



TOWN OF BOLTON

BOARD OF APPEALS

Town Hall, 663 Main Street, Bolton MA 01740

Phone 978-779-3308 Fax 978-779-5461

FINDINGS AND DECISION



2016 00074952

Bk: 55832 Pg: 236

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**Applicant name and address: Alan DePietro
4 Riverside Park
Stow, MA 01775**

Zoning Relief sought: Variance to Code of Bolton, Division I, Part III, Zoning Bylaw, Chapter 250, Section 3 – Dimensional Regulations – Residential Frontage and Section 28 – Terms Defined – Lot Frontage for property located at 110 Teele Road in Bolton MA and shown on Assessors Map 3.00E-033.

Description:

Property Owner, Property address and zoning district: Alan DiPietro, 110 Teele Road

Public Hearing date(s): May 18, 2016, May 31, 2016

Board Members: Gerard Ahearn, Brad Reed, Andy Kitsch and Jack Sargent

Decision and Vote: To grant the variance request. Vote = 4/0/0

1. PROCEDURAL HISTORY

On April 11, 2016 the Applicant Alan DiPietro, applied for a variance from the Board of Appeals pursuant to Bolton Zoning By-Laws Section 3 – Dimensional Regulations – Residential Frontage and Section 28 – Terms Defined – Lot Frontage for property locate at 110 Teele Road, Bolton, MA 01740.

The application filed with the Board of Appeals contained the following items:

1. Application for Hearing: Part I Background Information;
2. Certified Abutters List from the Town's Assessors office;
3. *A plot plan/drawing showing abutting properties and parcels of land, specifically parcel 1 in Bolton and Stow for which the applicant is requesting*

the variance defined above. The applicant requests relief from the provision of Section 250-13 Dimensional Schedule – Residential Frontage – 200 feet ; 250-28 Terms Defined – Lot Frontage. Parcel 1 from Assessors Map 30-33 has 210 feet of contiguous frontage, though due to the Town line, only 168 feet of the frontage is located within the Town of Bolton, MA (the residual within the Town of Stow, MA). The Applicant is seeking a Variance of approximately 32'.

A notice of the public hearing on the Original Application was published in the Bolton Common, a newspaper with general circulation in the Town of Bolton on April 29, 2016 and May 6, 2016.

Posted in a conspicuous place in the Bolton Town Hall on April 11, 2016 which was at least fourteen (14) days prior to the session of the hearing which the notice preceded; and

Mailed, postpaid on April 26, 2016, which were at least fourteen (14) days before the session of the hearing which the notice preceded, to the petitioner, abutters, owners and other town departments.

A duly posted open public hearing was held on May 18, 2016 at 7:00PM at the Houghton Building located at 697 Main Street, Bolton, MA 01740. Members present were Gerard Ahearn, Brad Reed, Alexander Kischitz and Jack Sargent. The Applicant was informed by the Board that because only four (4) board members were present, that any decision on the variance application would require a 4-0 unanimous vote. The Applicant was informed that he could withdraw the application if he so desired given the fact that stated about the unanimous vote requirement. The Applicant stated it was his intent to proceed with the hearing.

The Board took initial input from the Applicant (i.e., a walk-through of the Application and history of the property) and input and inquiries from certain Town residents. One resident, Ms. Maria Shoemaker (106 Teele Road), questioned whether or not the Applicant can meet all conditions for a variance. The Board provided a summary of the four (4) findings that must be met under M.G.L, Chapter 40 A, Section 10 (see Criteria noted below). The Board also reviewed prior ZBA hearing minutes from October 22, 1991 and October 29, 1991. The October 29, 1991 concluded with the ZBA granting a variance (i.e., the lapsed variance). Additionally, the Board reviewed a March 1, 2016 Bolton Planning Board Memorandum to the Board of Assessors, in which the Planning Board reviewed the zoning history of the properties identified in Assessor Map 3.00E-033. A key question that arose among Board members present that centered on the circumstance of the majority of the frontage being within Bolton, with a small portion located with Stow. This circumstance was specific to the property that was not generally affecting the zoning district in which it is located, but the Board questioned whether or not the fact that the parcel extended into Stow, MA could be a condition to

consider as contributing to a hardship determination. The Board chose to have this inquiry raised to Town Counsel before continuing discussions on the Variance. The Board voted 4/0/0 to continue the hearing until May 31, 2016 at 7:00PM in the same location.

On May 31, 2016 at 7:00PM at the Houghton Building located at 697 Main Street, Bolton, MA 01740, the Board continued hearing the Variance application. Members present were Gerard Ahearn, Brad Reed, Alexander Kischitz and Jack Sargent. At the meeting, the Board reviewed the May 26, 2016 e-mail response from Mr. Brian R. Falk, Associate counsel at Mirick, O'Connell, DeMallie & Lougee, LLP (Town Counsel), to the ZBA's question as to whether Town/County lines can factor in as a hardship for a lot. Attorney Falk summarized that "...the municipal boundary line dividing the lot should be considered by the ZBA in this case, but that fact alone does not compel the ZBA to grant a variance." In Attorney Falk's response, he also noted the four (4) specific areas of findings that the Board is required to make in order to issue a Variance.

At the May 31, 2016 hearing, the Board asked the Applicant if it was practical to restructure Parcel to by contributing land from abutting Parcel 2 in order to potentially make Parcel 1 a backland lot. The Applicant responded that there would be prohibited costs to him to consider such a plan, and that the current Variance request only considers Parcel 1.

After reviewing and discussing the above with the Applicant and those in attendance, the Board entertained a motion to close the public comment portion of the Hearing. Upon second of the motion, the Board voted 4/0/0 to close the public comment portion of the Hearing.

2. FINDINGS

A. General

1. *The subject property is located on 110 Teele Road (Assessor Map 3.00E-033) and is currently owned by Alan DiPietro (deed reference Book 52462, Page 364, and Book 918, Page 118). The Parcel 1 property is zoned residential.*
2. The Applicant submitted a complete application in accordance with the Board's Rules and Regulations.

The Hearing was called to order on May 18, 2016 at 7:00PM by chairman, Gerard Ahearn. The Board heard testimony from the Applicant, Alan DiPietro. Mr. DiPietro explained that Parcel 1 did not meet current zoning regulations because a portion of the contiguous 210 feet of lot frontage (approximately 42 feet) is located within the Town of Stow. The Applicant acknowledged that a former granted variance by the Town of Bolton ZBA (October 29, 1991) lapsed as it had not been recorded. The Applicant acquired the property in June 2015. The Applicant asserted that without the variance,

Parcel 1 could not be built upon. The Applicant also asserted that the lot's plans have been recorded, and that the lot has been taxed in Bolton as a buildable lot for 25 year or so.

A. Variance Criteria

Statutory criteria for granting a Variance under M.G.L Chapter 40A, Section 10 is as follows:

1. That 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; and,
2. That literal enforcement of the provisions of the Bolton Zoning Bylaws would involve substantial hardship, financial or otherwise, to the applicant; and,
3. That the desired relief may be granted without substantial detriment to the public good; and
4. That the desired relief may be granted without nullifying or substantially derogating from the intent and purpose of Bolton Zoning Bylaws.

All criteria must be met to grant the Variance. During its deliberations, the Board of Appeals considered whether all of the above-referenced criteria were met in the application.

B. Specific Findings

1. *There are circumstances that exist relating to the soil conditions, shape or topography of such land (i.e., the municipal boundary line) of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which Parcel 1 is located.*
2. *Literal enforcement of the provision of the Zoning Bylaw would involve substantial financial hardship to the applicant if the Applicant had to reconfigure abutting land to try and have Parcel 1 be zoned a backland lot, or if the Applicant could not develop a single family home on an otherwise buildable residentially zoned lot.*
3. *The desired relief from the documented provision of the Zoning Bylaw may be granted without substantial detriment to the public good. While some neighbors oppose the Variance request, the result of the request would be the siting of a single family residence on Parcel 1, and that is consistent with the Zoning area.*

4. *The request may be granted without nullifying or substantially derogating from the intent and purpose of the Bolton Zoning Bylaws, as only a small portion of the continuous frontage would be located in Stow, but with the cart path access to Parcel 1 being completely from a street in Bolton.*

3. DECISION

In view of the foregoing, the Board of Appeals hereby decides that the application meets all requisite criteria under MGL Chapter 40A Section 10. Therefore, the Board decided to *grant a Variance to the Applicant that provides relief from the provision of Section 250-13 Dimensional Schedule – Residential Frontage – 200 feet; 250-28 Terms Defined – Lot Frontage. This Variance is granted in accordance with the terms and conditions stated below.*

Conditions

1. Any appeals from the decision of the Board of Appeals can be made only to the Court and must be pursuant to Section 17 Chapter 40A (G.L.) as amended, and must be filed within twenty (20) days after the date of filing this decision with the Town Clerk.

A copy of this decision, certified by the Town Clerk, must be filed with the Worcester District Registry of Deeds to become valid.

RECORD OF VOTE


The Board of Appeals voted unanimously (4/0/0) to grant a Variance subject to the above-stated terms and conditions:



Gerard Ahearn (Chairman) (Member designated to sign on behalf of the Board)

2. Filed with the Town Clerk on

JUNE 14, 2016



Town Clerk

2016 JUN 14 PM 3:08

3. Certificate of No Appeal

The undersigned, being the Town Clerk of the Town of Bolton, this is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Pamela H. Powell

Copy of Findings and Decision mailed to:

2018 JUL -5 PM 9:30

Town Clerk

Date