

**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.

Zoning Permit

Z-20-7

Status: Active

Submitted: Apr 15, 2020

Applicant



Peter Van Dine

860-490-7314

petervandine81@comcast.net

Parcels Included in Project

Applicant Info

Applicant Type

Owner

Permit Info

Occupancy Type

Residential

Aquifer Protection Area

No

Zone Type

R-3

Development Title

--

Comments

--

Project Cost

0

Work Description

Asking for a variance from the front setback requirements

Permit For

Variance

Building Type

Single Family

Open Space (sqft)

--

Lots

--

Zoning Board of Appeals

Statement of Hardship

See Attachment -Statement of Hardship - Sheet B

Brief Explanation of Specific Action(s) Requested of the ZBA

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 an 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.

Has any previous application been filed in connection with these premises?

No

Setbacks

Front Required

35

Front Provided

--

Back Required

40

Back Provided

--

Left Required

25

Left Provided

--

Right Required

25

Right Provided

--

Open Space Required

20

Open Space Provided

--

Lot Coverage Required

15

Lot Coverage Provided

--

Attorney Info

Name

--

Address

--

City

--

State

--

Zip

--

Phone

--

Email

--

Building & Parcel Size

Building Size

--

Lot Area

--

Applicable Section(s) of Zoning By-Laws

--

Does Property Need CCDRB Review?

false

Is Property Located in Aquifer Protection District?

false

Engineer Information

Company Name

--

Engineer Name

--

Address	City
--	--
State	Zip
--	--
Phone	Registration #
--	--
Insurance Expiration	AOR
--	--
Email	
--	

Architect Information

Company Name	Architect Name
--	--
Registration #	License Expiration
--	--
Address	City
--	--
State	Zip
--	--
Phone	Email
--	--
AOR	
--	

Contractors

Additional Project Info

Date of Receipt	Hearings Commencement Deadline
04/08/2020	--
Hearings Completion Deadline	Decision Deadline
--	--
Existing Gross Sqft	Proposed Gross Sqft
--	--
Existing Parking Spaces	Proposed Parking Spaces
--	--

Total Acreage / Sqft

Linear Feet

--

--

Disturbed Acres

Distance to Town Line

--

--

Extended

Hearing Not Required

false

false

Public Hearings

Conditions [Internal Use Only -- To be Printed of Permit]

Conditions

--

Attachments (4)

docx Plot Plan

Apr 15, 2020

pdf Sheet A - Applicants.pdf

Apr 15, 2020

pdf Statement of Hardship - Sheet B.pdf

Apr 15, 2020

pdf Appendix.pdf

Apr 15, 2020

Timeline

Permit Fee

Status: Paid April 15th 2020, 12:40 pm

Zoning Board of Appeal Fee

Status: Waived April 15th 2020, 12:40 pm

Application Review

Status: In Progress

Assignee: Jim Rupert

Peter Van Dine April 23rd 2020, 8:33:33 am

Have you been in touch with the Town's Counsel concerning this matter?

Peter Van Dine April 23rd 2020, 8:34:47 am

When can we expect the Permit to be issued?

Peter Van Dine April 23rd 2020, 8:35:21 am

What can we do to accelerate the process?

Peter Van Dine April 23rd 2020, 8:35:54 am

When will the ZBA meet?

Jim Rupert April 23rd 2020, 10:11:29 am

4/29/2020

Good morning Peter, I have referred the matter to the Town attorney and did so immediately after receiving the information from Bruce. I did hear from the Town Attorney earlier this week with a couple of questions so I know they are working on it. I don't have the exact date of the ZBA meeting with me just now but Danielle will be reaching out to you not later than Monday. She and I discussed your application yesterday and some interim steps that need to be completed. I will let you know as soon as I have a decision from the Town Attorney.

Zoning Official's Approval

Status: Pending

Issue Permit

Status: Pending

Inspections - Variance

Status: Pending

Town of Bolton
Zoning Board of Appeals
Application for Variance
9 Orchard Lane
April 8, 2020

Attached Sheet A
Applicants and Owners

Names, Addresses and Contact Information

Charles Peter Van Dine
81 Vernon Road
Bolton, CT 06043
Phone: 860-490-7314
eMail: petervandine81@comcast.net

Mary Elizabeth Van Dine
13 Colonial Road
Bolton, CT 06043
Phone: 860-480-0104
eMail: marybethvandine@gmail.com

Town of Bolton
Zoning Board of Appeals
Application for Variance
9 Orchard Lane
April 8, 2020

Attached Sheet B
Statement of Hardship

The Zoning Location Survey of 9 Orchard Lane, Bolton, CT prepared by Andrew Bushnell of Bushnell & Associates, LLC shows the setback distances of the existing and proposed construction plans on this property under the questionable assumption/determination that Orchard Lane is the legal roadway (for the purposes of frontage setbacks) for the application of the setback regulations of the Town of Bolton. Orchard Lane (it would appear) is a 'paper road' that has never been accepted by Town and is reminiscent of many 'papers roads' that were perhaps, initially planned as part of a development plan, but never came to fruition. Having never been established, or worse never officially abandoned, these strips of land, long used for access are essentially in limbo as to ownership, maintenance, taxation, etc.

It is clear is that, Orchard Lane, being a "paper" road, has not been accepted by the Town, has not been maintained by the Town and not passable throughout its entire length. The Town has allowed an adjoining property owner to restrict passage through Orchard Lane by means of a heavy locked chain. The owners enjoy access (as has their predecessors in title for quite some time) to the 9 Orchard Lane property only by privately maintaining a portion of Orchard Lane to where it connects to Llynwood Drive. It is by all definition a private right away (or private driveway) having been established by its continual and uninterrupted use over a long period of time.

The Hardship is having the frontage setback requirements of the Bolton Zoning Regulations being applying to the sole means of access to this property. This Hardship was not caused by the owners.

Town of Bolton
Zoning Board of Appeals
Application for Variance
9 Orchard Lane
April 8, 2020

Appendix

Abutting Property Owners

Daniel J. Zielenski
15 Colonial Rd
Bolton, CT 06043

Leopold J. Drouin
19 Colonial Rd
Bolton, CT 06043

Connecticut Water Co
93 West Main St
Clinton, CT 06413

Lyndsay E. Roscoe & Gerald D. Kupchunos
25 Llynwood Dr
Bolton, CT 06043

Helena M. Trey
29 Llynwood Dr
Bolton, CT 06043

Harold D. & Irene K. Peterson
33 Llynwood Dr
Bolton, CT 06043

Mary E. Van Dine
13 Colonial Rd
Bolton, CT 06043

From: "C. Peter Van Dine" <petervandine81@comcast.net>
Date: April 27, 2020 at 1:02:47 PM EDT
To: "Rupert, Jim" <jrupert@boltonct.org>
Cc: Bruce Comollo <bcomollo@ctlaw.net>, Mary Beth <marybethvandine@gmail.com>, Katherine Clement <KClement1128@gmail.com>
Subject: Re: variance request

Jim,

You have my authorization to amend my application to the ZBA for a variance with your wording appearing below in italics. If I need to do something else please advise. I am available by phone at 860 490 7314.

Have you received any advice from the Town Counsel?

Peter Van Dine

On 4/27/2020 12:35 PM, Rupert, Jim wrote:
Dear Mr. Van Dine,

I tried to call a short time ago and found you were unavailable so I am sending this email message instead. Last Friday I was working with Danielle on your application and realized that although you were requesting a variance form the front yard setback at 9 Orchard Lane you did not request anything specific as is necessary for consideration and legal notices. After reviewing your site plan and having a discussion with Andrew Bushnell here is my suggestion for language. *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 an 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.*

We do need to get this type of language as a part of your application and will need to attend to it in the next day or so. Danielle is working to put together an agenda for the meeting and has reached out to the tax office to aide with an abutters list as notices will need to be sent to those folks.

Please reach out to me if you have any questions,

Jim Rupert



Town of Bolton

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".

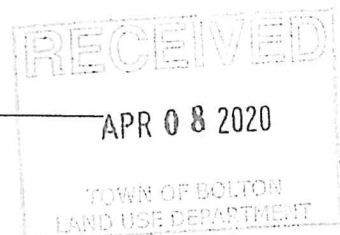
Check Type of application:

Variance Appeal from the Decision of the Zoning Enforcement Officer

- Street Address of subject property 9 ORCHARD LANE
- Deed Reference (Bolton Land Records) Volume 147 Page 890
- Assessor's Records Reference: Map # 23A ; Block # 18F Parcel / Lot # R243
- Current zone(s) of subject property R.3 Acreage: 0.57
- In Aquifer Protection District? Yes No
- In FEMA Flood Area? Yes No
- Wetlands Application Required? Yes No
- Applicant(s) SEE ATTACHED SHEET A Address _____
Zip _____
Phone # _____ Fax # _____ E-mail _____
- Owner(s) of subject property SAME AS APPLICANTS - SHEET A
Address _____ Zip _____
Phone # _____ Fax # _____ E-mail _____
- Official Contact / Representative regarding this Application: PETER VANDINE
Address 81 VERNON RD, BOLTON, CT 06043 Zip _____
Phone # 860-490-7314 Fax # _____ E-mail PETERVANDINE@COMCAST.NET
- 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) _____
 X Yard, front (cite section of Zoning Regulations) 11A _____
 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: SEE ATTACHED SHEETS

Brief Explanation of specific action(s) requested of the ZBA: A VARIANCE FROM THE FRONT SETBACK REQUIREMENTS

Has any previous application been filed in connection with these premises? NO 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: _____

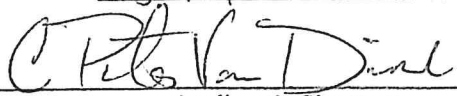
Attach a scale drawing certified by a surveyor or other qualified professional accurately showing the dimensions of the lot, the location of the lot (geographically), the location of the house or proposed building on the lot and the direction of drainage on the lot. Also show the location of the septic 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 8TH day of APRIL, 2020

 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 _____

**Notice of Certain Planning and Zoning Matters in
Neighboring Municipalities**

DATE: April 20, 2020

TO: Town Clerks of: Vernon, CT

FROM: _____ Planning & Zoning Commission
 X Zoning Board of Appeals
_____ Inland Wetlands Commission

Pursuant to P.A. 87-307 which requires Planning & Zoning and Inland Wetlands Commissions and Zoning Board of Appeals to notify the clerk of any adjoining municipality of the pendency of an application, petition, request, or plan concerning any project on any site in which:

1. Any portion of the property affected by a decision of such board is within five hundred feet of the boundary of the adjoining municipality;
2. A significant portion of the traffic to the completed project on the site will use street within the adjoining municipality to enter or exit the site;
3. A significant portion of the sewer or water drainage from the project on site will flow through and significantly impact the drainage or sewerage system within the adjoining municipality; or
4. Water run-off from the improved site will impact streets or other municipal or private property within the adjoining municipality.

Notice is to be made by registered mail and mailed within seven days of the date of receipt of the application, petitions, request, or plan.

No hearing may be conducted unless the adjoining municipality has received notice required by P.A. 87-307. A representative may appear and be heard at any such hearing.

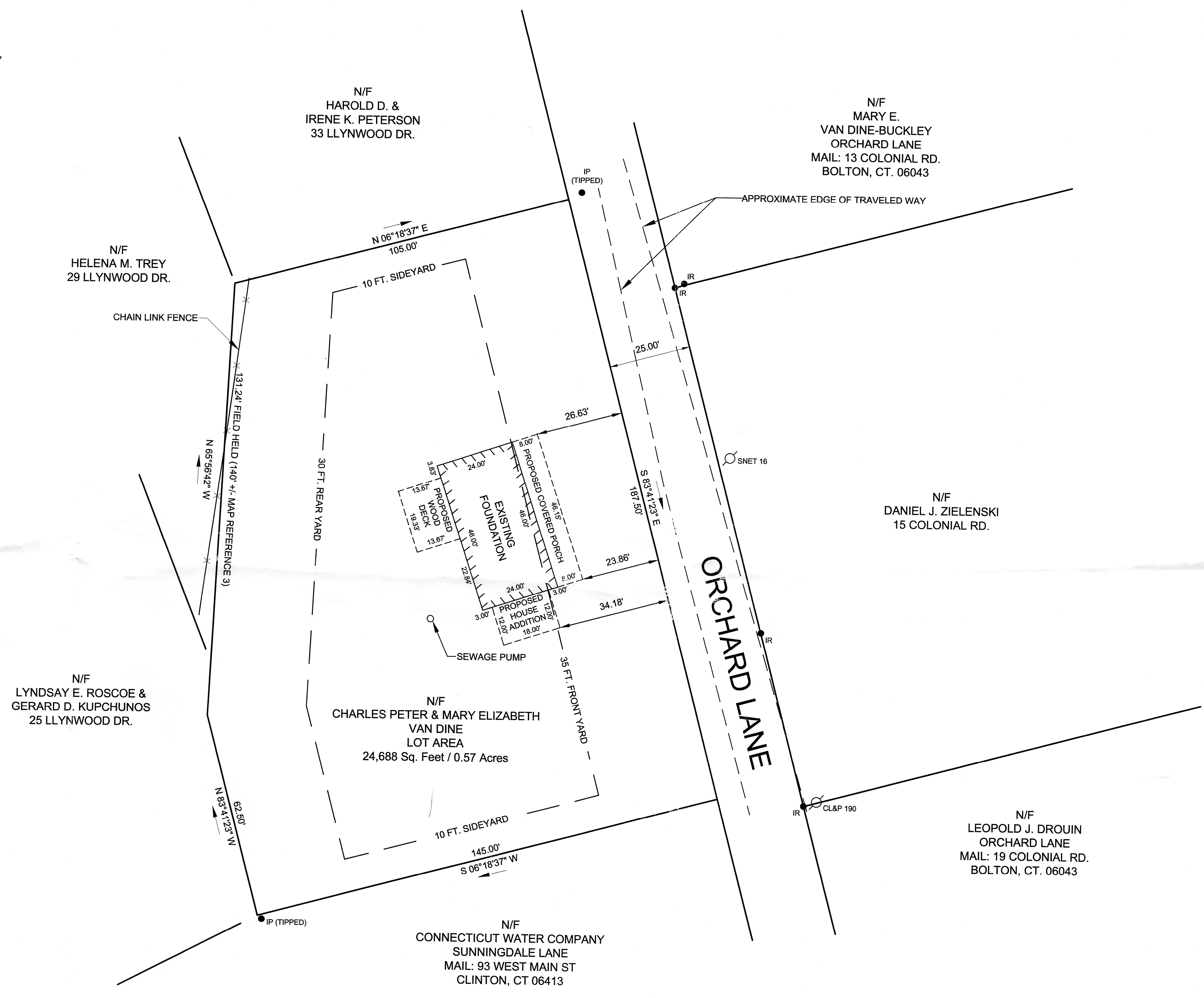
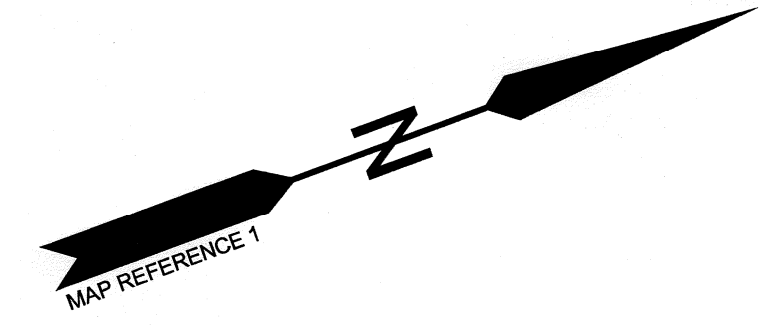
This letter is to inform you of the pendency of such a project described as follows:

Description of application and location: Application #Z-20-7: REQUEST FOR VARIANCE FROM FRONT SETBACK REQUIREMENTS – 9 ORCHARD LANE, BOLTON, CT 06043

Scheduled hearings: **Date:** May 12, 2020
 Time: 7:00 p.m.
 Place: *VIRTUAL MEETING (refer to website for meeting information)*

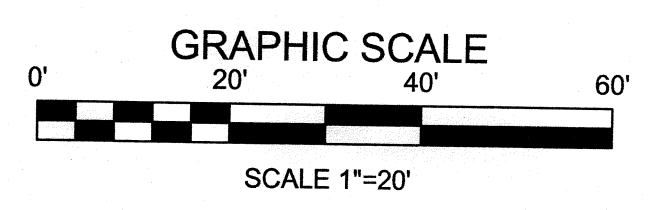
- SURVEY NOTES:**
- THIS SURVEY AND MAP HAS BEEN PREPARED IN ACCORDANCE WITH SECTIONS 20-300b-1 THRU 20-300b-20 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES "MINIMUM STANDARDS OF ACCURACY, CONTENT AND CERTIFICATION FOR SURVEYS AND MAPS", AS ADOPTED BY THE CONNECTICUT ASSOCIATION OF LAND SURVEYORS INC. ON AUGUST 29, 2019. IT IS A LIMITED PROPERTY ZONING LOCATION SURVEY MAP BASED ON A RESURVEY CONFORMING TO HORIZONTAL SURVEY ACCURACY CLASS A-2.A. THE INTENT OF THIS MAP IS TO DEPICT THE LOCATION OF THE PROPOSED OR EXISTING IMPROVEMENTS SHOWN WITH RESPECT TO THE APPLICABLE MUNICIPAL OR STATUTORY REQUIREMENTS.
 - PROPERTY IS LOCATED IN A R-3 ZONE.
 - THE PROPERTY IS NOT LOCATED IN A FLOOD HAZARD ZONE A PER FIRM FLOOD INSURANCE RATE MAP NUMBER 091090001B EFFECTIVE JUNE 1, 1981.
 - THE PROPERTY IS SHOWN ON MAP REFERENCE 3 AS LOTS 242, 243 & 244.

- MAP REFERENCES:**
- ZONING LOCATION SURVEY PLAN OF PROPOSED GARAGE 15 COLONIAL ROAD PREPARED FOR DANIEL ZIELENSKI BOLTON, CONNECTICUT DUTTON ASSOCIATES, LLC LAND SURVEYOR AND CIVIL ENGINEERS 67 EASTERN BOULEVARD GLASTONBURY, CONNECTICUT 06033 DATE: 10/24/2017 SCALE: 1"=20' SHEET 1 OF 1 REVISIONS: 12-5-2017-COMMENTS
 - MAP OF PROPERTY OF DANIEL J. ZIELENSKI 15 COLONIAL ROAD BOLTON CT DRAWN: E.J.S. CHKD: R.Z. DATE: 07/08/92 SCALE: 1"=30' JONATHAN S. FOX STATE OF CONNECTICUT REGISTERED LAND SURVEYOR.
 - BOLTON SECTION MAP OF ROSEDALE BOLTON & VERNON, CONN. PROPERTY OF HOLL INVESTMENT COMPANY SCALE 1"=100' JAN. 1934 HAYDEN L. GRISWOLD C.E. REVISED NOV. 1960



LEGEND

- EXISTING IRON ROD

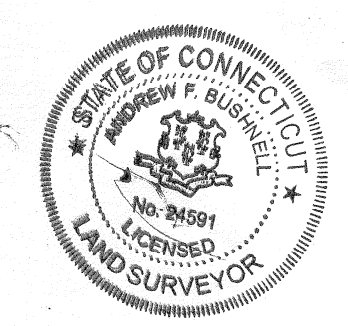


TO MY KNOWLEDGE AND BELIEF, THIS MAP IS SUBSTANTIALLY CORRECT AS NOTED HEREON.

ANDREW F. BUSHNELL P.E. L.S. 24591
 THIS MAP IS NOT VALID UNLESS IT BEARS THE EMBOSSED SEAL OF THE LICENSED LAND SURVEYOR WHOSE REGISTRATION NUMBER AND SIGNATURE APPEAR ABOVE.

UTILITIES SHOWN ON THIS MAP WERE DERIVED FROM FIELD LOCATIONS AND EXISTING MAPPING CONTRACTOR TO VERIFY LOCATIONS AND DEPTH IN THE FIELD PRIOR TO THE START OF ANY CONSTRUCTION. "CALL BEFORE YOU DIG (1-800-922-4455)."

PLAN PREPARED FOR			
CHARLES PETER VAN DINE			
9 ORCHARD LANE		BOLTON, CT.	
ZONING LOCATION SURVEY			
SCALE: 1"=20'	DATE: 03/16/2020	FILE NO. 2020-19	SHEET: 1 OF 1
BUSHNELL ASSOCIATES LLC.			
CIVIL ENGINEERING AND LAND SURVEYING			
563 WOODBRIDGE STREET		MANCHESTER, CT. 06042	
860-643-7875			
REVISIONS:			



MICHELSON, KANE, ROYSTER & BARGER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

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CAROLYN A. YOUNG #

ALSO ADMITTED IN
NEW YORK

RICHARD L. BARGER
STEVEN B. KAPLAN
MARK E. BLAKEMAN†
PAUL S. TAGATAC

† ALSO ADMITTED IN
MASSACHUSETTS

April 30, 2020

OPINION LETTER NO. 216

Via U.S.P.S. and email

James Rupert
Town of Bolton
222 Bolton Center Road
Bolton, CT 06043

Re: Whether adding a second story expands or intensifies a non-conforming use and whether the zoning regulations regarding minimum front yard setback requirements apply to a private road.

Dear Jim:

You requested our opinion in reference to the owner of 9 Orchard Lane's application for a zoning permit to reconstruct a non-conforming house which had been destroyed by a fire. The house had violated the front yard setback requirements and the owner has proposed adding a second story on the prior non-conforming foundation. In addition, the owner's attorney has argued that the reconstruction is not nonconforming because Orchard Lane is a private road and the town's regulations regarding front yard setback requirements do not apply as they reference roads accepted and maintained by the Town.

ANALYSIS:

In answering your inquiry, we have reviewed the Connecticut General Statutes, case law, Bolton's Zoning Regulations and *Land Use Law and Practice*, 4th Edition, Robert A. Fuller.

As a general matter, "[z]oning regulations ... seek the elimination of nonconforming uses, not their creation or enlargement.... [T]he accepted policy of zoning ... is to prevent the extension of nonconforming uses ... and that it is the indisputable goal of zoning to reduce nonconforming to conforming uses with all the speed justice will tolerate.... Nevertheless, the rule concerning the continuance of a nonconforming use protects the right of a user to continue the same use of the property as it existed before the date of the adoption of the zoning regulations." (Citation omitted) *Woodbury Donuts, LLC v. Zoning Board of Appeals*, 139 Conn.App. 748, 760-61, 57 A.3d 810 (2012). The rule is that "a nonconforming structure cannot be increased in size in violation of zoning ordinances...." *Bauer v. Waste Management of Connecticut, Inc.*, 234 Conn. 221, 243, 662 A.2d

1179 (1995). Regarding whether adding a second story increases a non-conforming use, the courts look to the terms of the particular zoning regulations.

Generally, an addition to the building not within the setback areas is not an extension of a nonconforming use and does not require a variance. Under most other ordinances, an addition to the building which does not extend the perimeter in a horizontal direction is not an extension requiring a variance. Other ordinances define an extension of a nonconforming building in such a way as to encompass any construction in the setback areas, even if the perimeter of the building is not extended, which would include enclosing a porch or adding a second story over an existing first floor within the setback area.

9 Conn. Prac. Land Use Law and Practice, §4.35 (4th ed.)

Because the courts look at the particular zoning regulations involved in each case, there have been decisions going both ways as to whether adding a second story is an expansion of the non-conforming use. In general, where the courts have found the intent to limit and prevent the expansion of non-conformities, the addition of a second story has been found to be an expansion of the non-conforming use.

In *Munroe v. Zoning Board of Appeals*, 75 Conn. App. 796, 818 A.2d 72 (2003), a case on point with the facts in the matter at hand, an applicant sought to add a second story to an existing nonconforming garage. The garage was nonconforming because the footprint violated the setback requirements and the applicant sought to increase the floor area available for use without changing the footprint of the garage. The Appellate Court noted that the relevant question was whether the addition of a second story to the garage, which did not enlarge the existing ground level footprint, would be an extension, enlargement, reconstruction or structural alteration that increases the nonconformity. The Appellate Court stated:

In interpreting the zoning regulations at issue in this case, we read the regulations as a cohesive whole. Section five of the zoning regulations is entitled "Nonconformity." Section 5.1 provides: "Intent: It is the intent of these Regulations that nonconformities are not to be expanded, that they should be changed to conformity as quickly as the fair interest of the owners permit and that the existence of any existing nonconformity shall not of itself be considered grounds for the approval of a variance for any other property." Section 5.1 requires us to read § 5.7 narrowly because the town's intent, as expressed in § 5.1, is to eliminate nonconformity as quickly as possible. Section 5.7, itself, provides in relevant part: "No nonconforming building or structure shall be enlarged, extended, reconstructed or structurally altered, if the result would be an increase in nonconformity." A nonconforming building or structure, as provided in § 5.2, is one that existed lawfully on the date the zoning regulations became effective and that fails to conform to one or more of the zoning regulations.

Id., at 804-805. The court concluded that: “A structure alteration exists if a building would be changed into a different structure ... We conclude that the addition of a second story is a structural alteration because the addition would convert the garage into a substantially different building.” (Citation omitted.). *Id.*, at 807. With regard to the vertical expansion, the Appellate Court stated “A vertical extension of a building by adding a second story can change and affect the amount of air or light between buildings and may detract from the aesthetic value of a neighborhood. The addition of a second story is not a negligible or cosmetic change from the original nature of the nonconformity. The bulk of the building has been increased in quantity and dimension, thereby intensifying the nonconformity. The second story provides a significant additional amount of enclosed space within the confines of the nonconforming footprint, causing a substantial increase in the nonconformity.” *Id.*, at 810-811. The Appellate Court ruled that the zoning enforcement officer should not have issued a certificate allowing the vertical expansion without a variance.

In addition, in *Moon v. Zoning Board of Appeals*, 291 Conn. 16, 18, 966 A.2d 722 (2009) the applicants sought to add additional living space to the second story of nonconforming building. Section 12.6 of the town zoning regulations provided in relevant part: “No building which does not conform to the requirements of [the town zoning] regulations regarding ... required yards ... shall be enlarged unless such enlarged portion conforms to the regulations applying to the district in which it is located.” The trial court found that §12.6 prohibited property owners from vertically expanding a nonconforming building's existing footprint if the expanded portion lies above a section of the existing building that does not conform with front yard setback requirements. The plaintiffs claimed that §12.6 permitted them to expand vertically any portion of their existing building so long as the expanded portion of the building remains within the existing nonconforming footprint. However, the Connecticut Supreme Court concluded, “that the plain language of §12.6 of the town zoning regulations clearly and unambiguously conveyed a legislative intent to restrict the enlargement of nonconforming buildings, unless the proposed enlarged subsection of the building, standing alone and without respect to the characteristics of the existing building, conformed to the zoning regulations.” *Id.*, at 20.

The Connecticut Supreme Court further stated in the *Moon* case:

In this case, the plaintiffs seek to expand their residence by adding a second story atop certain sections of the existing nonconforming footprint. The new sections of the nonconforming building, i.e., enlarged portions, would rest within forty feet of the front lot line. Because § 3.6(f) of the town zoning regulations requires a front yard of at least forty feet within the RU-2 zoning district, the proposed enlarged portion of the plaintiffs' residence would not conform to the zoning regulations. Accordingly, the trial court properly determined that the plaintiffs would require a variance from the board in order to proceed with their proposed renovation.

Id., at 23.

Bolton's zoning regulations at Section 3A3 provide, “It is the specific intent of these Regulations that all uses, lots, buildings or structures of any kind which are non-conforming to these Regulations shall be diminished and permanently discontinued over time.” Section 3A3a further provides in pertinent part, “If any non-conforming building or structure is destroyed by fire or other

cause, it may be rebuilt with no greater non-conformity than at the time of destruction...” Further Section 3A3c states that, “No non-conformity of any kind shall be expanded or intensified, except as follows: 1. A single family dwelling within a business or industrial zone...2. The Zoning Enforcement Officer may issue a Zoning Permit in connection with the change in use from one permitted commercial or industrial use to another such permitted use...”

Bolton’s zoning regulations as a whole indicate the intent to eliminate non-conformity and to prevent the expansion or intensification of non-conformities except in very limited factual circumstances which do not apply to this case. Adding a second story would be a greater non-conformity than existed at the time of destruction of the original house and it would expand and intensify a non-conforming use. Based on the foregoing, the application for a zoning permit can be denied on that basis.

As to the second issue, whether the zoning regulations regarding minimum front yard setback requirements apply in this case to a private road, the courts look to the specific facts of the case in conjunction with the terms of the particular zoning regulations at issue.

Zoning regulations universally contain front setback requirements, designed primarily to keep buildings and structures at significant distance from streets for safety reasons. Most regulations contain rear yard and side yard setbacks in addition to front yard requirements, all of which are authorized by the enabling statute.

9 Conn. Prac. Land Use Law and Practice, §4.35 (4th ed.)

In this matter, the owner’s attorney has argued that the reconstruction is not nonconforming because Orchard Lane is a private road and the town’s regulations regarding front yard setback requirements do not apply as they reference roads accepted and maintained by the Town.

However, the Town of Bolton’s zoning regulations contain much broader definitions for setback and building line in Section 2 which provides:

“Setback” - “the distance between a structure and the property line, street line or other clearly denoted reference point.”

“Building Line”- “An imaginary line which runs parallel to the property line at a distance equal to or greater than the minimum yard dimension for the required yard along that property line, delineating an area between the property line and the building line where no structures shall be located except as otherwise allowed by these regulations. The building line may also be called the set back line.”

Further, Section 11 of the Zoning Regulations provides that the Minimum Front Yard dimensional requirement is 35 feet in a Residential Zone.

Relying on the foregoing, the town can readily conclude that the proposed reconstruction is non-conforming. Pursuant to the above definitions, the setback is defined as “the distance between a structure and the property line, street line or other clearly denoted reference point.” It is not solely to

April 30, 2020

the street line – it is more inclusive. It can include the property line of the owner’s lot or the private road as a “clearly denoted reference point.” Further, the building line which may be called the setback line must be equal to or greater than the minimum yard dimension for the required yard – in this case the front yard. The minimum front yard setback is 35 feet in a Residential Zone. The survey provided by the owner’s attorney indicates that the proposed reconstruction on the foundation is within approximately 32 feet of Orchard Lane, which is the “property line” of the owner’s lot and a clearly denoted reference point. In addition, the survey indicated the enclosed porch would violate the setback line by an additional 8 feet. It is clear from the express terms defining setback and building line, that the reconstruction is non-conforming because it does not meet the 35 foot front yard setback requirement.

If you require anything further in connection with this, please so advise.

Sincerely,

Beth N. Mercier

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Richard L. Barger

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