

**BOLTON ZONING BOARD OF APPEALS
TUESDAY, JANUARY 15, 2019
7:00 PM
BOLTON TOWN HALL
222 BOLTON CENTER ROAD
MEETING AGENDA**

RECEIVED

DEC 19 2018

Town Clerk of Bolton

Regular Meeting

1. Call to Order:
2. Public Comment

NEW BUSINESS

Application of William Anderson – 25 French Road – for Appeal of decision of the Zoning Enforcement Officer – Section 3A5 (General Provisions) Dwellings or Structures on small lots.

New Business

1. Approval of Minutes
 - A. December 11, 2018
4. Correspondence
5. Adjournment



RECEIVED
DEC - 7 2018
TOWN OF BOLTON
LAND USE DEPARTMENT

Pd 12/7/18
CK # 2583
\$335.00

Town of Bolton

original Z-18-72

222 BOLTON CENTER ROAD • BOLTON, CT 06043

TOWN OF BOLTON ZONING BOARD OF APPEALS APPLICATION FOR VARIANCE OR APPEAL FROM THE DECISION OF THE ZONING ENFORCEMENT OFFICER

FILING FEE: \$335.00 (\$275.00 Zoning Board of Appeals fee plus \$60.00 State fee) payable upon submission of the application. Other costs may be incurred. Please make checks payable to the "Town of Bolton".

Check Type of application:

Variance Appeal from the Decision of the Zoning Enforcement Officer

1. Street Address of subject property 25 French Road

2. Deed Reference (Bolton Land Records) Volume 138 Page 884

3. Assessor's Records Reference: Map # 17; Block # 1 Parcel / Lot # _____

4. Current zone(s) of subject property Zone R-1 Acreage: .84

5. In Aquifer Protection District? Yes _____ No

6. In FEMA Flood Area? Yes _____ No

7. Wetlands Application Required? Yes _____ No

8. Applicant(s) William H. Anderson and Erin E. Anderson Address _____

77 French Road, Bolton, CT Zip 06043

Phone # 860-803-1846 Fax # _____ E-mail canyonrun35@yahoo.com

9. Owner(s) of subject property Same

Address _____ Zip _____

Phone # _____ Fax # _____ E-mail _____

10. Official Contact / Representative regarding this Application: Stephen T. Penny

Address 202 West Center Street, Manchester, CT Zip 06040

Phone # 860-646-3500 Fax # 860-643-6292 E-mail stpenny@pbolaw.com

11. For Variance Applications:

This is a variance from (check all that apply):

Min. lot area (cite section of Zoning Regulations) _____

_____ Frontage (cite section of Zoning Regulations)
 _____ Yard, front (cite section of Zoning Regulations)
 _____ Yard, side (cite section of Zoning Regulations)
 _____ Yard, rear (cite section of Zoning Regulations)
 _____ Max. building height (cite section of Zoning Regulations)
 _____ Max. lot coverage (cite section of Zoning Regulations)
 _____ Max. Impervious coverage (cite section of Zoning Regulations)
 _____ Other dimensional requirements (cite section of Zoning Regulations)

 _____ Other Zoning Regulation requirements: _____

Statement of Hardship: _____

Brief Explanation of specific action(s) requested of the ZBA: _____

Has any previous application been filed in connection with these premises? _____ If yes, give date: _____

12. Appeal from the decision of the Zoning Enforcement Officer (attach copy of letter from ZEO documenting decision being appealed)

Description of relief being sought: See attached statement.

Attach a scale drawing certified by a surveyor or other qualified professional accurately showing the dimensions of the lot, the location of the lot (geographically), the location of the house or proposed building on the lot and the direction of drainage on the lot. Also show the location of the septic system, well and the driveway, if applicable. Maps must accompany this application to the Zoning Board of Appeals and will be retained by the Zoning Board of Appeals.

NOTE: Within one year of the granting of a variance all necessary permits must be obtained or the variance granted will become null and void unless otherwise specified.

NOTE: PLEASE LIST THE NAMES AND ADDRESSES OF THE CURRENT ABUTTING PROPERTY OWNERS OF THE SUBJECT PROPERTY ON AN APPENDIX TO THIS APPLICATION.

.....

I hereby depose and say that all the above statements and the statements contained in any appendix to this application are true.

Dated this 5th day of December, 20 18

[Signature]
 Applicant's Signature

Owner's Endorsement (If Owner is different than Applicant):

I am a willful participant and fully familiar with the contents of this application. Signature _____

Date _____

**Town of Bolton
Zoning Board of Appeals
Appeal from the Decision of the Zoning Enforcement Officer
William H. Anderson, Applicant
December 6, 2018**

Description of Relief Being Sought

The Applicant is the owner of property located at 25 French Road in Bolton. Pursuant to Section 3A5a. of the Bolton zoning regulations, the property has been “owned separately and distinctly from any adjoining lot as evidenced by a deed recorded in the Office of the Bolton Town Clerk on or before May 12, 1954”. Pursuant to Section 3A5b. of the Bolton zoning regulations, “Such lot has been continuously owned after May 12, 1954 as a separate and distinct lot from any adjoining lot”. The Applicant is also the owner of an abutting lot at 27 French Road that is smaller and with less frontage than 25 French Road. Nonetheless, there is a single family residence on the lot at 27 French Road, constructed in 1950. 25 French Road is undeveloped. Neither of the lots at 25 and 27 French Road meet the current requirements for lot size or frontage.

By letter dated November 7, 2018, the Zoning Enforcement Officer (ZEO) expressed the opinion that “the lots were not owned separately and distinctly from any adjoining lot either before or after May 12, 1954”, and disqualified the lot at 25 French Road from being regarded as a “small lot of record” under the regulations, which would have qualified it to be built upon. In so finding, the ZEO’s interpretation of the regulation is incorrect both as to the facts and the law.

The Facts

On March 27, 1947, William S. Hyde conveyed the lot at 27 French Road to William McDonald and Jeanette McDonald by deed recorded in Volume 25 at Page 345 of the Bolton Land Records (BLR). On October 15, 1953, May S. Hyde conveyed 25 French Road to William McDonald and Jeanette McDonald by deed recorded in Volume 30 at Page 105 of the BLR.

On October 16, 1985, William McDonald and Jeanette McDonald conveyed the lots at 27 French Road and 25 French Road as two separate

parcels to John J. McDonald and Deborah D. McDonald by deed recorded in Volume 60 at Page 174 of the BLR.

On November 21, 2007, John J. McDonald and Deborah D. McDonald conveyed the lots at 27 French Road and 25 French Road as two separate parcels to William H. Anderson and Erin E. Anderson by deed recorded in Volume 138 at Page 884 of the BLR.

William H. Anderson and Erin E. Anderson remain the owners of the lots and are the Applicants herein. In each of the foregoing deeds, the two lots have been described and conveyed as separate and distinct parcels. The lots have not been occupied by any of the owners as a single parcel, and the ZEO makes no such finding. Consistent with Section 3A5c. of the regulations, neither of the lots is a lot "which conformed to earlier zoning regulations and was thereafter made smaller by any voluntary act of an Owner of such lot", a circumstance that the ZEO also did not find to exist. The Tax Assessor for the Town of Bolton has consistently assessed the lots as two separate and distinct buildable lots.

Copies of all of the foregoing deeds and the current tax cards are attached.

The Law

Contiguous land owned by the same person does not necessarily constitute a single lot. The land of one owner fronting on a street may well be made up of two or more lots. *Schultz v. Zoning Board of Appeals*, 144 Conn. 332, 338 (1957). In *Schultz*, the town of Berlin had adopted (on July 21, 1954) an ordinance similar to Bolton's. While this ordinance increased the lot frontage requirements of the regulations, it also protected smaller lots as buildable if they had met the regulation prior to this increase, provided however that the owner "owns no adjacent land which may, without undue hardship to him, be included as part of the plot in question". Prior to 1954, an owner had effectively divided a larger parcel into two lots, building a house on the westerly portion of the property, and in so doing changing the grade from that of the remaining land by four feet. In 1954, when the ordinance was adopted, this remaining land was still commonly owned with the westerly portion, with this easterly portion having frontage that met the regulations prior to the 1954 frontage increase. There was no division of ownership of the two parts of the original parcel until 1955. The ZBA denied a building permit on the basis that the easterly portion was not

a separate parcel until after the adoption of the ordinance. In ordering the permit to issue, the Supreme Court found that the owner of the original parcel had set off the remaining land as a separate parcel “when he built a house on that lot and graded it, leaving his land to the east of it in its natural state and at a different grade, thus evidencing his intent not to utilize it in connection with his home to the west,” and that “this left the easterly portion of his land as a plot of land ‘existing as a separate parcel’, as that phrase is used in the [1954] ordinance”. The ordinance, stated the court, “vested in the owner of any lot in that town the right to erect a building thereon even though the lot does not satisfy the minimum-area and width-of-lot requirements of the revised ordinance, provided the plot existed as a separate parcel on July 21, 1954”. In so finding, the court said that this right under the ordinance “attached to the plot itself, it runs with the land and accrues to all owners who succeed to the title”, and “consequently, the only reason for the denial of the permit given by the board in the minutes of its meeting, i.e. that the plaintiff had purchased the lot after the revision of the ordinance had gone into effect, had no validity whatever”. Importantly, the Supreme Court also found that the lot that was the remaining land could not have been brought up to size by taking land from the house lot ‘without hardship’ as the house lot too was undersized and non-conforming.

The *Schultz* case is instructive in two significant respects. First, because in the Berlin case the court found that the small-lot ordinance created a right to develop any undersized parcel that existed separate and apart from abutting property on the date of the ordinance that had previously met the zoning requirements, despite common ownership, and that this right attached to the land and accrued to all subsequent owners. And it made this finding even though a prior owner had effectively divided his property into two separate and distinct lots by his own conduct prior to adoption of the ‘smaller lot’ ordinance, without having done so by deed. In this Bolton case, the Applicant’s position is much stronger as the two commonly-owned lots have been deeded as separate and distinct parcels since prior to adoption of the ordinance, and consistently thereafter. Second, in both cases (Berlin and Bolton) no land from one commonly-owned lot could be taken for the other in order to make it conform to the regulations because both of the lots were ‘smaller lots of record’. The *Schulz* decision is attached.

The Appellate Court reached the same result in the more recent case of *Bell v. Zoning Board of Appeals*, 27 Conn. App. 41 (1992). In the *Bell* case, the 'Non-conforming Lot of Record' ordinance in Newington (Section 5.1.1) required that: (1) the lot was created or established as a 'separate building lot' prior to the adoption of zoning or, at the time of its creation or establishment as a separate building lot, complied with all lot width and area requirements then in effect; (2) the lot must be shown or described as a separate and distinct building lot on a map, or in a deed or other instrument duly recorded in the Town Clerk's Office; (3) no owner of such lot or lots at any time since it became non-conforming shall have owned adjacent land which may be or could have been merged as part of the lot in question; (4) the lot fronts on an accepted street [or on certain other streets not significant here]; and (5) all other requirements are met.

Three contiguous lots at issue in *Bell* were established in a 'subdivision' created in 1924 (before zoning), acquired between 1931 and 1949 by the same owner, and commonly owned thereafter. With the 1930 adoption of zoning, the lots became non-conforming for building purposes, but were protected by a non-conforming small lot provision in the regulations. In 1952, the owners constructed a single family residence on two of the lots. In 1989, Section 5.1.1 in its current form was adopted. Sometime thereafter, the owners sought a building permit to construct a residence on the third lot, and the zoning enforcement officer denied their application on the basis that the regulation permitted an owner to build on a non-conforming lot only if the owner owned no adjacent land. On appeal to the ZBA, that board reversed the decision of the ZEO, finding that there was no adjacent land that 'may be or could have been' added to the lot to make it conforming, and finding further that the three lots had not merged. In upholding the decision of the ZBA, the trial and appellate courts found that adding property to the third lot from the other two lots "could not result in making lot 115 [the third lot] conform to the present zoning requirements without reducing the combined area of lots 116 and 117 [the other two lots], already below the minimum requirement, and rendering them more nonconforming." The same analysis was applied to the frontage requirement. The Appellate Court concluded, "[B]ecause the intent of the amendment [Section 5.1.1] was to prevent the creation of non-conforming lots whenever possible, the board and the trial court correctly concluded that the adjacent land was not land that 'may be' or 'could have been' included in the property in question, and, therefore, that there was not merger by operation of law." The *Bell* decision is attached.

Relying on the *Bell* decision, the writer (Stephen Penny) presented a similar case last year to the Newington ZEO, and later defended the ZEO's determination that the undersized lot in question was a buildable lot in a neighbor's appeal before the ZBA. In that case, three contiguous lots had been established as separate lots with the filing of a plan of lots in 1897. From the discussion of the *Bell* case above, you are familiar with the current Newington ordinance on small lots of record (Section 5.1.1). The three lots had been commonly owned from at least 1925, but were divided equally in 1948 into two parcels of one and one-half lot each, separately owned, and still protected by the non-conforming small lot provision of 1930. In 1979, the town issued a building permit for a single-family residence to be constructed on one of the two post-1948 parcels. The parcel at issue before the Board was the other lot and one-half parcel.

Similar to both the *Schultz* and *Bell* cases, at no time since the adoption of the 1930 non-conforming small lot ordinance and during the common ownership of the three contiguous 1897 lots could property have been taken from one commonly-owned undersized separate and distinct lot and added to another without rendering the contributing lot even more non-conforming. Accordingly, the Newington ZEO determined that the parcel at issue constituted a buildable non-conforming small lot under the ordinance, and the ZBA subsequently upheld his decision when appealed. The decision of the Newington ZEO is attached. The issue that was presented last year in Newington is the same as the one before the Board in this Bolton appeal.

Conclusion

The underlying purpose of a 'non-conforming small lot of record' ordinance is to avoid having a newly-adopted, more-restrictive change in the zoning regulations suddenly confiscate from property owners the right to build on a lot that until that moment they had had a right to build on. Most towns have such a provision in their zoning regulations, as of course has Bolton since at least May 12, 1954. That said, in keeping with the desire of the zoning regulations to 'diminish and permanently discontinue' such non-conforming lots over time (Bolton Reg. 3A3), many such non-conforming small lot regulations also include certain conditions that must be met in order to enjoy the right to build. Bolton, for example, denies the right to owners who by their own voluntary act have made their lot smaller

since the adoption of the ordinance (Section 3A5c). Other towns include a provision that specifically merges by law abutting undersized lots that are commonly owned. Bolton does not have such a merger provision in its regulations.

In an effort to effectively create such a merger provision, however, the ZEO has interpreted Section 3A5 in a manner such that anytime a person owns land that abuts a non-conforming small lot, whether such land is also a non-conforming small lot or not, that owner would lose the protection of the non-conforming small lot ordinance automatically. This interpretation, however, is inconsistent with the decisions in the *Schultz* and *Bell* cases to the effect that a non-conforming small lot ordinance creates, in the instant of its adoption, a right in the owners of such lots to build on them, and that right is attached to the land and passes on to subsequent owners. These cases establish that that property right can only be disturbed if it can be shown that the same owner held title to an abutting parcel from which land could be or could have been taken and added to the small non-conforming lot to make it conform to the lot size and/or frontage regulations. If the abutting property is also a small non-conforming lot, however, such that no such land can have been taken from one for the other without increasing the non-conformity of the contributing lot, then the municipality cannot take the position that the common ownership of the lots has caused a merger by operation of law. In making such an interpretation in this case, the Bolton ZEO's position is outside what is permitted by law.

Further, the error in the ZEO's interpretation is shown by the fact that he places his emphasis on the word "owned" to the exclusion of the words "separate and distinct". As stated in *Shultz* and repeated in *Bell*, however, "Contiguous land owned by the same person does not necessarily constitute a single lot. The land of one owner fronting on a street may well be made up of two or more lots". Certainly both the deed descriptions and the separate title history of 25 and 27 French Road make it clear that the two lots were always "separate and distinct" from one another, and the Bolton ordinance itself references "owned separately and distinctly from any adjoining lot as evidenced by a deed recorded in the Office of the Bolton Town Clerk on or before May 12, 1954" (emphasis added). Yet, the ZEO's interpretation of the ordinance would treat them as one lot solely by virtue of their common ownership, again contrary to the law.

For the foregoing reasons, the ZEO's interpretation of the non-conforming small lot regulation should be overturned by the ZBA.



Town of Bolton

222 BOLTON CENTER ROAD • BOLTON, CT 06043

LAND USE DEPARTMENT
(860) 649-8066 Phone
(860) 643-0021 Fax

11/7/18

To: Mr. William Anderson
77 French Road
Bolton, CT 06043

From: James Rupert, ZEO

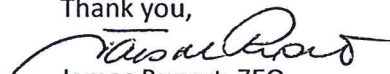
Subject: Small lot determination 25 French Road

Dear Mr. Anderson,

I have reviewed the documentation you provided along with the Bolton Zoning Regulations as it pertains to your request regarding dwellings or structures on small lots. After said review it is my opinion that the lots were not owned separately and distinctly from any adjoining lot either before or after May 12, 1954. As such this section of the regulations would not be applicable to the subject lot at 25 French Road in Bolton CT.

Please feel free to contact me should you have any questions regarding this matter.

Thank you,


James Rupert, ZEO

25 French Rd



Property Information

Property ID 09013012-17-1
Location 25 FRENCH RD
Owner ANDERSON WILLIAM H & ERIN E



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

CRCOG makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

25 FRENCH RD

Location 25 FRENCH RD

Mblu 17 / 1 / /

Owner ANDERSON WILLIAM H &
ERIN E

Assessment \$56,300

Appraisal \$80,400

PID 2264

Building Count 1

Current Value

Appraisal	
Valuation Year	Total
2018	\$80,400
Assessment	
Valuation Year	Total
2018	\$56,300

Owner of Record

Owner ANDERSON WILLIAM H & ERIN E

Co-Owner

Address 77 FRENCH RD

BOLTON, CT 06043

Sale Price \$0

Certificate salemaster

Book & Page 0138/0884

Sale Date 11/21/2007

Ownership History

Ownership History				
Owner	Sale Price	Certificate	Book & Page	Sale Date
ANDERSON WILLIAM H & ERIN E	\$0	salemaster	0138/0884	11/21/2007

Building Information

Building 1 : Section 1

Year Built:

Living Area: 0

Building Percent

Good:

Building Attributes	
Field	Description
Style	Vacant Land
Stories	

Occupancy	
Exterior Wall 1	
Exterior Wall 2	
Roof Structure	
Roof Cover	
Interior Wall 1	
Interior Wall 2	
Interior Flr 1	
Heat Fuel	
Heat Type:	
AC Percent	
Total Bedrooms:	
Full Bthrms:	
Half Baths:	
Extra Fixtures	
Total Rooms:	
Num Kitchens	
Fireplace(s)	
Wood Stoves	
Bsmt Gar(s)	
Fin Bsmt Qual	

Building Photo



(PhotoHandler.ashx?pid=2264&bid=2264)

Building Layout

(ParcelSketch.ashx?pid=2264&bid=2264)

Building Sub-Areas (sq ft)	Legend
No Data for Building Sub-Areas	

Extra Features

Extra Features	Legend
No Data for Extra Features	

Land

Land Use

Zone R-1

Land Line Valuation

Size (Acres) 0.84
 Depth
 Assessed Value \$56,300
 Appraised Value \$80,400

Outbuildings

Outbuildings	Legend
No Data for Outbuildings	

Valuation History

--

Appraisal

Valuation Year	Total
2017	\$60,000
2016	\$60,000

Assessment

Valuation Year	Total
2017	\$42,000
2016	\$42,000

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27 FRENCH RD

Location 27 FRENCH RD

Mblu 17 / / 2 / /

Owner ANDERSON WILLIAM H &
ERIN E

Assessment \$102,700

Appraisal \$146,700

PID 136

Building Count 1

Current Value

Appraisal	
Valuation Year	Total
2018	\$146,700

Assessment	
Valuation Year	Total
2018	\$102,700

Owner of Record

Owner ANDERSON WILLIAM H & ERIN E

Co-Owner

Address 77 FRENCH RD

BOLTON, CT 06043

Sale Price \$205,000

Certificate salemaster

Book & Page 0138/0884

Sale Date 11/21/2007

Instrument 08

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
ANDERSON WILLIAM H & ERIN E	\$205,000	salemaster	0138/0884	08	11/21/2007

Building Information

Building 1 : Section 1

Year Built: 1950

Living Area: 1,068

Building Percent 74

Good:

Building Attributes	
Field	Description
Style	Ranch
Stories	1

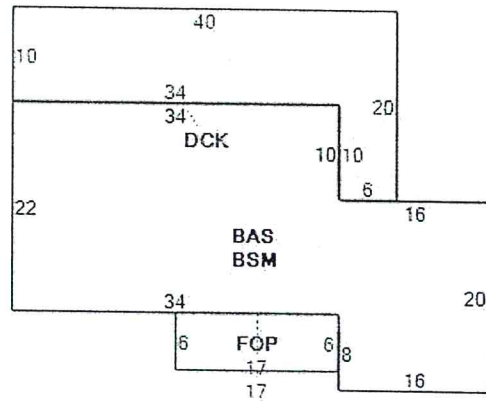
Occupancy	1
Exterior Wall 1	Wood Shingle
Exterior Wall 2	
Roof Structure	Gable
Roof Cover	Arch Shingles
Interior Wall 1	Drywall
Interior Wall 2	
Interior Flr 1	Carpet
Heat Fuel	Oil
Heat Type:	Hot Water
AC Percent	0
Total Bedrooms:	2 Bedrooms
Full Bthrms:	1
Half Baths:	0
Extra Fixtures	0
Total Rooms:	6
Num Kitchens	1
Fireplace(s)	
Wood Stoves	1
Bsmt Gar(s)	
Fin Bsmt Qual	

Building Photo



(PhotoHandler.ashx?pid=136&bid=136)

Building Layout



(ParcelSketch.ashx?pid=136&bid=136)

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
BAS	First Floor	1,068	1,068
BSM	Basement	1,068	0
DCK	Deck	460	0
FOP	Open Porch	102	0
		2,698	1,068

Extra Features

Extra Features		Legend
No Data for Extra Features		

Land

Land Use

Land Line Valuation

Zone R-1

Size (Acres) 0.51
Depth
Assessed Value \$46,200
Appraised Value \$66,000

Outbuildings

Outbuildings	Legend
No Data for Outbuildings	

Valuation History

Appraisal	
Valuation Year	Total
2017	\$146,100
2016	\$146,100

Assessment	
Valuation Year	Total
2017	\$102,300
2016	\$102,300

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WARRANTY DEED (SURVIVORSHIP)

To all People to whom these Presents shall come, Greeting:

KNOW YE, THAT We, John J. McDonald and Deborah D. McDonald, both of the Town of Bolton, County of Tolland and State of Connecticut (hereinafter referred to "Grantors")

for the consideration TWO HUNDRED FIVE THOUSAND and 00/100 (\$205,000.00) DOLLARS received to our full satisfaction of William H. Anderson and Erin E. Anderson, both of the Town of East Hartford, County of Hartford and State of Connecticut (hereinafter referred to as "Grantees")

do give, grant, bargain, sell and confirm unto the said William H. Anderson and Erin E. Anderson and the survivor of them, and the heirs and assigns of the survivor of them forever

those two certain pieces or parcels of land situated in the Town of Bolton, County of Tolland and State of Connecticut, being more particularly bounded and described as follows, to wit:

FIRST PIECE:

Northerly by land now or formerly of Harold C. Risley, Two Hundred Twenty (220) feet;

Easterly by French Road, One Hundred (100) feet;

Southerly by land formerly of Harold C. Risley, Two Hundred Twenty (220) feet; and

Westerly by land of Rose Freddo, One Hundred (100) feet.

SECOND PIECE:

Beginning at a point in the generally Westerly line of French Road, 415 feet South of the Northeasterly corner of land now or formerly of Orra Strickland; running thence Southerly along the generally Westerly line of French Road, 39 feet to a point; continuing thence Southerly along the generally Westerly line of French Road, by interior angle 183° 22', 108.4 feet to a point; running thence Westerly by interior angle 96° 36', 220 feet to a point; running thence Northerly by interior angle 83° 10', 185.5 feet to a point; running thence Easterly by interior angle 86° 52', 220 feet to the point of beginning, and making an interior angle of 90° with the line first above described.

Being bounded: Northerly by land now or formerly of William Souer, Two Hundred twenty (220) feet; Easterly by French Road, One Hundred Forty-seven and 4/10 (147.4) feet; Southerly by land now or formerly of William McDonald and Jeanette McDonald, Two Hundred Twenty (220) feet; and Westerly by land now or formerly of Rose Freddo, One Hundred Eighty-five and 5/10 (185.5) feet.

Said premises are conveyed together with the right to take water from a well on land now or formerly of Charles Hodgkins et ux by a pipe and to enter upon the land now or formerly of the said Hodgkins et ux for the purpose of maintaining and repairing said pipe.

Being the same premises conveyed to the grantors herein by William McDonald by deed dated October 16, 1985, and recorded in the Land Records of the said Town of Bolton, in Volume 60, at Page 174.

VOL. 138 PAGE 885

Said premises are subject to any and all provisions of any ordinance, municipal regulation, or public or private law and to taxes due the Town of Bolton on the List of October 1, 2006, which taxes the Grantees herein assume and agree to pay as part consideration for this Deed.

TO HAVE AND TO HOLD the above granted and bargained premises, with the appurtenances thereof, unto them the said grantees and the survivor of them, and the heirs and assigns of the survivor of them forever, and to their own proper use and behoof. And also, we the said grantors do for ourselves, our heirs, executors administrators, and assigns covenant with the said grantees, their survivor and such survivor's administrators, and assigns that at and until the ensealing of these presents, we are well seised of the premises, as a good indefeasible estate in FEE SIMPLE; and have a good right to bargain and sell the same in manner and form as is above written; and that the same is free from all encumbrances whatsoever, except as is above written.


AND FURTHERMORE, We, the said grantors do by these presents bind ourselves and our heirs and assigns forever to WARRANT AND DEFEND the above granted and bargained premises to them the said grantees and to the survivor of them and to such survivor's heirs and assigns, against all claims and demands whatsoever, except as is above written.

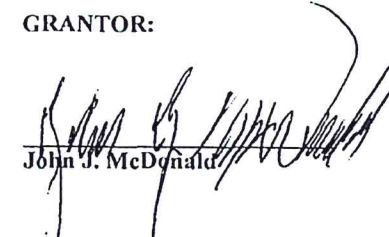
IN WITNESS WHEREOF, We, **John J. McDonald** and **Deborah D. McDonald** have hereunto set our hands this 21st day of November, 2007.


Signed and Delivered in the presence of:

WITNESS:

GRANTOR:


 Erik S. Young

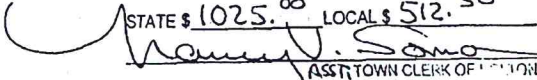

 John J. McDonald

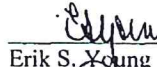

 MICHAEL V. NELSON
 (as to both)


 Deborah D. McDonald

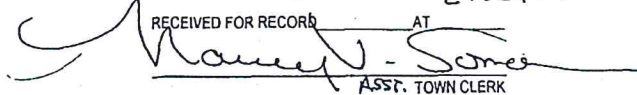
STATE OF CONNECTICUT)
) ss. Plainville November 21, 2007
 COUNTY OF HARTFORD)

Personally Appeared **John J. McDonald** and **Deborah D. McDonald**, Signers of the foregoing Instrument, and acknowledged the same to be their free act and deed, before me.

CONVEYANCE TAX RECEIVED
 STATE \$ 1025.⁰⁰ LOCAL \$ 512.⁵⁰

 Nancy J. Sones
 ASST. TOWN CLERK OF BOLTON


 Erik S. Young
 Commissioner of the Superior Court

Grantees Address:
 27 French Road
 Bolton, CT 06043

NOV 21 2007 2:30pm
 RECEIVED FOR RECORD AT

 Nancy J. Sones
 ASST. TOWN CLERK

WARRANTY DEED - STATUTORY FORM SURVIVORSHIP

KNOW YE, THAT I WILLIAM McDONALD, of the Town of Bolton, County of Tolland and State of Connecticut

for the consideration of TWENTY-TWO THOUSAND FIVE HUNDRED (\$22,500.00) DOLLARS

received to my full satisfaction of JOHN J. McDONALD and DEBORAH D. McDONALD, both of the Town of Bolton, County of Tolland and State of Connecticut

do give, grant, bargain, sell and confirm unto the said JOHN J. McDONALD and DEBORAH D. McDONALD, as joint tenants,

with WARRANTY COVENANTS

those two certain pieces or parcels of land situated in the Town of Bolton, County of Tolland and State of Connecticut, being more particularly bounded and described as follows, to wit:

FIRST PIECE:

A Northerly by land now or formerly of Harold C. Risley, Two Hundred Twenty (220) feet;
 Easterly by French Road, One Hundred (100) feet;
 Southerly by land formerly of Harold C. Risley, Two Hundred Twenty (220) feet; and
 Westerly by land of Rose Freddo, One Hundred (100) feet.

SECOND PIECE:

B Beginning at a point in the generally Westerly line of French Road, 415 feet South of the Northeasterly corner of land now or formerly of Orra Strickland; running thence Southerly along the generally Westerly line of French Road, 39 feet to a point; continuing thence Southerly along the generally Westerly line of French Road, by interior angle $183^{\circ} 22'$, 108.4 feet to a point; running thence Westerly by interior angle $96^{\circ} 36'$, 220 feet to a point; running thence Northerly by interior angle $83^{\circ} 10'$, 185.5 feet to a point; running thence Easterly by interior angle $86^{\circ} 52'$, 220 feet to the point of beginning, and making an interior angle of 90° with the line first above described.

Being bounded: Northerly by land now or formerly of William Souer, Two Hundred twenty (220) feet; Easterly by French Road, One Hundred Forty-seven and $4/10$ (147.4) feet; Southerly by land now or formerly of William McDonald and Jeanette McDonald, Two Hundred Twenty (220) feet; and Westerly by land now or formerly of Rose Freddo, One Hundred Eighty-five and $5/10$ (185.5) feet.


Said premises are conveyed together with the right to take water from a well on land now or formerly of Charles Hodgkins et ux by a pipe and to enter upon the land now or formerly of the said Hodgkins et ux for the purpose of maintaining and repairing said pipe.

Said premises are subject to any and all provisions of any ordinance, municipal regulation, or public or private law and to taxes due the Town of Bolton on the List of October 1, 1985, which taxes the Grantees herein assume and agree to pay as part consideration for this Deed.

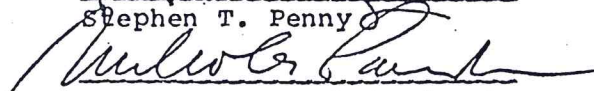
Being the same premises conveyed to the Grantor herein by a Warranty Deed dated March 27, 1947 and recorded on March 31, 1947 in Volume 25 at Page 345 of the Bolton Land Records and a Quit-Claim Deed dated October 15, 1953 and recorded on October 21, 1953 in Volume 30 at Page 105 of the Bolton Land Records.

Signed this 18TH day of October, 1985.

Witnessed by:


Stephen T. Penny


William McDonald


NICHOLAS PAINDAKIS

STATE OF CONNECTICUT)


COUNTY OF HARTFORD)

) ss. 18 OCT 1985

October 16, 1985

Personally appeared William McDonald, Signer and Sealer of the foregoing Instrument and acknowledged the same to be his free act and deed, before me.

Grantees Address:
27 French Road
Bolton, CT 06040


Stephen T. Penny
Commissioner of Superior Court

\$ 25.30 Conveyance Tax received
Catherine H. Leiner
Town Clerk of Bolton

OCT 25 1985 at 9:43am
RECEIVED
Catherine H. Leiner
BOLTON TOWN CLERK

*Check to Commissioner of Revenue
Services received \$112.50 etc.*

To all People to whom these Presents shall come--GREETING:

Know Ye, That, I, William S. Hyde, of the Town of Manchester, County of Hartford, and State of Connecticut,

For the consideration of a valuable sum in dollars, received to my full satisfaction of William McDonald and Jeanette McDonald, both of the Town of Bolton, County of Tolland, State of Connecticut,

do give, grant, bargain, sell and confirm unto the said grantees, their heirs and assigns forever, that certain lot of land situated in said Town of Bolton, bounded and described as follows, to wit:

Northerly by land now or formerly of Harold C. Risley, Two Hundred Twenty (220) feet; Easterly by French Road, One Hundred (100) feet; Southerly by land formerly of Harold C. Risley, Two Hundred Twenty (220) feet; and Westerly by land of Rose Freddo, One Hundred (100) feet.

LOT A

\$3.85 Revenue Stamps.

To Have and to Hold, the above granted and bargained premises, with the appurtenances thereof, unto them,

AND ALSO, I do for my self, my heirs, executors and administrators, covenant with the said grantees, their heirs and assigns, that at, and until the ensealing of these presents, I am well seized of the premises, as a good indefeasible estate in Fee Simple; and have good right to bargain and sell the same in manner and form as is above written; and that the same is free from all encumbrances whatsoever.

And Furthermore, I do by these presents, bind myself and my heirs, forever, to WARRANT and defend the above granted and bargained premises to their heirs and assigns, against all claims and demands whatsoever.

In Witness Whereof, I have hereunto set my hand and seal this 27 day of March in the year of our Lord nineteen hundred and forty-seven.

Signed, sealed and delivered } in presence of

Dorothy R. Pagani Aldo Pagani

William S. Hyde L.S.

STATE OF CONNECTICUT, } ss. Manchester. COUNTRY OF TOLLAND }

March 27, A.D., 1947

Personally appeared William S. Hyde,

Signer and Sealer of the

foregoing instrument, and acknowledged the same to be his free act and deed, before me.

Aldo Pagani Notary Public

Received for Record, March 31, 1947, at 2 h 02m P.M., and recorded by me.

David C. Jooney Town Clerk.

Town of Bolton in Book 24 at Page 47 & c, has caused these presents to be signed, acknowledged and delivered in the names and behalf of the Land Bank Commissioner and Federal Farm Mortgage Corporation and has caused its own corporate seal to be here-to affixed and these presents to be signed, acknowledged and delivered in its own name and behalf as attorney in fact for the Land Bank Commissioner and Federal Farm Mortgage Corporation by C. Edson Bemis its Agent, this 16th day of October, 1953.

Signed and sealed in the presence of:

Maye C. Cole
Mary A. Donovan

Land Bank Commissioner and
Federal Farm Mortgage Corporation
By The Federal Land Bank of Springfield (SEAL)
Their Attorney in Fact. by C. Edson Bemis Agent.

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF HAMPDEN, SS.

October 16, 1953

Personally appeared the above named C. Edson Bemis who being duly authorized and appointed by vote of the board of directors of The Federal Land Bank of Springfield, Agent of said corporation for the purpose of executing the foregoing instrument pursuant to the above described power of attorney, acknowledged that he executed the foregoing instrument as the free act and deed of the said Land Bank Commissioner and Federal Farm Mortgage Corporation and the free act and deed of The Federal Land Bank of Springfield as said attorney in fact and his own free act and deed, before me.

Allyn K. Talmadge, Notary Public
My Commission expires March 2, 1956

Received October 21, 1953 at 10:16 A.M. Recorded by *David C. Toney* Town Clerk

* * * * *

RELEASE OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, That I, Elizabeth Heller, of the Town of Bolton, County of Tolland, and State of Connecticut, do hereby release and discharge a certain mortgage from William McDonald and Jeanette McDonald, both also of said Town of Bolton, County of Tolland, and State of Connecticut, to me dated March 27, 1947, and recorded in the Land Records of the town of Bolton, County of Tolland and State of Connecticut, in Vol. 21, at Page 512 to which reference may be had:

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 16th day of October, in the year of our Lord nineteen hundred and fifty-three.

Signed, sealed and delivered in presence of
Dorothea E. Stavitsky
Robert J. Boyce

Elizabeth Heller L.S.

STATE OF CONNECTICUT)
) ss. Manchester,
COUNTY OF HARTFORD)

October 16, A. D. 1953

Personally appeared Elizabeth Heller, Signer and Sealer of the foregoing Instrument, and acknowledged the same to be her free act and deed before me.

Dorothea E. Stavitsky, Notary Public.

Received October 21, 1953 at 10:20 A.M. Recorded by *David C. Toney* Town Clerk.

* * * * *

QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That I, MAY C. HYDE, of the Town of Manchester, County of Hartford, and State of Connecticut, for divers good causes and considerations, received to my full satisfaction of WILLIAM McDONALD and JEANETTE McDONALD, of the Town of Bolton, County of Tolland, and State of Connecticut, have remise, released and forever quit-claimed, and do by these presents, for myself and heirs justly and absolutely remise, release and forever Quit-Claim unto the said WILLIAM McDONALD and JEANETTE McDONALD, and the survivor of them and the heirs and assigns of the survivor of them forever all such right and title as I the said MAY C. HYDE, have or ought to have in or to that certain piece or parcel of land, situated in said Town of Bolton, on the Westerly side of French Road, being more particularly bounded and described as follows:

Beginning at a point in the generally Westerly line of French Road, 415 feet South of the Northeasterly corner of land now or formerly of Orra Strickland; running thence Southerly along the generally Westerly line of French Road, 39 feet to a point; continuing thence Southerly along the generally Westerly line of French Road, by interior angle 183° 22', 108.4 feet to a point; running thence Westerly by interior angle 96° 36', 220 feet to a point; running thence Northerly by interior angle 83° 10', 185.5 feet to a point; running thence Easterly by interior angle 86° 52', 220 feet to the point of beginning, and making an interior angle of 90° with the line first above described.

Being bounded: Northerly by land now or formerly of William Souer, Two Hundred

LOT B

twenty (220) feet; Easterly by French Road, One Hundred Forty-seven and 4/10 (147.4) feet; Southerly by land now or formerly of the Releasees herein, Two Hundred Twenty (220) feet; and Westerly by land now or formerly of Rose Freddo, One Hundred Eighty-five and 5/10 (185.5) feet.

Said land consists of the premises distributed to the Releasee herein from the Estate of William S. Hyde, as evidenced by a Certificate dated October 14, 1953, and recorded in the Bolton Land Records.

Said premises are conveyed together with certain water and pipe rights conveyed to William S. Hyde in a deed from Harold C. Risley, dated August 18, 1942, and recorded in the Bolton Land Records, Volume 25, Page 129.

TO HAVE AND TO HOLD the premises unto them the said William McDonald and Jeanette McDonald, and unto their survivor, and unto such survivor's heirs and assigns, to the only use and behoof of the said William McDonald and Jeanette McDonald, and the survivor of them, and the heirs and assigns of the survivor of them forever, so that neither the said May C. Hyde nor any other person of persons in her name and behalf, shall or will hereafter claim or demand any right or title to the premises or any part thereof, but they and every of them shall by these presents be excluded and forever barred.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 15 day of October, in the year of our Lord nineteen hundred and fifty-three.

Signed, sealed and delivered in presence of R. E. Hathaway Everett E. Moore \$1.10 Revenue Stamp May C. Hyde L.S.

STATE OF CONNECTICUT) ss. Manchester, October 15, A. D. 1953 COUNTY OF HARTFORD)

Personally appeared May C. Hyde, Signer and Sealer of the foregoing Instrument, and acknowledged the same to be her free act and deed before me.

Everett E. Moore, Notary Public.

Received October 21, 1953 at 10:21 A.M. Recorded by David C. Toomey Town Clerk.

* * * * *

MORTGAGE DEED

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING: Know Ye, That We, WILLIAM McDONALD and JEANETTE McDONALD, both of the Town of Bolton, County of Tolland, and State of Connecticut, (hereinafter collectively referred to as Grantor) for the consideration of Four Thousand (\$4,000.00) Dollars received to Grantor's full satisfaction of MANCHESTER SAVINGS AND LOAN ASSOCIATION, INCORPORATED, a Connecticut corporation located in the Town of Manchester, County of Hartford, and State of Connecticut (hereinafter referred to as Grantee) do give, grant, bargain, sell and confirm unto the said Grantee, its successors and assigns forever, a certain piece or parcel of land situated in the Town of Bolton, in said State, known as # , West side, French Road, and bounded and described as follows, to wit:

Beginning at a point in the generally Westerly line of French Road, 415 feet South of the Northeasterly corner of land now or formerly of Orra Strickland; running thence Southerly along the generally Westerly line of French Road, 39 feet to a point; continuing thence Southerly along the generally Westerly line of French Road by interior angle 88° 22', 108.4 feet to a point; continuing thence Southerly along the generally Westerly line of said French Road by interior angle of 186° 36' 100 feet to a point; running thence Westerly by interior angle 90°, 220 feet to a point; running thence Northerly by interior angle 90°, 100 feet to a point; continuing thence Northerly by interior angle 173° 10', 185.5 feet to a point; running thence Easterly by interior angle 86° 52', 220 feet to the point of beginning, and making an interior angle of 90° with the line first above described.

Being bounded: Northerly by land now or formerly of William Souer, Two Hundred Twenty (220) feet; Easterly by French Road, Two Hundred Forty-seven and 4/10 (247.4) feet; Southerly by land now or formerly of Madlyn Heller, Two Hundred Twenty (220) feet; and Westerly by land now or formerly of Rose Freddo, Two Hundred Eighty-five and 5/10 (285.5) feet.

Said land consists of the same premises conveyed to the Grantor herein by warranty deed from William S. Hyde, dated March 27, 1947, and recorded in the Bolton Land Records, Volume 25, Page 345, and by quit-claim deed from May C. Hyde, recorded herewith.

Said premises are conveyed together with certain water and pipe rights conveyed to William S. Hyde in a deed from Harold C. Risley, dated August 18, 1942, and recorded in the Bolton Land Records, Volume 25, Page 129.

TOGETHER with all buildings and improvements now or hereafter placed thereon; and it is agreed that all equipment, now or hereafter installed, including, but not limited to all gas and electrical fixtures and appliances, all heating, plumbing,

Released 10/30/61 Vol. 30, P. 435

first day of January, 1954 , and on the first day of each sixth month thereafter upon the unpaid balance of said note, together with all taxes assessed on said sum against the holder thereof and together with all costs and reasonable attorney's fees incurred in any action to collect said note or to foreclose the mortgage securing the same.

The Makers further agreed, without demand, to pay on account of the principal of said note the sum of One Hundred Twenty-five Dollars (\$125.00) on the first day of January, 1954, and a like sum on the first day of each sixth month thereafter, but nothing therein shall affect the right of the holder of said note to demand payment of the entire note at any time.

The Makers thereof reserved the right to make payments on the principal of said note at any time.

And I, the said Grantor, do for myself and my heirs, executors, administrators and assigns, agree to keep all buildings on said premises in good repair, and insured against loss by fire and otherwise to an amount and by such companies as shall be satisfactory to said grantee, and maintain said insurance for the benefit of and first payable in case of loss to said grantee, and claim no cancellation or return of any policy or premium except from and after the redemption of this mortgage by the grantor.

NOW THEREFORE, if said note, or any renewals thereof or substitutions therefor, not exceeding the amount of said note, shall be well and truly paid according to their tenor, and if all agreements and provisions contained in said note and herein contained are fully kept and performed, then this deed shall become null and void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 15th day of October A. D. 1953.

Signed, sealed and delivered in the presence of: Arthur H. Keeney Mildred A. Dougan

Dorothy B. Fickett L.S.

STATE OF CONNECTICUT) ss. Manchester, October 15th, A. D. 1953 COUNTY OF HARTFORD)

Personally appeared Dorothy B. Fickett, signer and sealer of the foregoing Instrument, and acknowledged the same to be her free act and deed, before me.

Arthur H. Keeney, Notary Public.

Received October 16, 1953 at 1:09 P.M. Recorded by David C. Jooney Town Clerk

* * * * *

CERTIFICATE OF DECEASED'S OWNERSHIP OF REAL ESTATE

STATE OF CONNECTICUT) ss. Probate District of Manchester, October 15, 1953 COUNTY OF HARTFORD)

This certifies that William S. Hyde who last dwelt at Manchester, Connecticut and who at the time of his death was the owner of real estate situated in the Town of Bolton, County of Tolland and State of Connecticut, died on the 2nd day of October 1948, leaving a will.

The Manchester Trust Company, Executor of the Estate of William S. Hyde. By Everett E. Moore, Assistant Trust Officer

Received October 16, 1953 at 1:10 P.M. Recorded by David C. Jooney Town Clerk.

* * * * *

CERTIFICATE OF DEVISE

STATE OF CONNECTICUT) ss. Probate Court DISTRICT OF MANCHESTER)

I, John J. Wallett, Judge of the Court of Probate for the District of Manchester, in said State, do certify that it appears from the records and files of this Court that William S. Hyde died a resident of said District on the 2nd day of October 1948, leaving a will which was duly admitted to probate by said Court on the 7th day of October, 1948; that on the 7th day of October, 1948 letters testamentary under the will of said decedent were issued to The Manchester Trust Company of Manchester Connecticut, the executor named in said will, and on said day by decree as of record will more fully appear said Court limited and allowed six months thereafter for the presentation of all claims against said decedent to the executor of said estate and directed that public notice of said limitation be given as by Statute required; that after the expiration of said six months said executor filed in Court an administration account and other returns which have been accepted by the Court, from which it appears that public notice of said limitation was given as di-

ected in said order and that all claims against said decedent presented to said executor within said time limited have either been paid, settled or barred by law, and that all legacies given by the terms of the will of said decedent, which have not lapsed and all succession or inheritance taxes due the State of Connecticut have been fully paid and satisfied.

I further certify, that by the terms of the will of said deceased there is devised and bequeathed unto MAY C. HYDE of said Manchester, widow of said deceased, any and all interest which said deceased had in and to that certain piece or parcel of land situated in the Town of Bolton, County of Tolland, and State of Connecticut, on the Westerly side of French Road, and being more particularly bounded and described as follows:

Beginning at a point in the generally Westerly line of French Road, 415 feet South of the Northeasterly corner of land now or formerly of Orra Strickland; running thence Southerly along the generally westerly line of French Road, 39 feet to a point; continuing thence Southerly along the generally Westerly line of French Road by interior angle 183° 22', 108.4 feet to a point; running thence Westerly by interior angle 96° 36', 220 feet to a point; running thence Northerly by interior angle 83° 10', 185.5 feet to a point; running thence Easterly by interior angle 86° 52', 220 feet to the point of beginning and making an interior angle of 90° with the line first above described.

Being bounded: Northerly by land now or formerly of William Souer, Two Hundred Twenty (220) feet; Easterly by French Road, One Hundred Forty-seven and 4/10 (147.4) Southerly by land now or formerly of William McDonald, et ux., Two Hundred Twenty (220) feet; and Westerly by land now or formerly of Rose Freddo, One Hundred Eighty-five and 5/10 (185.5) feet.

IN TESTIMONY WHEREOF, I have hereunto affixed the Seal of said Court and subscribed my name at Manchester, this 14th day of October, 1953

(SEAL)

John A. Walleit, Judge.

Received October 16, 1953 at 1:11 P.M. Recorded by David C. Toomey Town Clerk.

* * * * *

QUIT-CLAIM DEED

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING: Know Ye, That THE NORWICH SAVINGS SOCIETY, a Corporation located and doing business in Norwich, New London County, Connecticut, for divers good causes and considerations moving; especially for one dollar received to its full satisfaction of ALLAN A. LEVENTHAL and DORIS E. LEVENTHAL, husband and wife, of Bolton, Tolland County, in said State, hath remised, released, and forever quit-claimed and by these presents for itself and its successors, doth fully, clearly and absolutely remise, release and forever Quit-Claim unto Allan A. Leventhal and Doris E. Leventhal full and peaceable possession and seizin and to their heirs and assigns forever all such right, estate, title, interest and demand whatever as the said Corporation hath or ought to have in or to A tract of land, with the buildings thereon, situated in the Town of Bolton, bounded and described as follows:

Commencing at a Connecticut Highway Department Bound, in the northerly line of Boston Turnpike, U. S. Routes 6 and 44A, 125.4 feet westerly of the southwesterly corner of land now or formerly of Nina L. Johnson, measured along the northerly line of Boston Turnpike, U. S. Routes 6 and 44A; the line runs thence northerly by interior angle of 81° a distance of 140.4 feet to a point; thence northerly by interior angle of 186° 8', 140.4 feet to a point; thence easterly by interior angle of 78° 56', 46.6 feet to a point; thence southerly along land of Robert D. Valentine, about 268 feet, to a point in the north line of Boston Turnpike, U. S. Routes 6 and 44A; thence westerly along the northerly line of Boston Turnpike, by interior angle of 99°, 32.4 feet to the point of beginning.

Hereby releasing the above tract only from the lien of mortgage from these releasees to this releasor dated March 30, 1953, recorded in Bolton Land Records, Vol. 29, page 476.

TO HAVE AND TO HOLD the Released Premises above described unto the said releasees their heirs and assigns to the only use and behoof of the said releasees, their heirs and assigns forever; so that neither said The Norwich Savings Society, nor its successors, nor any other person or persons, for them, nor in their names, nor in the name, right or stead of any of them, shall or will by any way or means hereafter have claim challenge or demand any estate, right, title interest of, in or to the premises, or any part thereof, but from all and every action, right, estate, title, interest and demand of, in or to the premises, or any part thereof, they and every of them shall be utterly excluded and barred forever by these presents.

IN WITNESS WHEREOF, said The Norwich Savings Society hath caused these presents to be executed and its corporate seal affixed by Wesley C. Sholes, Its Vice President hereunto duly empowered, this 13th day of October in the year of our Lord 1953.

Signed, sealed and delivered in presence of Nelson G. Wraight Estelle J. Ryan

The Norwich Savings Society (SEAL) By Wesley C. Sholes Its Vice President.

144 Conn. 332 (Conn. 1957), *Schultz v. Zoning Bd. of Appeals of Town of Berlin* /**/ div.c1 {text-align: center} /**/

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144 Conn. 332 (Conn. 1957)

130 A.2d 789

Adolph SCHULTZ

v.

ZONING BOARD OF APPEALS OF TOWN OF BERLIN.

Supreme Court of Errors of Connecticut.

March 26, 1957.

Edward B. Scott and J. Noxon Howard, New Britain, with whom, on the brief, was Donald H. Clark, New Britain, for appellant (plaintiff).

Roger F. Gleason, New Britain, with whom, on the brief, was Algert F. Politis, New Britain, for appellee (defendant).

Before INGLIS, C.J., and BALDWIN, O'SULLIVAN, WYNNE and DALY, JJ.

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INGLIS, Chief Justice.

The question presented in this case is whether the defendant board acted illegally

[130 A.2d 790]

or arbitrarily when it denied the plaintiff's application for permission to build a dwelling house on land located on the south side of Alling Street in the town of Berlin.

When the plaintiff appealed the decision of the board to the Court of Common Pleas, the board, in

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an apparent attempt to comply with the directions contained in § 379d of the 1955 Cumulative Supplement, filed in the court certain documents which purported to constitute the record of the case made Before the board. This procedure was not strictly in compliance with the statute. On an appeal from a zoning board of appeals, the record made Before the board should be annexed to, and incorporated by reference in, the answer of the board. When this is done, it does not become necessary to introduce the record in evidence on the trial of the case unless, of course, the plaintiff denies the correctness of the record returned. In the present case, the record filed contained, as was proper, the notice of the hearing, a rather sketchy report in narrative form of what was said at the hearing and a copy of the minutes of the executive meeting of the board at which the application was denied. There was no copy of the application itself, and this lack, as well as the incompleteness of the summary of evidence, had to be cured by the court's taking evidence, as it permitted by the statute to determine what facts and considerations were presumptively in the minds of the members of the board when they acted. *Berkman v. Board of Appeals on Zoning*, 135 Conn. 393, 397, 64 A.2d 875; *Levine v. Zoning Board of Appeals*, 124 Conn. 53, 57, 198 A. 173. Upon the evidence so taken, the court very properly made a finding.

From the record filed by the board and the finding made by the court, with such additions as the plaintiff is entitled to, it appears that the following are the facts pertinent to the decision of the

case. The zoning ordinance of the town of Berlin was adopted originally in 1948 and was revised as of July 21, 1954. Prior to the revision, the minimum requirement for frontage of a building lot in the zone in

Page 335

which the property now in question is located was sixty feet. Under the revision, the minimum lot width was increased to seventy-five feet. The revised ordinance, however, contained the following provision as § 11(k): 'Any plot existing as a separate parcel and not complying with the minimum area or width of lot required in the schedule at the time of the passage of these regulations may, notwithstanding such fact, be improved with a building in accordance with the regulations of its residence zone, provided the owner owns no adjacent land which may, without undue hardship to him, be included as part of the plot in question.' At the time the revision went into effect, the land now belonging to the plaintiff was the eastern portion of property, having a total frontage of 132.6 feet on Alling Street, owned by Jack and Constance Glendening. The title had come to them by mesne conveyances from James B. Ellsworth, who owned it from May, 1946, to November, 1947. While Ellsworth was the owner, he built a dwelling house on the westerly portion of the lot. In that connection he graded and planted the land around the house so as to make a lot with a frontage of 68.6 feet on Alling Street. This operation left the easterly part of the original plot, sixty-four feet in front, unimproved and at a grade about four feet lower than the improved land. Ever since then this lot has been allowed to remain unimproved and in a wild state. It is this sixty-four-foot frontage that is now owned by the plaintiff. When Ellsworth sold the property, he sold the entire 132.6 feet frontage as one piece, and there was no division of ownership of the piece until April 7, 1955, when the plaintiff took conveyance of the eastern portion, and the western portion, with the dwelling house on it, was conveyed to Walter H. and Hedwig Parlow.

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On March 23, 1955, Before the plaintiff bought the lot with a frontage of sixty-four feet, he applied to the zoning commission of the town of Berlin, the body charged with

[130 A.2d 791]

the enforcement of the zoning ordinance, for a building permit for the erection of a dwelling on the lot. A permit signed by R. H. Allen, chairman of the commission, was given to the plaintiff, but the commission as a whole had not authorized its issuance. Thereafter, the plaintiff bought the lot and proceeded to excavate and pour concrete footings for a projected house. After receiving protests from neighbors against the erection of the house, the zoning commission first suspended, and then revoked, the permit.

On July 19, 1955, the plaintiff applied to the defendant board for relief from the revocation of his building permit, claiming that it was error for the commission to have taken that action. He also asked for a variance under the appropriate provisions of the ordinance which empowered the granting of variances 'in instances where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of these regulation.' Berlin Zoning Ordinance, § 15(6) (1954). As regards the application of the plaintiff for review of the action of the commission, his claim was that his plot with the sixty-four-foot frontage existed as a separate lot prior to the revision of the zoning ordinance in 1954 and therefore came within § 11(k) of the ordinance,

quoted above. This section, he claimed, excepted his lot from the requirement of a seventy-five-foot frontage. And due hearing, the board denied the plaintiff's application. In the minutes of the meeting at which this action was taken, the only reason given by the board was stated as follows: 'This action because the present owners purchased land

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after zoning change had gone in effect. The trial court found, on the strength of oral testimony Before it, that the board gave as its reasons 'that plaintiff failed to prove the lot was an existing one within the provisions of [§ 11(k)] of the ordinance; that plaintiff initiated his own problem with full knowledge of the facts; that the board did not want to establish any precedent as to lot-splitting; that the board felt that the original 132.6 foot parcel was one lot; and that in relieving plaintiff's hardship, the board would be creating a hardship on the next door neighbor.' From the evidence, however, it appears that the sole basis for the board's finding that the sixty-four-foot frontage owned by the plaintiff was not a separate lot was the fact that it had never, in the chain of title up to the time of its conveyance to the plaintiff, been transferred as a separate lot and had never been assessed as such for taxation.

On the foregoing facts the trial court concluded that at the time of the plaintiff's application to the zoning commission for a permit, the lot in question was not a plot existing as a separate parcel but a portion of a single lot with a frontage of 132.6 feet, and that the zoning commission could reasonably have found that to be the case. Accordingly, judgment dismissing the appeal was rendered.

We will first consider the application made by the plaintiff to the defendant board on the basis of its being an appeal from the action of the zoning commission. The effect of § 11(k) of the zoning ordinance of Berlin is to vest in the owner of any lot in that town the right to erect a building thereon even though the lot does not satisfy the minimum-area and width-of-lot requirements of the revised ordinance, provided the plot existed as a separate parcel on July 21, 1954, and also provided the owner

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owned no adjacent land which could be included as part of the plot in question without undue hardship. Inasmuch as by the express wording of the section the right is attached to the plot itself, it runs with the land and accrues to all owners who succeed to the title. It follows that the plaintiff was entitled as a matter of right to the issuance to him of a building permit if, as a matter of fact, his plot of land met the requirements of the section. Consequently, the only reason for the denial of the permit given by the board in the minutes of its meeting, i. e. that the plaintiff had purchased the lot after the revision of

[130 A.2d 792]

the ordinance had gone into effect, had no validity whatever. If, as found by the court, the board had the additional reason that the lot was not a separate parcel at the time the revision of the ordinance went into effect, the question arises whether the board could reasonably have concluded that the lot was not such a separate parcel as is contemplated in the ordinance.

Section 22(d) of the ordinance defines 'lot' as 'a parcel of land occupied by one building and the accessory buildings or uses customarily incident to it, including such open spaces as are

arranged and designed to be used in connection with such buildings.' This is substantially the definition we recognized in *Corden v. Zoning Board of Appeals*, 131 Conn. 654, 662, 41 A.2d 912, 159 A.L.R. 849. Contiguous land all owned by the same proprietor does not necessarily constitute a single lot. The land of one owner fronting on a street may well be made up of two or more lots. *Ginsberg v. Capone*, 91 Conn. 169, 172, 99 A. 501; *Peck v. Brush*, 89 Conn. 554, 556, 94 A. 981; *Wilcox v. Woodruff*, 61 Conn. 578, 587, 24 A. 521, 1056, 17 L.R.A. 314. Indeed, § 11(k) itself recognizes that this is so, for it contains the proviso that no pre-existing

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lot shall be entitled to the exception granted by the section if the owner can take enough from an adjoining lot to make up a seventy-five-foot frontage without hardship.

It is clear, therefore, that the westerly portion of the tract formerly owned by James B. Ellsworth was by him set off as a separate lot with a frontage of 68.6 feet when he built a house on that lot and graded it, leaving his land to the east of it in its natural state and at a different grade, thus evidencing his intent not to utilize it in connection with his home to the west. This left the easterly portion of his land, that now owned by the plaintiff, as a plot of land 'existing as a separate parcel,' as that phrase is used in § 11(k) of the ordinance. The defendant board could not reasonably have concluded otherwise. *Grady v. Katz*, 124 Conn. 525, 530, 1 A.2d 137. This separate lot complied with the sixty-foot-frontage requirement of the original zoning ordinance. Without question this lot could not have been extended to the west by the Glendenings without hardship to them since, even though they owned both lots, if they took an eleven-foot strip from their westerly lot they would thereby reduce the frontage of that lot below the minimum required in the original ordinance.

It follows that the defendant board misapplied the law in denying the plaintiff a building permit on the ground that his lot did not qualify under the provisions of § 11(k) of the ordinance, and the trial court erred in sustaining the defendant's ruling.

Since we have reached this conclusion, it is apparent that the plaintiff had no need for a variance, and we need not discuss that feature of the case. Nor need we consider his assignment of error directed at a ruling on evidence.

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There is error, the judgment is set aside and the case is remanded with direction to render judgment sustaining the appeal and directing the defendant to order the issuance of a building permit to the plaintiff for the construction of a building on his lot pursuant to the provisions of § 11(k) of the zoning ordinance if it appears that his proposed building will comply with all other requirements of law.

In this opinion the other Judges concurred.

Richmond v. Longo

stance and nature of such matters, which could be determined only by a voir dire of the witness outside the presence of the jury. The court's refusal to permit such cross-examination without having full knowledge of what such cross-examination might elicit was improper.

When a party has not been permitted "fair and full cross-examination of a witness upon the subjects of his examination in chief . . . [the] denial of this right is . . . prejudicial" and requires reversal by this court. *Fahney v. Clark*, 125 Conn. 44, 47, 3 A.2d 313 (1938). The central issue in the trial court was the extent and permanence of the plaintiff's injuries. Resolution of that issue revolved largely around the testimony of the experts, whose opinions differed in significant respects. Although the plaintiff testified about the extent of his injuries, the plaintiff was not competent to testify concerning the permanence of those injuries. The credibility of the neurosurgeons, therefore, was of critical importance in this case because it was from their testimony that the jury could determine the degree of permanence, if any, of the plaintiff's injuries. The jurors should have had before them all relevant evidence that would help them consider and weigh the testimony of the experts. To deny the defendant the right to cross-examine the plaintiff's expert on issues relating to his credibility without first allowing the defendant an opportunity to demonstrate the relevance and significance of the testimony the defendant wished to adduce was to deny the defendant his right to a fair trial.

The judgment is reversed and the case is remanded for a new trial.

In this opinion the other judges concurred.

Bell v. Zoning Board of Appeals

WAYNE T. BELL v. ZONING BOARD OF APPEALS OF
THE TOWN OF NEWINGTON ET AL.
(10442)

DUPONT, C. J., LANDAU and FREEDMAN, Js.

The plaintiff zoning enforcement officer of the town of Newington appealed to the trial court from a decision by the defendant Newington zoning board of appeals reversing his denial of a building permit to the defendant property owners, E and R. E and R were the owners of three contiguous nonconforming lots, two of which had merged when a single family home was built on them. They sought the permit to build a single family home on the third lot. The trial court rendered judgment affirming the decision of the board, from which, on the granting of certification, the plaintiff appealed to this court. *Held* that the plaintiff could not prevail on his claim that the third lot automatically merged into the other two lots; this court could not say that the trial court acted unreasonably, arbitrarily or illegally in concluding that there was no merger because no land could be taken from the adjacent, commonly owned lots to make the subject lot conform to the zoning laws without making the donor lots more nonconforming.

Argued January 9—decision released March 10, 1992

Appeal from a decision by the named defendant reversing the plaintiff's decision to deny an application for a building permit filed by the defendants Elsie Yawin et al., brought to the Superior Court in the judicial district of Hartford-New Britain at New Britain and tried to the court, *Allen, J.*; judgment dismissing the appeal, from which the plaintiff, on the granting of certification, appealed to this court. *Affirmed.*

Thomas P. Byrne, for the appellant (plaintiff).

Frank R. Boroway, with whom, on the brief, was *David L. Griffith*, for the appellee (named defendant).

Vincent F. Sabatini, for the appellees (defendant Elsie Yawin et al.).

LANDAU, J. The plaintiff, Wayne T. Bell, the Newington zoning enforcement officer, appeals from the judg-

Bell v. Zoning Board of Appeals

The plaintiff appealed the board's decision to the Superior Court. He argued that the board had incorrectly interpreted § 5.1.1 and that the amendment permitted an owner to build on a nonconforming lot only if the owner owns no adjacent land. The crux of the plaintiff's argument was that, because the Yawins own adjacent land, they are required to add that land to lot 115 in an attempt to conform lot 115 to the zoning regulations. The defendants argued that, because there is a house on lots 116 and 117, there is no land available to add to lot 115 to make it conform to the zoning regulations and that taking land from lots 116 and 117 and adding it to lot 115 would render the donor lots more nonconforming, contrary to the intent of the newly amended § 5.1.1.⁵

The trial court made the following factual findings: (1) lot 115 is a separate and distinct building lot on a deed and certified map, (2) no land could have been used to make this a conforming lot, (3) lot 115 was established as a separate lot in 1924 and complied with all then existing zoning requirements, and, therefore, the lots never merged. The court concluded that the board did not act in an unreasonable, arbitrary and illegal fashion in determining that there was no merger of the land and that the Yawins owned no land that could have been added to lot 115. The court dismissed the plaintiff's appeal and granted the Yawins permission to build on lot 115.

⁵ The second introductory paragraph of the amendment to § 5.1.1 provides: "It is the intent of this regulation to permit these non-conformities to continue until they are removed, but not to encourage their survival. Such uses are declared by this regulation to be incompatible with permitted uses in the zones involved. It is further the intent of this regulation that non-conformities shall not be enlarged upon, extended or expanded if such a change increases the non-conformity, or be used as grounds for adding other structures or uses prohibited elsewhere in the same district." The third introductory paragraph concludes as follows: "[N]othing in this regulation shall be deemed to require a change in the plans, construction or designated use of any structure on which actual construction was lawfully begun prior to the effective date of this . . . regulation."

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The plaintiff claims that the trial court improperly found that lots 115, 116 and 117 had not merged by operation of law because there was no adjacent property that could have been added to lot 115 to make it conform with the zoning regulations. We disagree.

"Zoning boards of appeal are entrusted with the function of deciding, within prescribed limits and consistent with the exercise of legal discretion, whether a regulation applies to a given situation, and the manner of its application. *Connecticut Sand & Stone Corporation v. Zoning Board of Appeals*, 150 Conn. 439, 442, 190 A.2d 594 (1963). In discharging this responsibility, a board is endowed with a liberal discretion, and its action is subject to review by the courts only to determine whether it was unreasonable, arbitrary or illegal. *Id.*" *Molic v. Zoning Board of Appeals*, 18 Conn. App. 159, 165, 556 A.2d 1049 (1989). "Courts are not to substitute their judgment for that of the board . . . and decisions of local boards will not be disturbed so long as honest judgment has been reasonably and fairly exercised after a full hearing." (Citations omitted.) *Lamucci v. Zoning Board of Appeals*, 25 Conn. App. 85, 88-89, 592 A.2d 970 (1991). When a zoning board of appeals has stated the reasons for its action, a reviewing court may determine only whether the reasons given are supported by the record and are pertinent to the decision. *Torsello v. Zoning Board of Appeals*, 3 Conn. App. 47, 50, 484 A.2d 483 (1984).

The board stated that its reason for reversing the plaintiff's decision was that there had been no merger of the subject properties because there was insufficient land to add to lot 115 to make it conform with the existing zoning regulations. Thus, the trial court was restricted to a determination of whether the board's finding that there was no available adjacent land that could have been added to the lot and, therefore, that there had been no merger, was reasonably supported

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have owned adjacent land which may be or could have been included as part of the lot in question. Said lot was created or established as a separate building lot prior to the adoption of Zoning in the Town of Newington or, at the time of its creation or establishment as a separate building lot, complied with all lot [width] and area requirements then in effect." (Emphasis added.) The italicized language, as applied in the present case, precludes a finding of merger by operation of law. This portion of the amendment indicates that only if there is land that "may be" or "could have been" included as part of the lot in question will such land merge by operation of law. Here, the zoning board of appeals and the trial court found that no such land existed. Where the legal conclusions of the court are challenged, we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision. See *McClintock v. Riward*, 219 Conn. 417, 426-27, 593 A.2d 1375 (1991); *Red Hill Coalition, Inc. v. Conservation Commission*, 212 Conn. 710, 723, 563 A.2d 1339 (1989); *Koepke v. Zoning Board of Appeals*, 25 Conn. App. 611, 616, 595 A.2d 935, cert. denied, 220 Conn. 932, 599 A.2d 382 (1991). We conclude that the trial court's conclusions are legally and logically correct.

Adding property to lot 115 from lots 116 and 117, as the plaintiff suggested, could not result in making lot 115 conform to the present zoning requirements without reducing the combined area of lots 116 and 117, already below the minimum requirement,⁸ and rendering them more nonconforming. In addition, the most that can be taken from lots 116 and 117 without making them nonconforming as to road frontage would be twenty feet, which is still not enough to make lot 115

⁸ By building a house on lots 116 and 117 the property owners exhibited sufficient evidence to support an inference that it was their intent that these two lots merge.

In re Adalberto S.

conforming in that regard.⁹ Because the intent of the amendment was to prevent the creation of nonconforming lots whenever possible, the board and the trial court correctly concluded that the adjacent land was not land that "may be" or "could have been" included in the property in question, and, therefore, that there was no merger by operation of law.

The judgment is affirmed.

In this opinion the other judges concurred.

IN RE ADALBERTO S. *
(10265)

DUPONT, C. J., FORI and FRIEDMAN, JS.

The respondent, who had been adjudicated a delinquent in connection with having been charged with interfering with a police officer and using a motor vehicle without the owner's permission, appealed to this court. He claimed, *inter alia*, that the evidence presented was insufficient to prove him guilty beyond a reasonable doubt of using a motor vehicle without the owner's permission and that the trial court improperly denied him the right to present a defense to the charge of interfering with a police officer. The respondent had been apprehended after running from a suspicious vehicle and struggling with officers as they attempted to handcuff him. The vehicle had had its engine running without a key in the ignition and it was later found to have the steering column broken and chipped away on the left side. *Held:*

1. All of the facts proven, even when considered together, were insufficient to justify a conclusion that the respondent knew that the car was being used without the owner's permission; the state offered no evidence to prove that the respondent, who had exited the vehicle from the right rear door, knew that the vehicle's steering column was

⁹ The frontage on lot 115 would become seventy feet and the total area would become 7700 square feet.

* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 2026, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the Appellate Court.



Tanya Lane
Town Manager

TOWN OF NEWINGTON

131 Cedar Street Newington, Connecticut 06111

Town Planner

Craig Minor
Town Planner

OFFICE OF ZONING ENFORCEMENT

August 16, 2017

Attorney Stephen Penny
202 West Center Street
Manchester, CT 06040

Re: Building Lot at 48 Fairfield Ave A.K.A Lot No. 57 and portion of Lot No. 58

The Town is in receipt of your letter dated August 14, 2017. After a review of the information you have provided the Town is in agreement that this parcel constitutes a non-conforming lot of record based on Section 5.1.1 of the Zoning Regulations.

Based on this finding, the Town will treat this lot as buildable moving forward and update our records accordingly.

Best Regards

Michael D'Amato
Asst Town Planner/ZEO



Phone: (860) 665-8575 Fax: (860) 665-8577
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www.newingtonct.gov

DEC 12 2018

Town Clerk of Bolton

Bolton Zoning Board of Appeals
Regular Meeting Minutes
December 11, 2018 7:00 PM
Bolton Town Hall, 222 Bolton Center Rd

The Bolton Zoning Board of Appeals held its regular meeting on December 11, 2018 at the Bolton Town Hall. Members in attendance were Chairman Mark Altermatt, John Toomey, Robert Peterson, Jonathan Treat, Joseph Hriczo, Letrisa Miller and Zoning Officer Jim Rupert.

Call to Order: 7:03 PM

Public Comment: None

Receipt of Application: A motion was made by Chairman Mark Altermatt to accept a new application for an appeal of a decision by a Zoning Enforcement Officer, made by William H. Anderson and Erin E. Anderson, dated December 6, 2018 and received by the Bolton Land Use Department December 7, 2018, concerning property located at 25 French Rd. Bolton, CT, to be considered by the board on January 15, 2019. Motion seconded by Jonathan Treat. Motion unanimously passed.

Election of Officers: A motion was made by Robert Peterson to nominate Mark Altermatt as chairman. Motion was seconded by John Toomey. Motion unanimously passed.

Approval of Minutes: A motion was made by Robert Peterson to accept the minutes of the December 12, 2017 meeting as written. Motion seconded by John Toomey. Motion unanimously passed.

Set Meeting Dates for 2019: Chairman Matt Altermatt submitted for consideration meeting dates of the second Tuesday of every month in 2019, at 7:00 PM at the Bolton Town Hall, 222 Bolton Center Rd, Bolton, CT, excepting the month of January 2019, when the meeting will be held on the third Tuesday of the month, to allow for 30 days from the present meeting, at 7:00 PM in Room 9 of the Notch Rd Municipal Center, due to the unavailability of Town Hall on that date. Motion made to accept meeting dates by Robert Peterson. Motion seconded by John Toomey. Motion unanimously passed. Zoning Officer Jim Rupert clarified that contrary to prior information, the Town Hall would be available for the January 15, 2019 meeting. Chairman Altermatt made a pen change to amend the 2019 meeting dates to reflect that all 2019 meetings will be held at the Bolton Town Hall, 222 Bolton Center Rd.

Discuss 2019-2020 Budget: Board anticipated no alterations to the current budget being needed.

Correspondence: None

Adjournment: A motion was made by Robert Peterson to adjourn the meeting at 7:10 PM. Motion was seconded by John Toomey. Motion unanimously passed.

Respectfully submitted,

Josh Gaston

PLEASE SEE MINUTES OF SUBSEQUENT MEETINGS FOR ANY ADDITIONS OR CORRECTIONS HERETO.