

**Bolton Zoning Board of Appeals
Regular Meeting Minutes
April 8, 2025, 7:00 p.m.
Bolton Town Hall, 222 Bolton Center Road
In-Person Meeting and Virtual Utilizing Zoom**

Members Present: Chairman Morris Silverstein, Members-Joshua Machnik, William Pike, Jonathan Treat, Anne Decker, and Alternates John Toomey, Jr. and Tom Lyon

Others Present in Person: James Read, Alexander O'Neill

Others Present via Zoom: Andrew Bushnell, Domenic Perito, Lyra Read, Board Secretary Kacie Cannon

Others Present via Telephone: Jodi Saponaro

Regular Meeting

1. **Call to Order:** Chairman Morris Silverstein called the meeting to order at 7:05 p.m.
2. **Roll Call/Seating of Alternates:** All members were present for the meeting.
3. **Resident's Forum/Public Comment:**
Jodi Saponaro, an employee of James Read, spoke to Mr. Read's character noting that he is very professional and organized and researches thoroughly and follows rules.
4. **Cont. Public Hearing**
No. ZBA-25-1, Vernon Rd, vacant land located between Nos. 21 and 31 Vernon Rd, owned by James Read. Request for a 15-ft front yard setback variance, reducing the 35-ft requirement to 20-ft, and a 15-ft rear yard setback variance, reducing the 30-ft requirement to 15-ft, for the purpose of constructing a new dwelling.

Mr. Read spoke on his own behalf. He stated that Domenic Perito, the original owner of the property, provided a letter of support to the Board, and the Inland Wetlands Commission has approved of the plans for the dwelling, which will ultimately tie into the sewer. Mr. Read offered to install a modular home to reduce the noise of building a house and a stone wall or fence from the northern corner to the driveway to enhance the safety of the property, if necessary.

Mr. Read noted that the R-3 zoning regulations have the same front yard setback requirements as the R-1 and R-2 zones. He stated that the lot is eligible for a variance due to the space limits and inability to build a house anywhere else on the property, and added that the hardship is based on need and the pre-existing challenges of the lot.

J. Treat stated that the hardship pertaining to the land needs to be a hardship that is not imposed in general. Mr. Read replied that there is no alternative to make reasonable use of the land and noted that the dwelling cannot be any smaller based on building codes. He added that his engineer has done a thorough assessment and determined the property has met

all criteria for a variance. J. Treat stated that the setbacks might take up 85 percent of the property and leave 15 percent; however, that does not justify a variance.

M. Silverstein asked the Board members for their thoughts. J. Toomey stated that Mr. Read has met the requirements of the Eastern Highland Health District and the Inland Wetlands Commission. He added that the President of the Bolton Land Trust has indicated they are not interested in the land.

Alexander O'Neill, 366 West Street, pointed out that none of the abutters are present at the meeting to oppose the variance, which indicates their concerns are not as dire as they were made out to be in the previous hearing.

Mr. Read argued that the Zoning Regulations are not etched in stone and that that the ZBA has the authority to decide what is appropriate in each situation. He asked for the Board's support and noted that he has met the criteria and has done everything possible to comply with the variance requirements.

J. Treat agreed and noted that the ZBA stands between the public and the individual property owner to protect owners from an unnecessary hardship or difficulty and failure to do so could essentially result in a taking of the property. He added that financial gain or loss is not to be considered when making decisions.

The Public Hearing was closed at 7:28 p.m.

M. Silverstein called for a general discussion on the effects of zoning prior to voting. W. Pike commented that the lots were created prior to the adoption of the R-1, R-2, and R-3 zones and many of the properties were grandfathered in. He noted that the ZBA should consider when the lots were created and how they are being utilized. W. Pike added that he views that as a hardship, and does not believe Mr. Read's request is excessive or unreasonable. J. Toomey stated that Mr. Read has made the driveway safer than most driveways in the area and has met all of the requirements to address any concerns related to health, environmental concerns, and safety.

J. Machnik stated that the plot is very small, and the setbacks take up 71 percent of the property, excluding the setback from the water. J. Treat agreed and noted that the front, rear, and side setbacks create a hardship. T. Lyons highlighted Mr. Read's thoroughness and noted that he appears to be the right person to construct a dwelling on the challenging lot.

M. Silverstein pointed out that this is the second time an application was delayed as a result of neighbors requesting more time to voice their concerns and then failing to show up to the follow-up meeting. He suggested that the ZBA resolve any issues the first time the residents appear to voice their opposition to avoid unnecessary delays and to be fair to the applicants.

J. Treat referred to the ZBA Regulations and noted that the ZBA must state the unusual hardship or exceptional difficulty for which the variance is being granted.

J. Treat moved to grant the proposal made by David Read to grant the variance. J. Machnik seconded.

Discussion: W. Pike suggested amending the motion to include the specific reason for the hardship. M. Silverstein stated that the hardship is in the regulation because what the applicant is requesting to do is what is permitted in the zone, and if the applicant is prevented from utilizing the property for which it is zoned, it is tantamount to confiscation of the land. Therefore, the hardship is in the regulation itself. J. Treat disagreed and stated that it does not make it peculiar to the property but applies to all properties in general. M. Silverstein noted the valid point, and suggested that the unique hardship is that there is no other land available to build a house on. He referred to a similar court case in Manchester that was won based on the argument that no other land was available. J. Treat agreed that the overlapping of the setbacks creates a hardship peculiar to the property. W. Pike added that a hardship also exists due to the fact that the lot was established prior to the zoning regulations and the dimensional orientation of the lot. The ZBA discussed whether that constitutes a hardship since it applies to all lots in the community.

W. Pike moved to amend the motion to include that the hardship in this particular case is the existence of the lot prior to R-3 Zoning, which would severely impede the ability to utilize it for a residence. J. Machnik seconded.

Discussion: M. Silverstein pointed out that zoning regulations prevent property owners from doing what they wish with their properties and can, in essence, result in the confiscation of property by rendering it worthless. J. Treat stated that the R-3 zone is the smallest in area that the town permits, and Mr. Read's property is 29% of the area. He shared concerns that others could refer to this decision to obtain variances for land that is not suitable for dwellings.

The motion passed 4:0:1 (J. Treat abstained).

5. Old Business: None

6. Approval of Minutes:

- **November 12, 2024**

J. Treat moved to approve the November 12, 2024 meeting minutes. J. Machnik seconded. Motion carried 4:0:1 (J. Toomey abstained).

- **March 11, 2024**

W. Pike moved to approve the March 11, 2024 meeting minutes. J. Machnik seconded. Motion carried 5:0:0.

7. Adjournment

J. Machnik made a motion to adjourn at 7:52 p.m. J. Treat seconded. The motion passed unanimously 5:0:0.

Respectfully submitted by Kacie Cannon

Kacie Cannon

Please see the minutes of subsequent meetings for the approval of these minutes and any corrections hereto.