

**Bolton Zoning Board of Appeals**  
**Regular Meeting Minutes**  
**May 12, 2020**  
**Virtual Meeting via Zoom**

**Members Present:** Chairman Mark Altermatt, Anne Decker and William Pike and Alternates Letrisa Miller (seated for John Toomey) and Peyton Rutledge (seated for Jonathan Treat) and 6 members of the public:

C. Peter Van Dine, the applicant, 81 Vernon Road, Bolton  
Mary Elizabeth Van Dine, Co-applicant, 13 Colonial Road, Bolton  
Katherine Clement, 23 Colonial Road, Bolton  
Christopher Clement, 23 Colonial Road, Bolton  
Jonathan Lender, 23 Colonial Road, Bolton  
Morris Silverstein

**Staff Present:** Zoning Enforcement Officer Jim Rupert, Administrative Officer Joshua Kelly, Selectman Sandra Pierog and Hanah Scala Town of Bolton summer intern

**1. Call to Order:** Chairman M. Altermatt called the meeting to order at 7:05 p.m.

**2. Public Comment:** There were no members of the public that wished to speak on a matter unrelated to the Public Hearing.

**New Business/Public Hearing**

Application of C. Peter Van Dine – 9 Orchard Lane – requesting a variance of the front yard setback as found in section 11 – A of the Bolton Zoning Regulations; more specifically, a 12 foot variance of the front yard setback to permit the reconstruction of what was formerly a one story home as a two story home with as 8’ covered porch after a fire destroyed the home. Additionally we propose to construct an 18’ x 12’ addition and are requesting a 2’ variance of the front yard setback to construct that addition.

M. Altermatt noted that this is the first Zoom meeting for the ZBA and asked participants to identify themselves before speaking.

Pursuant to this being a regular meeting of the ZBA, a notice was posted on the Town website, the Town of Vernon (as an abutting Town) was notified and a notice was posted on the property.

All board members confirmed that they had copies of the documents that were submitted to the Town. These include the application for variance from Mr. Van Dine including the statement of hardship, the Email exchange between Mr. Van Dine and J. Rupert, the survey from Bushnell Associates LLC, an opinion letter from the Town of Bolton attorneys, a letter of testimony from Mr. Van Dine and an Email from Paul Senk, 39 Llynwood Drive, Vernon expressing his support of approval of the variance.

Emails were received by the Town on the day of the hearing from Jonathan Lender of 23 Colonial Road, Bolton, Daniel Tierney and Lane Bradford. The Emails were read into the record and all were in support of granting the variance.

There was no comment from the board regarding the documents presented in the packet or regarding the Emails.

There are no Town attorneys present nor is the applicant's attorney present.

M. Altermatt made opening comments stating that as the applicant agreed it is not the board's decision tonight to determine if Orchard Lane is a town owned or private road. Therefore a deviation of the setback requires a variance. The prior house was non-conforming but was grandfathered in. The setback rule was adopted after the house was built. There are three different variances to be discussed. M. Altermatt suggested addressing them one at a time.

Mr. Van Dine wished to go through his testimony in order. The board agreed with this approach. Mr. Van Dine's testimony was shared on the screen by Joshua Kelly and Mr. Van Dine recapped the details. The existing foundation is slightly over the building line possibly due to an error in construction. The proposed porch on the front of the house is another issue. The setback of the major portion of the house is a minor detail. The 34.2' is a very minor extension of the required 35' setback.

Severe storm caused electrical damage from the high line to the electrical drop to the house. The circuit panel was blown through the wall and the fire spread into the attic. Due to extensive damage the house was taken down to the foundation. The loss of a home and the contents is a hardship for the owners. The house is to be rebuilt on Orchard Lane only (a paper road never accepted by the Town of Bolton). Mr. Van Dine understands that there will be no determination on the status of the road tonight. The only access to the property is from Orchard Lane. There is winter debris and a chain blocking access from the Sunnydale side of the road. Electrical and water service follow Orchard Lane. 9 Orchard Lane is the largest plot in the area-almost 25,000 square feet as opposed to the required 22,500 square feet. There will be no visual disruption or public safety problems with the new structure

Mr. Van Dine spoke about the Rosedale neighborhood standards. It is quiet, safe and enjoyable and it was mostly established before current zoning regulations. There have been new homes built to replace older non-conforming homes. Emails have been received from neighbors stating their support of his variance and they feel that the rebuilding will improve the neighborhood. The concept of zoning regulations is to improve the look of a neighborhood. Mr. Van Dine recapped his testimony and how the new home would improve the neighborhood and help relieve the hardship to the family. If this variance is denied he feels that Orchard Lane should be made part of Bolton's road system. Mr. Van Dine rested his case and welcomed questions from the board.

There was no comment from the board at this time.

Katherine Clement stated that she and her husband rented the house that burned down. There was no intention to rebuild if it hadn't burned down. They would like to return to the neighborhood.

Christopher Clement stated that he understands respecting the land. He would like to keep it as nice as possible and he would like to continue living in the area.

There was no further comment from the public and no comment from the board members.

M. Altermatt addressed Mr. Van Dine and told him that the way this system works is the Zoning Board looks at the regulations that the public has voted on for the town. In very limited circumstances the ZBA can overturn these regulations. By law a variance can only be given only if there is a real hardship to the applicant. To grant you what you think is a minor variance would cause problems if every property owner wanted to change their setback to build a bigger, wider or taller house. The regulations themselves may need to be changed. The authority the ZBA has is limited by statute and is looked at very closely. Just 3 feet over the line is still 3 feet over the line. The same house can be built again with no problem. Rebuilding the one story nonconforming house to a two story non conforming house is an expansion. No nonconforming house can be expanded either up or out.

Mr. Van Dine disagreed with these statements. The new house will not block a view. There are woods and a well field surrounding. No neighbors will be affected by the new building. He reviewed the cases that the Town attorney referenced in their letter- Munroe vs. ZBA in Branford and Moon vs. ZBA in Madison. In both cases additions have been made since the rulings that initially denied the variances. He doesn't feel that both cases referenced are to be considered along with this variance.

M. Altermatt acknowledged that each case is fact specific and that other town's decisions do not apply to the case presented today. Mr. Van Dine said that a hardship exists in this case and it is a very unusual situation. M. Altermatt noted that the hardship must make the property virtually unusable under the regulations. The variances have to be few and far between. There is plenty of room on that lot to build the house that they want, just not in the location that they want. There may be more options to locate the house on the lot. Mr. Van Dine said to look at the plot plan. If you tear out the foundation and build elsewhere it would be too close to the grinder pump. If that's not the definition of a hardship, he doesn't know what is. The purpose of zoning is to bring consistency to the neighborhood.

Mary Beth Van Dine stated that the position of the current foundation is deemed sufficient for a two story house and it seems like a hardship to move the house.

M. Altermatt noted that there are a number of very small houses on very small lots in that neighborhood. If everyone wanted to grab a couple of feet here and there, what would happen? It would set a precedent. That's what the regulations of this Town are here to protect against. Four other Board members will opine on this. M. Altermatt stated he would give the applicant every opportunity to convince him otherwise.

Mary Beth Van Dine had a home that was lost in a fire in 1992. It was rebuilt as a two story cape on a lot that previously had a four room ranch. She can show photos of many houses in the neighborhood that have been expanded or improved upon. It is not an unusual request for this neighborhood.

Mr. Van Dine noted that it always comes back to the size of the lot. It is a hardship in location. This is a large lot with an approved foundation and utilities. It has everything but a town road. That is a hardship. Calling for a frontage setback from this road is probably not legal. This paper road has been blocked off and is only maintained by the owners of the house. These kinds of roads are usually split by the property owners on each side of the property. The hardship is that the piece of land is legally inaccessible from a town road.

M. Altermatt said that he can see where maintenance of the road can be difficult in the winter months. But your property itself is the problem. The fact that the house is too close to the exiting boundary line is the problem. It is not permitted. The problem is not that your road is a challenge every winter.

A. Decker posed some questions:

The homeowners have cited other additions to homes in town. In most of those cases those additions were put on to conforming properties. Are there any examples of nonconforming properties that have had expansions?

Mr. Van Dine said that the house that Mary Beth cited is on a nonconforming lot. The house to the east was rebuilt on a nonconforming lot and the house across the street was rebuilt, all with variances granted. No variances have been granted to his knowledge on an undeveloped lot.

A. Decker sympathizes with the paper road but the nonconforming aspect is the setback. She asked if there were remedies that the property owners could take to change the status and/or if they were interested in taking it over.

Mary Beth Van Dine said that if it's not a liability she wouldn't mind taking it on.

Mr. Van Dine said that the town has shown no interest unless there was over 4 inches of snow. He would be cooperative of this but feels that it is a strange way of solving this problem. The access road makes this a hardship. It's the only house on this "road".

A. Decker asked if the board could provide guidance on changing the status of the road.

M. Altermatt replied that the Board's input is guided by statutes and zoning regulations only. The Board doesn't have the authority to be an appellate court for everything the town does. The Board is a creature of statute. Variances are very rarely given if there is reasonable use of the property. The Board tries to grant variances if they can but the Board can't run roughshod over regulations.

Mr. Van Dine asked if the Board was suggesting that he negotiate the plans of the house at this point in the meeting. M. Altermatt stated that was not the case.

Mary Beth Van Dine stated that there is a nonconforming property on Juniper Lane

M. Altermatt said that he couldn't speak to that as he wasn't on the board at that time. And it had no bearing on today's decision.

Mr. Van Dine said that they are asking for a variance tonight, not to come back for another appeal. The cases the Town attorney cited are not valid and the discussion should have been opened up to the whole board.

W. Pike asked J. Rupert to summarize that application again. Mr. Rupert recapped the three issues-the setback, the porch addition and the second story addition. J. Kelly shared the plans online.

L. Miller stated that the property line is an issue and it doesn't matter if it is on a paper road or not. She asked why the foundation can't be moved to make it conform.

Mr. Van Dine said that the sewage pump is a problem if they relocate the house.

Discussion ensued concerning the condition and maintenance of the road. M. Altermatt noted that the status of the road is not the issue before that Board. The condition of the road doesn't warrant a setback variance, a second story or a porch addition.

Morris Silverstein spoke as a member of the public. In his opinion, as far as the front yard variance, the hardship is that it is not on an established road. The road has been abandoned and is only a right of way. He mentioned other examples of houses that were built bigger and larger than the originals. Jim Rupert was just doing his job but the ZBA has the power to make an exception. The existing building is conforming due to its non-conformity.

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

M. Altermatt said that he is finding it hard to justify a variance in this situation. The local regulations don't allow it. He is not comfortable with further expanding a nonconforming use and he is not in favor of the variance.

A. Decker is not sure exactly where she stands. She feels that there are questions that merit further research but doesn't believe it is in the purview tonight. The ruling needs to be very cut and dried. The Board was presented with a setback requirement and a house that sits a little over that. With those strict perimeters, the variance should be denied.

L. Miller doesn't see how as a Board with the guidelines that they have that they can accept the variance. If they wanted to rebuild as is, no problem, but the variance is outside of the board's authority.

W. Pike feels that it is tough with all of the interpretation. The setback rules have to be followed without a hardship issue other than financial. Not in favor of the variance with the current information available.

P. Rutledge agrees with those who have spoken before. She wishes there was better recourse for those who are grandfathered in.

M. Altermatt made a motion to deny the application for variance. L. Miller seconded. The motion passed unanimously with voting by roll call. The application was denied.

**Other New Business**

**3. Approval of Minutes**

**A. December 10, 2019**

W. Pike made a motion to accept the minutes as written. A. Decker seconded. The motion passed unanimously.

**4. Correspondence:** M. Altermatt mentioned that all board members are required to take sexual harassment training.

**5. Adjournment**

L. Miller made a motion to adjourn at 9:32 p.m. W. Pike 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.