

BOLTON PLANNING & ZONING COMMISSION
SPECIAL MEETING
7:00 PM, Wednesday, October 28, 2015
Bolton Town Hall, 222 Bolton Center Road

Minutes & Motions

Members Present: Chairman Eric Luntta, Jeffrey Scala, Carl Preuss (7:08pm), James Cropley, Arlene Fiano, Adam Teller, Nancy Silverstein (alternate seated for Thomas Manning), Christopher Davey (alternate seated for Carl Preuss until his arrival), Neal Kerr (alternate)

Members Excused: Thomas Manning

Staff Present: Patrice Carson, AICP, Consulting Director of Community Development, Glenn Chalder, Planimetrics Consultant

Others Present: Several members of the public.

1. Call to Order: Chairman Eric Luntta called the meeting to order at 7:05pm.

2. OLD BUSINESS:

a. Discussion/Possible Decision: Adoption of the 2015 Town of Bolton Plan of Conservation & Development in accordance with Section 8-23 of the Connecticut General Statutes

Glenn Chalder reviewed with the Commission the changes that were made to the “baseline” document. The changes were clarifications and not substantive in nature. In addition, comments that were made at the public hearing and sent in to staff were consolidated into a table to review with the Commission to decide whether further changes to the baseline document were appropriate. The Commission went through the five pages of comments/suggestions and decided on possible actions of recommended change, no change, or discuss and decide. Commissioners had no additional comments or concerns besides what was discussed in the table.

Glenn Chalder discussed the next steps and time frames and P. Carson reminded the Commission that the POCD will need an effective date. A final copy needs to be drafted with the changes decided by the Commission from discussion tonight and filed with the Town Clerk before the effective date. A 30-day window would be enough time to allow for all the administrative things that need to occur. The Commission decided on Thanksgiving Day, November 26, 2015 as an effective date.

A. Teller **MOVED** the working draft of the Plan of Conservation and Development with the changes discussed and approved tonight be adopted by the Commission with an effective date of November 26, 2015. J. Cropley **SECONDED** the motion. Under **discussion** of the motion it was suggested that the motion be clarified adding “as reflected in the proposed POCD reflecting edits to 10/22/15 plus with the changes in the table discussed and made by the Commission tonight”. A. Teller restated his motion and **MOVED** the Commission adopt as the Plan of

Conservation & Development for the Town of Bolton the working draft presented to the PZC with edits through October 22, 2015 with the additional changes discussed and approved by Commission consensus tonight, and that the effective date be established as November 26, 2015. J. Cropley **SECONDED** the restated motion. **Motion carried 7:0:0.**

Glenn Chalder congratulated the Commission on a job well done. The Commission thanked Glenn and Patrice for keeping the process and Commission on track, making the process painless and simple, and for finishing the project ahead of schedule. Glenn stated that he has enjoyed coming to know Bolton even better and the Commission has talked through some challenging issues for a community that is continuing to grow and facing those issues. He felt the Commission did a great job talking the issues through and getting as “strong and active a verb” as was felt could be stated at this point in time because that’s what makes for a good Plan of Conservation & Development. This POCD is a great foundation going forward and the current and future Commissions will be able to build on it. Glenn thanked the Commission for the opportunity and said he enjoyed it very much.

b. DISCUSSION/POSSIBLE DECISION: ReSubdivision Application, 2-Lots, 61 French Road, William Anderson/Nancy Varca

A. Teller recused himself from this item and the rest of the meeting and left the building. E. Luntta clarified who would be discussing and deciding on this matter based on their attendance at the meetings and their listening to the meeting tapes. Those Commissioners were: E. Luntta, A. Fiano, J. Scala, J. Cropley, C. Preuss and N. Kerr (seated for Adam Teller).

Discussion:

E. Luntta stated the Commission heard a lot of testimony from the applicant and neighbors. E. Luntta did not believe that the application fits to the regulations in what was meant to be an irregular lot. As far as the property, if it was to be divided the way the applicant preferred, it did not seem consistent with the neighborhood even looking at the Assessor’s Map that was part of the record – going by the size and the shape it did not seem consistent with the rest of the neighborhood. As far as the water runoff, Mr. Luntta was unsure if that was resolved. J. Scala confirmed that the applicant’s engineer and the town engineer indicated that the swale cut along the property line of Gonder would not exacerbate the drainage problem and J. Scala was personally satisfied with that finding.

J. Cropley stated he liked the idea of bringing the driveway in on the north versus the south because it disturbed less wetland, but his biggest concern that he asked the applicant’s engineer about twice was about most of the runoff being contained by rain gardens. J. Cropley stated that he has visited some rain gardens that have been established in Bolton and has seen how they are maintained and it doesn’t seem like they still function properly. So what if someone decides to fill in the rain garden, then what happens to the runoff? J. Scala stated that any man-made feature – swale, rain garden, detention basin, etc. – that’s not maintained stops working which results in an increased flow. The town requires LID but not sure how its maintenance is

monitored. There is no body in the town that is responsible for this and they are private improvements on private property.

N. Kerr said the neighbor expressed that she already had a water problem. What the engineer proposed seemed like it might help the neighbor's problem. J. Scala stated that the applicant's engineer didn't state that's what his plan would do. The engineer only stated that the before and after design flows were similar.

A. Fiano stated the engineer at one point made the statement that "the drainage calculations were extremely tight" and wanted to know if the calculations were accurate. J. Scala said his numbers were his numbers.

J. Scala stated that in the regulations there is a definition of "Interior Lot" which states "a lot that has less than the required frontage on a public street but has at least 50 feet of lot frontage and is located immediately behind a lot or lots that comply with the zoning dimensional requirements, including lot frontage, and has a corridor at least 50 feet wide to the street. An interior lot may also be called a rear lot or a back lot or a flag lot." What does this definition refer to in the rest of the regulations? The only place found where those terms are used in the regulations was for an OSCD Subdivision. There were no other regulations for flag lots in a "regular" subdivision.

J. Scala also stated that the applicant made the statement that the 164 feet of proposed frontage for the Varca property is in character with the neighborhood. There are some smaller lots out there but short of the OSCD Subdivisions all the lots are 200-plus feet of frontage and therefore J. Scala did not believe that 164 feet of frontage was in keeping with the character of the neighborhood. The Zoning Regulations also require 85 feet of side yard between two properties and the applicant proposes only 35 feet. The regulations indicate that, at the Commission's discretion, it can waive the 85 feet and go to 35 feet, and the Commission will have to decide on whether that's appropriate. The applicant did request the waiver.

J. Scala stated Section 11F Irregular Lots is "intended for use when, after laying out lots within a subdivision in accordance with the dimensional requirements of these Regulations," shall be "leftover" land. J. Scala didn't feel so sure that 5 acres is "leftover land". And it's "meant as a last resort in the design of a lot" and shall "be employed sparingly". That same paragraph says that the "Commission shall have the right to deny usage of this Section by any applicant if it feels such usage is inappropriate." J. Scala stated he doesn't feel this is appropriate in this particular case. J. Scala stated he thought this because of the way the whole piece has come together – a conforming lot would now become an irregular lot in frontage.

J. Scala stated Section 11F.3. defines back land as "behind established lots with normal required frontage". By all accounts and dictionaries that J. Scala is familiar with, "normal" means common, commonplace, conforming, conventional, customary established, orderly, representative, standard, standardized, truthful. All of those definitions in J. Scala's opinion

mean 200 feet of frontage because that's the normal lot frontage required in Bolton. Therefore, the back land or rear lots have to be established behind a "normal" lot with "normal" frontage, and if the Varca lot is an irregular lot at 164 feet of frontage, then the rear lots would not be behind a normal lot by the town Zoning Regulations.

J. Scala had asked the applicant what would happen to the lots if the 35 foot side yard was moved to meet the 85 foot requirement. The applicant indicated that would not be a problem, but nothing was submitted to substantiate that claim, and J. Scala wasn't sure he agreed due to the dimensional requirements and how much he could move the line between the two lots.

J. Scala pointed out that the plans indicate a shed on the Varca property to be moved but it is not indicated where it would be moved to and whether that move would meet the regulations. In the applicant's exhibits C, D, E, and G that all relate to Wetland Permits back to 1995, the applicant was trying to make the argument that by default, everyone was well aware of what the applicant was trying to do, but in those approvals, only the Varca property was being discussed; nothing to do with the easement or the right of way to the south of the property and it was in fact specifically indicated that it wasn't part of that. And there are conflicts between the information in exhibits C, D, E and G in the dates. The maps that were exhibits were represented as the maps that were provided to the Wetland Commission, but the maps didn't have any designations identified on the Wetland Approvals, i.e., the designations and dates did not match, the lot size didn't match, so it's unclear they are the same maps reviewed, used for determinations and approved by the Wetlands Commission.

J. Scala stated that Exhibit F, the ZBA approval for lot area for 61 French Road, made a statement about a 50-foot ROW located on the south of the property provided full and intended use of the parcel, so the applicant's representation that the north is the only way to gain access seems inaccurate. The applicant had also stated he owns other property that abuts this piece and Assessors records seem to indicate he owns property to the north that might gain him access.

N. Kerr questioned the term "normal" and whether it applied to the Donahue property. N. Kerr stated that from the maps it looked like it was pretty common to have property that doesn't have 200 feet of frontage. He questioned whether the Wetlands Commission would approve an alternative crossing.

A. Fiano stated that when you buy a piece of property you should know what your constraints are on that property and all alternatives would need to be exhausted regarding access to the property.

E. Luntta stated the property is not land-locked today and the Commission needs to make its decision based on the facts presented and the regulations and not assumptions about what the Wetlands Commission might do.

C. Preuss stated that the Commission doesn't have a southern access to this piece before it. It has before it a northern access taking property from one parcel creating a smaller parcel to access a rear parcel. The Commission can't discuss hypothetical situations because this is the only application before the Commission and that's what needs to be discussed.

N. Kerr stated it seems like he still has the right to use the back property until the Wetlands Commission says he can't use the southern access.

C. Preuss stated that he had four concerns when the application had first been presented. First and foremost was they were taking a lot with approximately 200 feet of frontage and taking 50 feet of frontage off of it to create access to another lot in the rear and in C. Preuss' opinion that would be creating an Irregular Lot. And as far as C. Preuss knew, and it was discussed in the hearings, the Town of Bolton has never taken a conforming lot and created or made it into an Irregular Lot which would then have non-conforming frontage. The Commission has created subdivisions which have Irregular Lots in them but that was done to make the best use possible on the property that was before the Commission at the time.

Another concern C. Preuss had was increasing water runoff for the neighbors and for environmental impact on water quality on the Blackledge Watershed. The applicant's engineer testified that both of those concerns would be mitigated through engineering design as proposed and therefore C. Preuss' concerns about water runoff were alleviated.

C. Preuss' final concern was the slope of the common driveway. The applicant has proposed a driveway of 15%, there is a vehicle turnoff but still the concern is public safety. A 15% slope for that distance and getting fire apparatus and emergency vehicles into the site is a problem, but it's allowed by the regulations. J. Scala stated that the Fire Marshal had requested some minor changes to the plans that were not implemented, but could be made conditions of a decision.

J. Scala was having trouble rectifying that the applicant is proposing three Irregular Lots, one of which he's making a conforming lot that now meets the 200-foot frontage requirement Irregular. N. Kerr didn't understand why once the Commission approved a lot with less frontage than 200 feet the lot would then still be irregular? J. Scala explained it would be irregular because the applicant is using the section of the Regulations that define Irregular Lot for all of the lots. And J. Scala doesn't think it is appropriate to take a 200-foot frontage lot that's fully conforming and turn it into an Irregular Lot. Irregular Lots are supposed to be a last resort and used sparingly and J. Scala felt that if all the lots in the subdivision, in this case all three, are irregular, then that's not sparingly, that's 100 percent.

E. Luntta stated that he doesn't ever remember the Commission taking a lot that conforms and making it an Irregular Lot and was concerned of the precedence this would set of people with large lots with conforming frontage coming in and asking to reduce their conforming frontage below the 200 feet to create an Irregular Lot.

J. Scala **MOVED** to deny the William Anderson/Nancy Varca ReSubdivision application for 77/61 French Road, Town of Bolton, CT, for the following reasons:

1. The Commission feels the use of the Irregular Lot provision on the Varca property is inappropriate.
2. Lot #1 does not have the required 85-foot sideyard.
3. The waiver requested by the applicant for the 35-foot versus 85-foot side yard is not something in conformance/character with other development in this area.
4. According to the Regulations Irregular Lots are to be used “sparingly” and the Commission does not find the use in this application is “sparingly”.
5. The Fire Marshal’s concerns are not fully addressed on the plans or in the application.
6. Section 11F.3. Irregular Lots, the frontage on the Varca property was normally conforming, meaning 200 feet, and the application would change it to an Irregular Lot 164.96 feet is not an appropriate use.

C. Preuss **SECONDED** the motion. There was **discussion** regarding including in the motion the Fire Marshal’s concerns as not fully addressed. N. Kerr **MOVED** to amend the motion to remove #5. J. Croyley **SECONDED** the amendment. **Discussion** of the amendment was about whether it should be a condition or should the plans have been revised. **Motion on the amendment failed 1 (Kerr) in favor:5 opposed:0 abstained.** **Discussion** continued on the original motion. E. Luntta asked for clarification on #6 of the motion and whether J. Scala was stating that the application does not meet the Irregular Lot provisions of the Zoning Regulations. J. Scala responded that he was making the argument that the term “normal” no longer applies to the Varca property with this application because the property has normal frontage but it’s being reduced to something below normal and that’s against the Regulations. Section 11F.3. normally calls for a normal conforming frontage of 200 feet, and reduction to the 164 feet does not meet the Irregular Lot provision. N. Kerr felt that Exhibit Q contradicted that because lots shown on that map showed some lots with less than 200 feet of frontage and wasn’t sure what “normal” was. J. Scala stated he thought “normal” meant what is normally required today which is 200 feet. C. Preuss stated that he doesn’t know of anywhere in town that the Commission has allowed a “regular lot” with 200 feet of frontage to be created as an “Irregular Lot” with less than 200 feet of frontage and that is what the applicant is asking the Commission to do. J. Scala read paragraph 3 on the top of page 11-5 which says that the back land has to be “behind established lots with normal required frontage” and by reducing the Varca lot frontage it was no longer an “established lot with normal required frontage” which is 200 feet. After further discussion, most of the Commission felt that the Regulations did not allow the Commission to reduce the frontage of an existing “normal” conforming lot to less than that to create an Irregular Lot.

E. Luntta **MOVED** to amend the motion to add that this was a denial “without prejudice”. C. Preuss **SECONDED** the amendment. **Discussion** of the amendment centered on what does adding that language to the motion mean? E. Luntta explained it meant that the Commission was making this decision “in fairness to the applicant” or as an unbiased opinion. P. Carson asked if there was an intention of waiving a fee for a similar application in the future which is typically why a Commission would include language of “without prejudice” in a motion. E.

Luntta stated that he felt that the applicant had due process and didn't really intend on waiving future application fees. **Motion on the amendment failed 1 (Luntta) in favor:4 opposed:1 (Scala) abstained.**

E. Luntta stated the original motion still on the floor was for denial with six reasons made by J. Scala, seconded by C. Preuss and there didn't seem to be any more discussion. **Motion carried 5 in favor:0 opposed:1 (Kerr) abstained.**

3. Adjournment: J. Scala **MOVED** to adjourn. A. Fiano **SECONDED**. Meeting **adjourned** 9:50pm.

Respectfully submitted,

Patrice L. Carson

PLEASE SEE MINUTES OF SUBSEQUENT MEETINGS FOR APPROVAL OF THESE MINUTES AND ANY CORRECTIONS HERETO.