

BOLTON ZONING BOARD OF APPEALS

THURSDAY, SEPTEMBER 19, 2013

7:00 P.M.

BOLTON TOWN HALL

SPECIAL PUBLIC HEARING/MEETING MINUTES

Members Present: Chair Mark Altermatt, Joel Hoffman, William Pike, Bob Peterson, Morris Silverstein (arrived at 7:10 P.M.) and Rich Hayes (arrived at 7:14 P.M.)

Members Absent: Jonathan Treat

Others Present: Jim Rupert, Zoning Enforcement Officer; Ron and Bev Alleman (21 Hebron Road), Mary Anne Murphy (186 French Road), John and Terry Murphy (9 Sacherus Trail, Simsbury, CT), Robert Thrall (146 South Road), Ted Wrubec (500 Woodland Road, Storrs, CT), Peter Blum (Apt 307, Linden Place, Hartford, CT), Norman and Janet Rodrigue (67 Volpi Road), Charles and Enza Saladino (55 Volpi Road), Linda and Alan Brewer (190 French Road), Thomas Mortimer and Beth Martin (63 Volpi Road), Fred Lewie (48 Volpi Road), Gary Kent (191 French Road), Josephine Tobias (194 French Road), Todd Tobias (193 French Road) and Arthur McGeary (71 Volpi Road).

Regular Meeting

1. Call to Order:
The meeting was called to order at 7:02 P.M.
2. Public Comment:
None.

Public Hearing

1. Application of Thomas P. Mortimer - 63 Volpi Road - for an appeal of the decision of the Zoning Enforcement Officer to apply the dimensional requirements of the Zoning Regulations to a moveable solar array and for a variance of 15 feet to allow a portion of a tracking solar voltaic system to enter into the established side yard setback while in the flat "storm protection" mode.

Chairman Altermatt explained to Mr. Mortimer he has requested an appeal and variance. It was explained to him that the appeal needs to be addressed before the variance. Mr. Mortimer decided to continue with the appeal. He explained that he questions if the regulations apply to moveable structures.

Chairman Altermatt explained that in the zoning regulations structure is defined as that is which is built, constructed, installed or erected. Mr. Mortimer agreed that the solar panel meets these requirements. Accessory building structure is defined as building or structure that is

located on the same lot as the principal building. Mr. Mortimer agreed the solar panel meets this requirement.

Mr. Hoffman asked if the application stated the structure was always static or moveable. Mr. Mortimer stated it was defined in the application as moveable.

Mr. Mortimer requested that the appeal be withdrawn. He would like to move forward with the request for variance.

Chairman Altermatt explained that the issue to be addressed was the request for variance of 15 feet to allow a portion of the tracking solar voltaic system to enter into the established side yard setback while in the "storm protection" mode.

Mr. Mortimer presented a PowerPoint regarding the solar panels and pictures in relation to neighbors' properties of the area. The presentation also included advantages for this system, an explanation of how it functions, copy of site plan submitted and engineering drawings.

Chairman Altermatt asked when the panels infringe on the setback. Mr. Mortimer explained that worst case scenario is when it is in "storm mode" it is 13 feet from the property line. Mr. Mortimer did not know when it is in other positions, how far from the setback it is.

Mr. Mortimer explained that it would be impractical to move the 20,000 pound structure. He did explain that it may be possible to reprogram at what point it goes into "storm mode". However he explained that this may be a safety issue.

Mr. Mortimer provided to the chairman the affidavit noting that the necessary signs have been posted and written copy of the PowerPoint presented.

Mr. Silverstein asked what the alternatives were if the variance was not granted. Mr. Mortimer explained he would be able to bring the case to Superior Court. Other alternatives are limited because changing the programming could cause safety issues.

Chairman Altermatt asked what wind speed it could sustain. Mr. Mortimer believes it is approximately 80 miles per hour, however has not tested that. Mr. Rupert explained that the State of Connecticut requires the minimum to be 100 miles per hour. Mr. Rupert explained that he verified that it has been tested. However, it is not clear if it was tested in the flat storm mode.

Mr. Hoffman asked what "storm mode" is and can it be changed. Mr. Mortimer explained that when winds reach 30 miles per hour it will go into "storm mode" or flat mode. He believes it can be programmed to a higher number of miles per hour.

Chairman Altermatt explained variances are granted based on special circumstances, sets it apart from other properties in the area. Mr. Mortimer explained that when he completed the building permit application and it was approved, he believed that he had submitted all relevant information.

Mr. Hoffman asked why this has become an issue. Mr. Mortimer stated he believed a neighbor filed a complaint. Mr. Mortimer also explained that one of the reasons for the location is the location of the septic is not clear.

Chairman Altermatt asked what hardship the variance is based on. Mr. Mortimer explained that reasons included unknown location of septic, safety (if not in emergency storm mode) neighbors and financial investment. Chairman Altermatt explained that financial hardship cannot be considered. He asked if he could move it 10-15 feet. Mr. Mortimer explained only if money was available to do that.

Mr. Silverstein asked if it would infringe upon the septic system. Mr. Mortimer stated it would be quite possible. There are no current records of the correct location.

Mr. Hayes asked how far the septic tank was from the solar system. He stated it is approximately 80 feet.

Mr. Hayes asked if Mr. Mortimer has a full size copy of the site plan completed by Fuss & O'Neill. He believes the town has a copy. Mr. Mortimer explained that he added the approximate location of the septic field.

Chairman Altermatt questioned if the septic system is located in the area as it is shown on the site plan, couldn't the panel be moved. Mr. Mortimer explained that the location is approximate.

Chairman Altermatt asked if it had to move, is there reason not to move it west (where tree is). Mr. Mortimer explained that the solar exposure is not as good, and there are large oak trees on the property line and drops down.

Chairman Altermatt asked if someone inspected for best solar exposure. Mr. Mortimer explained that the contractor uses a device to determine.

Mr. Hayes asked where the location of the well is. Mr. Mortimer explained that it is located in front of the house.

Chairman Altermatt explained that there does not appear to be a hardship applied to his property. Mr. Mortimer explained that he would have located it further south (and did testing for location of the septic) if that is what he was told.

Mr. Hoffman asked if moving it would affect the view from the house. Mr. Mortimer stated it would not affect the view; the only concern was the location of the septic.

Mr. Pike asked if the normal operation encroaches on the 25 foot setback. Mr. Mortimer explained it may, but he does not know how much. However, definitely not as much as in flat mode.

Mr. Hoffman asked Mr. Rupert if the map is accurate of the septic system. Mr. Rupert explained that his part of the permit process is not to review that. That would be considered by the Town Sanitarian.

Chairman Altermatt invited parties to speak on the pending variance request.

Mike Saladino (son of Charles Saladino, 55 Volpi Road) questioned the size of the solar panel. He stated it appears to be a commercial set up.

Norman Rodrigue (67 Volpi Road) seconded the previous question. Additionally he provided two photographs of the solar array from his property. He also was wondering why Mr. Mortimer did not speak with any of his neighbors. Mr. Rodrigue stated the noise is bothersome. He also questioned the location of the solar panels.

Jane Rodrigue (67 Volpi Road) stated that it would set precedence for others to install a similar size. If it is allowed, how can it be denied for others?

Fred Lewie (38 Volpi Road) stated he agreed with all previous comments.

Charles Saladino (55 Volpi Road) provided several photographs of array and a copy of the application that Mr. Mortimer submitted for the original installation.

Peter Bloom (original owner of Mr. Mortimer's property before subdivision) stated that he was part of a law suit with Mr. Mortimer because he wrongfully cut down trees. However, Mr. Mortimer compensated Mr. Bloom for that. He also stated that Mr. Mortimer has an issue with boundaries and setbacks. The structure looks like a movie screen. Mr. Bloom questioned the information that was mailed to him in a town envelope which included personal information. Mr. Rupert explained that the hearing was previously supposed to be held, however an error was made on part of the town and Mr. Mortimer in notifying Manchester residents and Town Clerk. Mr. Mortimer withdrew his application to assist in complying with the required mailings. Therefore the town offered to mail the items the second time for him.

Beverly Alleman (21 Hebron Road) shared copies of articles in support of solar panels/solar arrays. She believes he went through the process in good faith.

Ron Alleman (21 Hebron Road) stated a building permit has to be posted notifying residents; this would explain what is happening on the property.

Norman Rodrigue (67 Volpi Road) reiterated the issue is the violation of the setback requirements, not the use of solar power.

Calvin Trumbull (28 Volpi Road) stated that since the permit was approved, the Town of Bolton should be liable to correct the issue if necessary.

Mr. Mortimer explained that the original idea was to put panels on the garage roof, however decided not to because the age of the shingles and stress on the roof. In regards to the size, the contractor originally suggested a larger solar array, however it was scaled back to meet minimal needs.

Mr. Saladino provided a picture depicting the size of the panels is 24' x 25' 6". The original application shows a smaller solar array then what was installed.

Mr. Hoffman asked if the number of panels could be reduced. Mr. Mortimer said he was not sure; it would be a question for the contractor.

A motion was made by Mr. Hayes, seconded by Mr. Hoffman to close the Public Hearing at 8:35 P.M. Motion unanimously passed.

A motion was made by Mr. Hayes, seconded by Mr. Hoffman to go into the regular meeting to discuss the application of Thomas Mortimer at 8:37 P.M. Motion unanimously passed.

Mr. Hayes asked if an A2 was filed when permit was submitted. Mr. Rupert answered that he was not sure.

Chairman Altermatt asked what the permit was for. Mr. Rupert explained that he interpreted from the information that was given to him that no part of the structure would encroach on the 25 foot setback. Mr. Rupert had a phone conversation with the contractor and explained it to him as well.

A motion was made by Mr. Peterson, seconded by Mr. Hathaway to grant the variance for Thomas Mortimer.

Mr. Hayes questioned who is voting. It was clarified that the voting members will be Chairman Altermatt, William Pike, Joel Hoffman and alternates Morris Silverstein and Robert Peterson.

The board continued to briefly discuss the application. Mr. Rupert did explain that the board has 35 days to make a decision from the close of the public hearing.

A motion was made by Mr. Hoffman, seconded by Mr. Silverstein to rescind the previous motion.

A motion was made by Joel Hoffman, seconded by Morris Silverstein, to postpone decision after obtaining a legal opinion from the town attorney. Motion unanimously passed.

Mr. Silverstein requested town obtain an opinion from Mr. Burn. Chairman Altermatt will look into this.

The next meeting will be October 17th.

2. Application for Robert Thrall – 146 South Road – for a variance of Section 11.A (Dimensional Requirements) of the Zoning Regulations to reduce the left side yard setback from 25 feet to 13 feet for a 1,000 gallon LP tank.

Chairman Altermatt stated that members William Pike, Rich Hayes, Joel Hoffman and alternate Bob Peterson will be sitting in on this Public Hearing.

Mr. Wruebel spoke on behalf of Mr. Thrall. He explained a new propane heating system was installed into the house. Where the unit and gas lines are located is on the opposite side of the house. If the tanks are on the opposite side, it is difficult for accessibility. Locating it in the front would be unsightly.

Chairman Altermatt asked why the tank could not be buried in front of the house. Mr. Wruebel explained that it is all ledge.

Paul Smith, High Grade Gas Services (installer of gas lines) explained that where the proposed location of the tank is, it is accessible from the road. It can also be moved in case of an emergency. Mr. Thrall recently had a heart attack and is unable to shovel to clear the area if necessary.

Mr. Smith also explained that the gas lines cannot cross or come within 5 feet of the septic field.

Chairman Altermatt asked what the hardship is. Mr. Wruebel explained the front yard is ledge. The right side of the house drops off and would be inaccessible. The septic and leach field is too close on the right side.

Mr. Hayes asked if the property to the side is buildable. Mr. Rupert believes it may be wetlands, therefore it is unbuildable.

No one else from the public chose to comment.

A motion was made by Bob Peterson, seconded by Mr. Hayes to close the public hearing 9:17 p.m. Motion unanimously passed.

Mr. Hoffman asked Mr. Rupert what his opinion is. He replied that based on building codes and requirements by NFPA, and the hardships presented this would be the best location.

A motion was made by Rich Hayes, seconded by Joel Hoffman to approve the variance as requested based on the following hardships: topography, ledge and the location of septic system. Motion unanimously passed.

3. Application of Alan Brewer - 190 French Road- for a variance for section 11.A (Dimensional Requirements) of the Zoning Regulations to reduce the rear yard setback from 40 feet to 5 feet for a 24' x 24' garage.

Mr. Brewer provided affidavits that the meeting was posted and all receipts for the certified mailings were received as well.

Mr. Brewer explained he is looking to put a garage at the end of this driveway. He is limited to the shape of the property. His first choice of placement is where the current septic system was. The other area is where the new septic system would have to be installed if the current one fails. The garage would have one bay and a barn door on the side.

Mary Anne Murphy (186 French Road) expressed that the garage would be too close to the road (no longer an official road) that is used for emergency vehicles to access Gay City Park. She is concerned that the building will prevent a safe removal of snow.

Todd Tobias (193 French Road) looked at the map provided stating the trail is not accessible to emergency vehicles. The width between the stone walls is 50 feet and is wide.

John Murphy (Simsbury, CT) grew up on the Murphy property. He reiterated the same concerns as Ms. Murphy that the garage would be too close to the road. Mr. Murphy suggested moving the garage back towards the house.

Mr. Brewer explained that if the garage was moved back, he would not be able to access the door.

The two owners are unsure who owns how much property into the road (unofficial road).

Mr. Hayes suggested leave the public hearing open to have time to adequately determine how much each resident owns, and to view the site again.

Gary Kent, (191 French Road) explained his house is approximately four feet from the road. He explained that it is not frequently used. Mr. Kent feels that the garage would not cause any issues. He has old maps that verify road.

Mr. Hayes asked Mr. Brewer to research the property ownership.

A motion was made by Mr. Hayes, seconded by Mr. Hoffman to adjourn the meeting at 9:58 P.M. and continue the public hearing on October 17th. The remaining new business on the agenda will be addressed at the October meeting. Motion unanimously passed.

Respectfully submitted,

Heidi Bolduk
Zoning Board of Appeals Substitute Clerk

Please see the minutes of subsequent meetings for the approval of these minutes and any corrections hereto.