

**Bolton Zoning Board of Appeals
Regular Meeting Minutes
December 10, 2019 7:00 p.m.
Bolton Town Hall, 222 Bolton Center Road**

Members Present: Chairman Mark Altermatt, Anne Decker, William Pike, John Toomey and Jonathan Treat, Alternate Letrisa Miller and 5 members of the public

Staff Present: Zoning Enforcement Officer Jim Rupert

1. Call to Order: Chairman M. Altermatt called the meeting to order at 7:18 p.m.

2. Public Comment: No public comment.

3. Elect Officers

J. Toomey nominated M. Altermatt as Chairman. J. Treat seconded. The motion passed unanimously.

NEW BUSINESS

1. 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

Attorney Stephen Penny spoke for Mr. Anderson who was also present.

Notices were given to landowners within 500 feet of the property and the appropriate signage was posted on the property.

Attorney Penny presented the following four Exhibits:

Exhibit One-The lot map and the assessor's cards. The subject parcel is zoned R-1 and the area consists exclusively of single family homes.

Exhibit Two-Showed that there are a number of parcels on French Road that are undersized but are developed. The Andersons have owned the parcel since 2007.

Exhibit Three-Showed the deed conveyed to the Andersons in 2007 as well as all previous deeds dating back to 1947. Two parcels (25 and 27 French Road) were noted as separate and distinct lots. The house at 27 French Road was built in 1950, before the ordinance. The driveway was also presumed to have been constructed in 1950 when the house was built. The driveway serves the residence at 27 French Road although a portion of the driveway crosses the lot at 25 French Road.

Exhibit Four-Contained two similar cases (Schultz v. Zoning Board of Appeals Town of Berlin and Bell v. Zoning Board of Appeals Town of Newington). Attorney Penny felt that he

summarized these cases in a fair and accurate manner. The Schultz and Bell cases are more difficult to argue than this one in Bolton because of the way the undersized lots were developed.

Attorney Penny summarized his case stating that the Bolton ZEO went wrong in his interpretation of separately and distinctly in the regulations. 27 French Road was a small lot of record and all rights should accrue. There would be limited impact to other land owners if relief was granted by the ZBA. This is a very uncommon situation. There is a relative abundance of nonconforming lots in the French Road area and they are undersized lots. There would be no injustice to the neighbors and it would be consistent with the law.

There are 3 regulations under 3A5. 3A5 controls the density of homes in the location. 3A5.a and 3A5.b are not valid in this case. Copies of the deed and the zoning title are in Exhibit 3. 27 French Road has remained unchanged. Land cannot be taken from the developed 27 French Road and added to the other nonconforming lot at 25 French Road.

J. Rupert's argument was that the driveway encroaches on 25 French Road and constitutes a merger of the two properties. Attorney Penny rebutted this stating that it was not the property owner's intent as the driveway was constructed in 1950 and there was no awareness of encroachment at the time. The town of Bolton does not define a driveway as a structure and there has been over 70 years of use. The only time that there has been any encroachment in all this time was when the septic system at 27 French Road was repaired. Dirt was moved from 25 to 27 using the wood road. Mr. Anderson stated that according to his conversation with J. Rupert at the time, he was under the threshold of moveable dirt.

Attorney Penny noted that this lot had been taxed as a buildable lot. In 2018, there was substantial tax relief as it is not truly buildable.

M. Altermatt noted that from 1947 to the present the properties have been conveyed under a single deed but as two parcels. The Town's position is that the properties are not owned separately and distinctly but Attorney Penny says that they are owned separately and distinctly but are held by a common owner. The lots were not originally commonly owned.

Town Attorney, Beth Mercier stated that the matter of whether 25 French Road and 27 French Road are separate and distinct is a question for the board. She discussed merger and presented Exhibit 5 showing 25 French Road and 27 French Road with the driveway crossing 25 to get to 27. Another map shows lot 25 with the access road (woods road) that was used to access lot 27. She felt that the woods road didn't look like it was used just once and was clearly made by the current owners.

M. Altermatt asked if Attorney Mercier was taking the position that if a road between the 2 lots is being used to access each other does this construe a merger of the lots? Can't they use one lot to access the other without it being intent to merge the two? Attorney Mercier feels that the owners have done multiple things to indicate that the owners are trying to merge the two lots.

M. Altermatt questioned if the tax issue a temporary reaction by the town. If 27 French Road is non-buildable shouldn't it be taxed as such? If the town has been taxing it as a buildable lot but then not allowing building on the lot, what should the owner do?

Attorney Mercier argued that because the owners are using a road to go between both properties it is effectively construed as a merger and she stated that perhaps they are not separate and distinct because of the owner's intent to merge the two lots based upon the fact that the driveway goes from one lot to the other.

M. Altermatt talked about the language of separately and distinctly in Regulation 3A5. This should be able to be proved by the evidence of a deed. And if there are deeds for both properties aren't they separate and distinct?

J. Treat asked Attorney Mercier if she felt that prior to driveway through the woods (the wood road) the lot was more separate and distinct. She feels that this is another driveway and further evidence of intent to merge the properties.

W. Pike asked when the actual driveway was installed at 27 French Road. Attorney Penny said that it was constructed in 1950 and at that time it encroached on 25 French Road unintentionally. The driveway was put in that location because it was the most easily accessible path to the house. There is no other driveway on the property. Mr. Anderson said there was evidence of a cart path when they bought the property. It was widened slightly to provide access for the septic repair and a few trees were cut down. It was more cost effective to move fill from one lot to the other. The wood road is not used now. J. Toomey asked if the second driveway (the wood road), is now abandoned. Mr. Anderson stated yes. It was only used once for the septic repair.

J. Treat asked for clarification of the relief the applicant is seeking. Attorney Penny stated that he is seeking relief from the ZEO that the two lots have been merged.

A. Decker questioned if the idea that the two lots are being merged would be an issue if the two lots were of regulation building size. J. Rupert noted that if the lot with the structure on it was of buildable size there would be no issue. There has been no application of a building permit.

M. Altermatt asked if there were any other questions from the Board or from members of the public.

Lori Stephenson, 21 French Road-She has lived there for many years. She stated that many trees have been removed from the lot and the tenant does use the wood road. She doesn't want to see any new buildings next to her house. She feels that there are enough houses and traffic in the area as it is.

W. Pike moved to close the public hearing. A. Decker seconded. The motion passed unanimously.

M. Altermatt said that in all of his years on the ZBA he has never disagreed with a ruling of the ZEO. Tonight is an exception. This has been a building lot for so many years that it seems

wrong to not call it a building lot and taxes have been collected as such for years. The town cannot just change their mind now just because of a driveway that has been there for years. The existence of the driveway is not an intention to merge. The case law seems to be valid on both sides. The lots were not merged by intent.

J. Treat asked if the lots were merged by intent, what actions of the owner would constitute this? M. Altermatt stated that it would have to be if the owners put a structure on the other land, not just a driveway.

W. Pike asked if the ZBA overturns the ruling would the driveway become a right of way? M. Altermatt answered no because the same owner has both properties. The town would tax this again as a buildable lot. The driveway would only become an issue if the properties were sold. An easement would be a possibility. W. Pike also noted that he doesn't consider the wood road intent to merge the two properties.

W. Pike moved that it would be the decision of the ZBA to overturn the decision of the ZEO regarding Section 3A5 (General Provisions) Dwellings or Structures on Small Lots at 25 French Road due to a misinterpretation of the non-conforming lot regulation. A. Decker seconded. The motion passed unanimously.

Other New Business

1. Approval of Minutes

A. September 10, 2019

J. Toomey moved to accept the minutes as presented. A. Decker seconded. The motion passed unanimously.

2. Set Meeting Dates for 2020

J. Toomey moved to set the 2020 meeting dates for the second Tuesday of every month as follows:

January 14, 2020
February 11, 2020
March 10, 2020
April 14, 2020
May 12, 2020
June 9, 2020
July 14, 2020
August 11, 2020
September 8, 2020
October 13, 2020
November 10, 2020
December 8, 2020

Meetings will be held at 7:00 p.m. at Town Hall. J. Treat seconded. The motion passed unanimously.

3. Correspondence:

Peyton Rutledge has expressed interest in joining the Board as an alternate as Anne Decker is now a full member of the board.

Added to the agenda-

Budget:

A motion was made by J. Toomey and seconded by A. Decker to have M. Altermatt and J. Rupert complete the budget. The motion passed unanimously.

4. Adjournment

W. Pike moved to adjourn at 8:51 p.m. A. Decker seconded. The motion passed unanimously.

Respectfully submitted,

Leslie J. Brand

Leslie J. Brand

Please see minutes of subsequent meetings for any additions or corrections hereto.