



# TOWN OF BOLTON

## Planning Board

Town Hall, 663 Main Street, Bolton, MA 01740  
Phone 978-779-3308 Fax 978-779-5461

### MEMORANDUM

DATE: March 1, 2016

TO: Board of Assessors

FROM: Planning Board

RE: Teele Road – Parcels 3.E-33 and 4.E-43

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The Bolton Planning Board, in coordination with Mirick O'Connell (Town Counsel), reviewed the zoning history of the properties identified on Bolton Assessor's Map 3.E as Parcel 33 and Assessor's Map 4.E as Parcel 43 to determine whether or not these parcels are considered buildable lots. These neighboring parcels are located off of Teele Road at the Bolton/Stow town line.

#### **Current Owner**

Alan DiPietro, 4 Riverside Park, Stow, MA 01775

- Purchased property in 2014 from Barbara A. Deck, Successor Trustee of the Alpha Trust
- Barbara A. Deck, wife of Yasin Balbaky (original Trustee of the Alpha Trust)

#### **Deed Reference**

Worcester Registry of Deeds in Book 52462 Page 364

#### **ANR Plan Reference**

Plan of Land in Stow, MA (Middlesex County) and Bolton, MA (Worcester County) prepared by Beals and Thomas, Inc. for Yasin Balbaky, Trustee of the "Alpha Trust" dated August 15, 1991 (revised 9/20/91 and 10/24/91), Scale: 1"=100', and recorded in the Middlesex Registry of Deeds in Book 01995 Page 206.

#### **Zoning History**

The ANR Plan was approved by the Stow Planning Board on November 12, 1991 and the Bolton Planning Board on December 11, 1991. The original parent parcel was subdivided into Parcels 1, 2, 3, 4, 5, and Lot 6. The ANR Plan was required to be recorded in both the Middlesex County and Worcester County Registries of Deeds. However, the plan was recorded only in the Middlesex Registry of Deeds (Town of Stow) on March 9, 1995.

Parcels 3.E-33 and 4.E-43 are identified on the ANR Plan as Parcels 1 and 2 respectively. Neither Parcel 1 nor 2 had the required 200 feet of lot frontage in the Town of Bolton to be considered buildable lots. In order to be considered buildable lots, both parcels required a variance for lot frontage from the Bolton Zoning Board of Appeals (ZBA) as noted in Note A of the ANR Plan.

- Parcel 1 has 168.07 feet of lot frontage on Teele Road in Bolton and 41.93 feet of lot frontage on Maple Street in Stow.
- Parcel 2 has no lot frontage on Teele Road in Bolton and 210.00 feet of lot frontage on Maple Street in Stow.

On November 19, 1991, The Bolton ZBA voted unanimously to grant the request for the variance to the Zoning Bylaw Section 2.6 “Lot Frontage” to allow building lots to be created not on a town way. The variance was required to be recorded in the Worcester Registry of Deeds within six months of the date of the decision. To the best knowledge of the Bolton Planning Board, the variance was not recorded and lapsed.

On November 19, 1991, The Bolton ZBA also voted unanimously to grant the request for the variance to the Zoning Bylaw Section 2.4.1.2 (d) “Common Driveway” to allow for a common driveway to be connected to other than a town way and not wholly within the Town of Bolton and required the petitioner to meet all the rules and regulations of all Boards of Stow and Bolton as if the property resided in only that town where the respective Board or regulation applies. Again, to the best knowledge of the Bolton Planning Board, the variance was not recorded and lapsed.

### **Determination**

The ANR Plan must be recorded in the Worcester Registry of Deeds to take effect.

A variance for lot frontage is required from the Bolton ZBA to consider Parcels 1 and 2 (as well as Parcels 3, 4 and 5) as buildable lots.

If the Owner chooses to develop Parcels 2 through 5 as buildable lots, a Backland Lot Special Permit for Parcel 2 and a Common Driveway Special Permit would be required from the Bolton Planning Board. The Bolton ZBA would also have to grant a variance to allow for a common driveway to be connected to other than a town way and not wholly within the Town of Bolton.

### **Conclusion**

**Parcel 3.E-33 and Parcel 4.E-43 are not buildable lots.**

Attachment: Email Thread between Erica Uriarte, Bolton Town Planner, and Brian Falk, Mirick O’Connell, RE: Questions for Town Counsel – Split Lots, dated 02/17/16 to 02/29/16.

## Erica Uriarte

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**From:** Falk, Brian R. <bfalk@MirickOConnell.com>  
**Sent:** Monday, February 29, 2016 5:41 PM  
**To:** 'Erica Uriarte'; 'Dave Yesue'  
**Cc:** 'Don Lowe'; Gibbons, Robert B.  
**Subject:** RE: Questions for Town Counsel - Split Lots

Hi Erica,

I agree with your summary of the landowner's options.

Please let me know if you need anything else.

Thanks,  
Brian

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**From:** Erica Uriarte [mailto:townplanner@townofbolton.com]  
**Sent:** Monday, February 29, 2016 10:59 AM  
**To:** Falk, Brian R.; 'Dave Yesue'  
**Cc:** 'Don Lowe'; Gibbons, Robert B.  
**Subject:** RE: Questions for Town Counsel - Split Lots

Thanks, Brian.

Just to reiterate and make sure I understand...

The owner can try to record a paper copy of the old plan along with an affidavit from an attorney. If this works, he can move forward with applying for frontage variances (for more than one lot if necessary since the court cases you mention below are after 1991?).

If not, and he needs ANR endorsement again, the owner will have to make a decision whether or not he's seeking more than one buildable lot which rely on a frontage variance. If he seeks more than one lot, he will need subdivision approval. Either way he will need to obtain frontage variances from ZBA.

Correct?

*Erica Uriarte, EIT*

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**From:** Falk, Brian R. [<mailto:bfalk@MirickOConnell.com>]  
**Sent:** Thursday, February 25, 2016 4:27 PM  
**To:** 'Dave Yesue' <[dayesue@yahoo.com](mailto:dayesue@yahoo.com)>; 'Erica Uriarte' <[townplanner@townofbolton.com](mailto:townplanner@townofbolton.com)>  
**Cc:** 'Don Lowe' <[townadministrator@townofbolton.com](mailto:townadministrator@townofbolton.com)>; Gibbons, Robert B. <[rgibbons@mirickoconnell.com](mailto:rgibbons@mirickoconnell.com)>  
**Subject:** RE: Questions for Town Counsel - Split Lots

I do not think he will be able to record a paper version of the plan, but the Registry may allow it under an attorney's affidavit. If he wants to present a new mylar to the Board, it will need to comply with the Board's current standards.

In addition, under Seguin v. Planning Board of Upton, 33 Mass. App. Ct. 374 (1992), and Cricones v. Planning Board of Dracut, 39 Mass. App. Ct. 264 (1995), the applicant may only obtain ANR endorsement, following a variance, if the plan shows just one "lot" (and any number of "parcels".) If the plan shows two or more lots, and those lots rely on a frontage variance, the applicant will need to obtain subdivision approval.

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**From:** Dave Yesue [<mailto:dayesue@yahoo.com>]  
**Sent:** Thursday, February 25, 2016 1:54 PM  
**To:** Falk, Brian R.; 'Erica Uriarte'  
**Cc:** 'Don Lowe'; Gibbons, Robert B.  
**Subject:** Re: Questions for Town Counsel - Split Lots

He has a paper version of the original endorsed plan from 1991, which he would like to record. I believe, however, that he would need to seek preparation and endorsement (and subsequent recording) of a new mylar identical to the 1991 plan. And before doing so, I would assume that he'd need to seek and receive ZBA approval for the frontage variance.

Separately, if he wishes to seek approval for a backland lot(s), and/or common drive(s), I'm thinking that he'd need to do that prior to arranging for an all-inclusive new mylar for recording.

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**From:** "Falk, Brian R." <[bfalk@MirickOConnell.com](mailto:bfalk@MirickOConnell.com)>  
**To:** 'Erica Uriarte' <[townplanner@townofbolton.com](mailto:townplanner@townofbolton.com)>  
**Cc:** 'Don Lowe' <[townadministrator@townofbolton.com](mailto:townadministrator@townofbolton.com)>; "Gibbons, Robert B." <[rgibbons@mirickoconnell.com](mailto:rgibbons@mirickoconnell.com)>; 'Dave Yesue' <[dayesue@yahoo.com](mailto:dayesue@yahoo.com)>  
**Sent:** Thursday, February 25, 2016 1:19 PM  
**Subject:** RE: Questions for Town Counsel - Split Lots

Hi Erica,

How has the applicant requested the Board's approval? Does he have the original, endorsed mylar from 1991, or is he seeking endorsement of a new mylar identical to the 1991 plan?

Brian

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**From:** Erica Uriarte [<mailto:townplanner@townofbolton.com>]  
**Sent:** Thursday, February 25, 2016 9:47 AM  
**To:** Falk, Brian R.  
**Cc:** 'Don Lowe'; Gibbons, Robert B.; 'Dave Yesue'  
**Subject:** RE: Questions for Town Counsel - Split Lots

Brian,

A question came up last night about the ANR Plan that was approved in 19991 for the Teele Road properties, but never recorded.

Does the ANR Plan need to be updated with current information or can the owner simply record the previous plan?

The Planning Board prefers the owner to update the plan as needed, apply for a variance for lot frontage with ZBA, then come back to Planning Board for sign off on the new plan.

Would this be appropriate? The Board received push back from the owner.

Thanks!

**Erica Uriarte, EIT**

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**From:** Falk, Brian R. [<mailto:bfalk@MirickOConnell.com>]

**Sent:** Wednesday, February 24, 2016 1:50 PM

**To:** 'Erica Uriarte' <[townplanner@townofbolton.com](mailto:townplanner@townofbolton.com)>

**Cc:** 'Don Lowe' <[townadministrator@townofbolton.com](mailto:townadministrator@townofbolton.com)>; Gibbons, Robert B. <[rgibbons@mirickoconnell.com](mailto:rgibbons@mirickoconnell.com)>; 'Dave Yesue' <[dayesue@yahoo.com](mailto:dayesue@yahoo.com)>

**Subject:** RE: Questions for Town Counsel - Split Lots

Hi Erica,

As we discussed by phone, my comments are embedded below.

Please let me know if you have any questions.

Thanks,  
Brian

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**From:** Erica Uriarte [<mailto:townplanner@townofbolton.com>]

**Sent:** Wednesday, February 17, 2016 10:35 AM

**To:** Falk, Brian R.

**Cc:** 'Don Lowe'; Gibbons, Robert B.; 'Dave Yesue'

**Subject:** FW: Questions for Town Counsel - Split Lots

**Importance:** High

Hi Brian,

I am in the process of researching a couple of split lots. I would like Town Counsel's weigh in and determination. Below is the background and questions. It may be worth discussing over the phone. Feel free to call me when you review the email. I am hoping to have some guidance before next Wednesday, February 24<sup>th</sup>.

**Parcels 3.E-33 and 3.E-43 off of Teele Rd (parcels are located in both Bolton and Stow)**

- ANR Plan from 1991 indicates Parcels 1 (3.E-33) and 2 (3.E-43) are not buildable and would require variances from ZBA for lot frontage. Parcel 2 would also require a common driveway special permit. The plan is attached.
- Bolton requires 200 feet of lot frontage.
- Parcel 3.E-33 has 168 feet of frontage in Bolton and 41.93 feet of frontage in Stow.
- Parcel 3.E-43 has 210 feet of frontage in Stow, but no frontage in Bolton.
- Variances for lot frontage granted for both parcels by Bolton ZBA in 1991.
- Recording of the variances in the Worcester Registry of Deeds cannot be found. Decision required recording within 6 months.
- Parcel 3.E-43 would require common driveway special permit (as part of a development with parcels 3 through 5 shown on the ANR Plan). Hearing for special permit was scheduled in 1991, but decision cannot be found. Common driveway was never built.
- The following court case from 1998 - <http://masscases.com/cases/app/45/45massappct283.html> indicates land located in one municipality can be used to meet the dimensional requirements of the other municipality.
- According to Bolton's definition of lot frontage – "The minimum frontage for permitted uses within the Town of Bolton must be met by contiguous frontage within the Town of Bolton on an approved or accepted right-of-way in the Town of Bolton" (added to definition of lot frontage by Article 22 at ATM 1998).

Questions

1. The ANR Plan was recorded in the Middlesex Registry of Deeds only. Did it need to be recorded in the Worcester Registry of Deeds to be valid?

The ANR Plan should have been recorded in the Worcester Registry as well in order to take effect.

2. Would the variances be valid if recorded at the Middlesex Registry of Deeds and not Worcester?

No. Under M.G.L. c. 40A, Sec. 11, a variance must be "recorded in the registry of deeds for the county and district in which the land is located." If not recorded or exercised, the variance lapses.

3. If the variances for lot frontage cannot be found in the registry, does the owner need to reapply for variances from ZBA?

Yes, but also because the variances have not been exercised.

4. Does the court case from 1998 weigh in whether or not a variance is required for lot frontage considering the 200 feet of frontage is available if include land in Stow?  
a. Or does the modification to the definition for lot frontage in 1998 (to say contiguous land in Bolton) factor in?

The case you referenced, *Boulter Brothers Construction Co. v. Zoning Board of Appeals of Norfolk*, 45 Mass. App. Ct. 283 (1998), held that land in one town may be used to satisfy the dimensional requirements of another town, absent a zoning bylaw provision to the contrary. Bolton has such a

provision in the definition of lot. As a result, any of the parcels shown on the ANR plan require a variance from the frontage requirement in order to qualify as buildable lots.

5. Does the common driveway special permit need to be issued in order for Parcel 3.E-43 to be considered buildable? Typically for a 3 to 5 lot subdivision in Bolton, the ANR plan and common driveway SP applications are submitted together.

Yes, but only if the that parcel will share the common driveway with two or more other lots, as set forth in the bylaw.

6. Is Parcels 3.E-33 considered buildable? Does it need a variance for lot frontage first?  
a. The owner would like to sell this lot as a buildable lot.

No, this parcel requires a frontage variance in order to qualify as a buildable lot.

7. Is Parcel 3.E-43 considered buildable? Does it need a variance for lot frontage and common driveway SP first?

This parcel requires a frontage variance in order to qualify as a buildable lot, and a common driveway special permit if applicable.

8. If the owner has no interest in developing the parcels as shown on the ANR, could he sell Parcel 3.E-43 as a buildable lot without the common driveway SP?

This parcel requires a frontage variance in order to qualify as a buildable lot, and a common driveway special permit if applicable.

### **Parcel 6.B-3 off of Main Street**

- Parcel is located in both Business and Residential Zoning Districts (approximately 9 acres in Business and 21 acres in Residential).
- Residential uses are not allowed in the Business Zoning District and vice versa.
- The Parcel is for sale.

Question - could a potential buyer develop residential use on the business zoned portion of the lot? Or vice versa? I would say no, but need confirmation. I think the use has to be permitted in both zoning districts to be allowed.

You are correct. A business use may be developed in the business zone and a residential use may be developed in the residential zone, but not simultaneously. Section 250-13.C provides that a lot may only have one principal building.

Attached is previous Town Counsel opinion regarding split lots.

Thanks,

**Erica Uriarte, EIT**  
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