lee Shanny the original chair of the library planning committee stated to the Board that Mr. Tarr had a long laundry list of concerns that the library met. One was the wall, so the committee addressed this; another was parking so parking was moved. Ms. Shanny stated that she understood Mr. Tarr has concerns but felt it was unfair of Mr. Tarr to state that the library never worked to address abutter concerns.

Mr. Plante stated as Selectmen he has been one of the most critical of the public officials and had previously expressed concern over what the library would look like. Mr. Plante stated that he had 4-years of college experience from Boston Architectural Center and as a current builder and developer he feels he has a background to comment on the design of the addition. He stated that he has been critical of how the addition looked and didn't want it to overpower the existing structure. If the library roof was lowered or re-designed with a flat roof, it would look like "crap" and he would not support or accept a design that reduced the roof line. He stated that he supports the current design.

Mr. Ahearn stated that all three Selectmen support the library addition and that they are the individuals who support the concerns of safety and public good.

Mr. Plante stated he was a previous volunteer fireman and the 32' height limit in the zoning bylaws was because of fire safety. He pointed out that the structure would be sprinkled.

Jodi Ross, Town Administrator questioned whether the meeting room hours should be discussed by the ZBA or Selectmen. Mr. Plante stated that during a site plan review, concerns and issues would be addressed. Town Counsel indicated that conditions could be imposed if a special permit was being sought for use, but conditions can't be imposed for variances.

Selectmen, Ken Troup stated he wouldn't support imposing conditions on the meeting room usage and time for those discussions would come later in the process. He also stated that he felt aesthetics were very important since the library is the only library in town.

Andrew Burnett stated he wanted to echo Mr. Troup's comments in that he is the closest abutter to the expansion and supports something that is aesthetically pleasing but will not support anything that is not, because it would have a direct impact on his property resale.

David Bradlee of 609 Wattaquodock Hill Road explained that he is in a wheelchair and that the floor height of a building is a very important issue for people in wheelchairs and that most wheelchair ramps are not designed for easy wheelchair access. He told the Board he supports the 3'6" height variance.

Mr. Ahearn requested clarification on the height request. He questioned whether it was 1.5" or 1'-6". Mr. Marks replied that the request is for 3' and 6" above the 32' overall height requirement and 1'6" or 1.5 feet beyond the 15' floor height requirement. He reiterated that the criteria being met for the library is: 1) the library has unique topography, 2) enforcement of the bylaw would create hardship by requiring dual levels and be a aesthetically displeasing design 3) the library addition will not be substantially more detrimental to the neighbors and 4) be the best designed possible library for the town of Bolton.

Mr. Ahearn closed the hearing for discussion.

*A motion was made by Gerard Ahearn, seconded by Brad Reed to approve 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 in excess of 3'6" or 3.5 feet above the height restriction.*

*Vote: APPROVED 5/0/0*

*A motion was made by Alexander Kischitz, seconded by Brad Reed to approve 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 by 1'6" or 1.5 feet.*

*Vote: APPROVED 5/0/0*

## **HEARING**

**8:30 p.m.      Modification of Comprehensive Permit - Regency of Bolton, Main Street  
Applicant: Toll Brothers – Shawn Nuckolls, Project Manager**

Present: Applicant – Toll Brothers - Shawn Nuckolls, Project Manager. Jason Witham, Assistant Vice President and legal counsel, Mark A. Kablack from M.A. Kablack & Associates, P.C.

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. At the ZBA meeting on May 27, 2008 the Board voted that the requested modification to the Comprehensive Permit was deemed substantial.

The Chairman opened up the Hearing by reading the hearing notice. Attorney Kablack explained to the Board that he was representing Heritage Manor Development LLC, an affiliate of Toll Brothers Limited and had been previously involved in the project with preparing the regulatory agreements and condo documents. He stated that he had been briefed about board concerns and was prepared to discuss them.

Board member, Alexander Kischitz asked how many units they were seeking to modify. Mr. Kablack replied 12 units. Mr. Kischitz asked how many have been sold. Mr. Nuckolls replied that 1 affordable has closed and 3 market rates are under agreement.

Mr. Ahearn asked if the 20% would apply to just the market rate units or include the affordable units as well. Attorney Kablack replied that he was going to respond to this and other questions in his prepared summary. Attorney Kablack gave a brief overview of the history of the FHA program and how it evolved from when it originated in 1968 to where it is now. Under FHA, one cannot discriminate against race or the number of children but can so for age as long as the development meets the FHA 80/20 requirements. At least one occupied person must be over the age of 55, which is verified and reported by the condo association (minimally) every 2 years. Under the FHA program the development must be promoted as age restricted and all associated advertising documents must incorporate this language as well. In 1995, the FHA was amended to allow any age in 20% of the units. Attorney Kablack stated that Toll Brothers will continue to restrict children under age 18 as it does now. Mr. Nuckolls explained that people in their late 40's and early 50's have looked at the units and expressed an interest but can't purchase because of the current age restriction. Attorney Kablack explained by modifying the permit allowing 20% of the units to be unrestricted would allow more flexibility to sell to the 53 year old. If the Board agreed to the modification request the Comprehensive Permit and condo documents would have to be modified as well. The advertising would stay the same, the style of units would remain the same and the restriction on no more than 3 occupants would remain as well as the no children under the age of 18. Mr. Nuckolls explained that once 80% of the units have achieved the over 55 requirement, then the remaining 20% would be opened to any age, but not children under the age of 18.

The Board expressed concern over the enforcement by the condo association if an association was never formed. Attorney Kablack stated the condo association would enforce the 80/20% which would have to qualify under state and federal laws. A bi-annual report would be required by DHCD regarding verification and reporting. A condo association is established once 31 units have been sold. The Board explained that this problem occurred in an earlier project, Bolton Woods Way. Attorney Kablack stated that if the condo association fails then the town would become the enforcer.

Mr. Reed asked if the 80/20 would be floating or would specific units be identified. Attorney stated that the units can't be segregated by age just like the affordable units can't be segregated from the market rate units, but the applicant prefers the concept of flexibility. The Applicant is requesting that this not be tied to specific units.



Mr. Kischitz and Mr. Reed both expressed concern over the logistics of the request. What happens if a unit is inherited or a spouse assumes the unit after a spouse dies? What happens if someone purchased a unit at age 53 and is now 55 and wants to sell it? How will units be counted and enforced? Will residents be forced to sell? Would they be sold as an unrestricted unit or a restricted one? Attorney Kablack responded by stating that it depends on the 80/20% mix at the time someone wants to sell a unit. Attorney Kablack also stated that the age restriction can go over 80% as long as it is not lower than 80%. In other words 100% of the units can be occupied by one person over 55 but this percentage cannot go under 80%.

The Board expressed concern over children attending the school system. Town Counsel stated that in order for a child to attend school they would need to establish residency and children under the age of 18 are not allowed to stay more than one month at a time or a cumulative total of 6 weeks per year.

Mr. Nuckolls stated that the applicant wants to be an age restricted community but are having trouble selling units. Attorney Kablack mentioned case law on a development in Hanover (MA), where the project became uneconomical. Attorney Kablack also mentioned the Hudson (MA) proposal to remove the age restriction completely and explained that they were not seeking to do this. The Board asked if the current owners/buyers had any concerns over the request. Mr. Nuckolls stated that they were aware of the applicant's request and supported it.

Mr. Kischitz asked if the affordable units would also be included proportionately in the proposal which would account for 3 of the affordable units. Attorney Kablack replied and stated that the 20% of the units that will be unrestricted will include both affordable and market rate units with no designation as to the breakdown. Town Counsel expressed concern over the Regulatory Agreement and how the affordable units will be designated. Attorney Kablack stated that he didn't foresee an issue with the affordable units getting people in under the age of 55 since the first lottery had 16 applicants.

Town Counsel requested a draft decision and related documents as well as examples of other 40B's with the 80/20 program. Attorney Kablack agreed to prepare these documents. The Board requested that the Board of Health's concern on septic capacity be addressed. The Board had received a letter from Mark Sprague a BOH member questioning the septic flow rates for age restricted and unrestricted units. Town Counsel stated that the development would need to comply with Title 5 and go before the Board of Health for compliance. Mr. Kischitz requested a new traffic report since the existing one is based on the residents being over the age of 55. He also wanted to know if parking would be adequate.

Town Counsel stated to the Board that they should be concerned with issues that would have made the Board decide differently on the original decision had they had the current proposal in front of them at that time.

***A motion was made by Gerard Ahearn, seconded by Brad Reed to continue the hearing to July 8, 2008 at 7:00pm.***

*Vote: APPROVED 5/0/0*

**GENERAL BUSINESS**

- 1. 8:15 pm Request for Change to Comprehensive Permit- Regency of Bolton, Main Street. Applicant: Toll Brothers – Greg Roy from Ducharme & Dillis**

Request to change parking lot location for building that holds 8 units.  
The applicant did not show up for this agenda item.

**NEXT MEETING**

A continued hearing date was scheduled for July 8, 2008 at 7:00 pm.

Meeting adjourned at 9:30 pm

*Minutes submitted by Jennifer Atwood Burney, Town Planner*