

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
FEBRUARY 12, 2015**

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

PRESENT: Angelo Colasante, Chair; Carol Amick, Clerk; Michelle Puntillo; Kay Hamilton; Robert Kalantari

ABSENT: Todd Crowley, Vice Chair; Jeffrey Dearing; Arthur Smith

Mr. Colasante introduced himself and read the emergency evacuation notice. The Zoning Board of Appeals (ZBA) members introduced themselves.

PRESENTATION: Ms. Amick read the notice of the business meeting.

BUSINESSSS ITEM: The Board will discuss the Town of Bedford's draft of the Coast Guard Request for Proposal (RFP) for municipal property at Pine Hill Road.

Richard Reed, Bedford Town Manager, and Jessica Porter, Assistant Town Manager, greeted the Board. Ms. Porter stated that the Town had acquired the former Coast Guard property on Pine Hill Road and plans to have developers bid on the property and come to them with a proposal. She said that, after receiving input from the public about their wishes and concerns for such a site, they have drafted a Request for Proposal (RFP) to give to these developers as a guideline of what the Town would like to see. She said they were now in the process of finalizing the RFP and have been presenting it to the relevant Town Boards for feedback. She stated the Town hoped for this to be a cottage style development, similar to River Walk in Concord, which would have anywhere from 15 to 35 homes.

Ms. Amick said she was concerned that there was nothing in the proposal that specifically talked about providing housing for seniors. Ms. Porter said that these homes would not be specific to over 55 housing, but there would be a design that is attractive to seniors, with a master bedroom on the first floor and maintained common areas. She said that the goal was to keep the market rate around \$400,000.

Ms. Amick also urged that the RFP include a separate rating element for "green" initiatives. She felt that the green initiatives should not be included in the rating for overall design, as they should be given greater attention in any proposal submitted. She also suggested that the RFP include energy-saving water heaters as a green initiative, which was missing from the current draft.

Ms. Puntillo asked whether it was possible to ensure that a certain percentage of the homes would go to people over the ages of 55 or 65. Margot Fleischman, a resident at

135 Page Road and a Bedford Selectman, said that the Selectmen felt uncomfortable putting a specific metric on items such as senior housing; she said the purpose here was to allow a developer to create his or her own unique plan with general guidance, not prescriptive specifics, from the Town. Ms. Puntillo said that this project could be exclusively dedicated to senior housing should the town decide; she disagreed with allowing the developer such latitude in deciding what does or doesn't get built.

There was conversation about restrictions for affordability. Mr. Kalantari said he hoped there was some language in the RFP that ensures that a buyer wouldn't be able to purchase a home for \$400,000 and then flip it for \$600,000 or more.

Mr. Kalantari said his concern was that there was no language in the RFP to provide the first right of refusal to a Bedford citizen; he said that, if Bedford is using Town resources to purchase and market this property, the Town residents must have some priority over other buyers.

After more general discussion about the project, Mr. Colasante said he was confident that the Town Manager, Selectmen, and other Boards would work together with the developer to come up with a scheme suitable for Bedford. He said he looked forward to seeing how the project developed and working with a developer when the time comes. He thanked Mr. Reed and Ms. Porter for their time.

PRESENTATION: Ms. Amick read the notice of the hearing.

PETITION #017-15 – Red Heat Tavern, LLC, at 150 Great Road, seeks a Special Use Permit per Table I: Use Regulations and per Section 4.5.7 of the Zoning Bylaw to construct new restaurant.

Kevin Harron, the CEO of Burton's Grill, which owns Red Heat Tavern, introduced himself and explained that the application before the Board was for a Use Permit to operate a restaurant at the 150 Great Road site. He said the proposed restaurant would be 6,000 square feet and would be located towards the back of the property, on the left side of the Marshalls building.

Mr. Colasante asked about the hours of operation. Mr. Harron stated that the proposed hours were 11:30 AM to 11:00 PM during the week, and 11:30 AM to midnight on Friday and Saturday.

Mr. Colasante asked whether there was any signage proposed at this time. Mr. Harron replied that there was not, but he was aware that the signage would need to be approved by the Zoning Board at a later date.

Mr. Colasante asked the applicant about trash pickup. Mr. Harron responded that the landlord's intent was to put a trash compactor there, but he believed it would service more than just this restaurant, so he wasn't sure whether its hours could be controlled.

Ms. Amick asked about noise, and what time the Bylaw allowed deliveries and trash pickup that cause noise in the neighborhood. Margot Fleischman, a resident at 135 Page Road and a Bedford Selectman, said that was part of the General Bylaw; after looking it up in the Bylaw, she said that deliveries and trash pickup were allowed no earlier than 6:00 AM.

Mr. Colasante asked about the seat count. Mr. Harron responded that the proposal was for 202 seats inside and 46 seats outside in a patio-style area; he added that the elevations for that front patio area were not yet completed, so the 46 seat count might shrink a bit by the time they were done, but it certainly would not be any more than 46 seats.

Mr. Colasante noted that the Board had received a synopsis from Christopher Laskey, the Code Enforcement Director, about this restaurant, and one of the items Mr. Laskey mentioned was that the applicants had only received an Alcohol License from the Selectmen for 221 seats, not for 248. Mr. Harron said they were aware of that and understood they needed to go back before the Selectmen for the updated seat count.

The Board talked about patio seating. Ms. Amick asked whether the Board was allowed to grant patio seating. Mr. Colasante noted that the Board had allowed outdoor seating in the past – at BGood and Chipotle, for example. Ms. Amick said she was aware of that, but she wondered whether it was done legally. She commented that Section 4.5.7 of the Zoning Bylaw defines “Restaurant” as a place “where the principal service is the sale of food or beverage to be consumed by persons at tables *within* the building.” She said that it might be wise to ask either Mr. Laskey or Town Counsel about this wording before granting any outdoor seating.

Ms. Amick asked whether the whole restaurant was wide open, with no dividers between the restaurant section and bar area. Mr. Harron said that was correct. Ms. Amick asked if the set-up would be identical to the Red Heat Tavern in Wilmington. Mr. Harron responded that it would be exactly the same, although the Bedford location would be slightly larger.

Ms. Hamilton asked about the type of food that would be on the menu. Mr. Harron said it was a unique mixture of American food, cooked on a charcoal grill.

Ms. Puntillo asked why the company had chosen to open Red Heat Tavern in Bedford as opposed to Burton’s Grill. Mr. Harron replied that there was already a Burton’s Grill in Burlington, one town over, so they had opted for Red Heat instead.

Mr. Colasante opened the hearing to the public.

Ms. Fleischman said there had been some concern at the recent Selectmen meeting about having a separation of the outdoor patio; they had hoped that the patio area would be visibly separated by a barrier. She added that some abutters had expressed concern about the noise at the site and hoped that could also be addressed, perhaps through some conditions in the Special Permit. She said the Selectmen were generally supportive of

this new restaurant, provided that the Special Permit held conditions that minimized the impact to surrounding neighbors.

Betty Tenwolde, the property manager of Bedford Village Apartments, said she had some concerns about the noise at this restaurant. She said Bedford Village was very close to this site, and she worried about outdoor music and other extra noise. She added that Marshalls already had a trash compactor which was very loud, so that was also a concern. Mr. Colasante agreed that it was important to ensure that the noise and smells were not bothersome to any surrounding abutters, especially since this space was so close in proximity to residences.

There was discussion about the site plan. Mr. Colasante noted that, according to Mr. Laskey, the site plan approval had not been granted by the Planning Board. Mr. Harron said that the site plan approval process was being handled by the property owner, and he wasn't sure whether the process had been completed. Ms. Fleischman said she believed the Planning Board had finished its site plan approval process for the site itself, although she wasn't sure whether the restaurant had to go back before the Board as an individual tenant.

Ms. Amick said she was extremely concerned about this business coming to the center of Town. She said that she and her husband recently went to the Red Heat Tavern in Wilmington to get a feel for it, and in her opinion this was not a restaurant, it was a sports bar, where patrons drink while watching sports on large TV screens. She said that the interior was one wide-open area with no divider between the dining area and the bar, with televisions and loud music; she said there were speakers outside the building as well, which also blared loud music. She stated that she felt this restaurant would be fine along Middlesex Turnpike or on Burlington Road, near the Flatbread building, but she felt it was out of character for Bedford Center, and therefore detrimental to that particular neighborhood. She concluded that she could not support this business in this location.

Ms. Puntillo said that she liked the idea of outdoor seating and hoped that the Board could find a way to allow it, with the proper tenant, but she agreed with Ms. Amick that this might not be the proper tenant for this area. She said this type of restaurant was perhaps not what Bedford was looking for.

With no further comments or questions from those in attendance, Mr. Colasante closed the public hearing.

Ms. Hamilton said it would be interesting to know whether the company had done a market study to determine whether there was a population within Bedford that would be interested in a restaurant like this.

Mr. Kalantari asked how far this property was from Bedford Village. Ms. Tenwolde stated that there was a small wooded area and a stream adjacent to the Whole Foods parking lot, and Bedford Village was just on the other side of that stream. Mr. Kalantari said that he wasn't as concerned about this restaurant being in the center of Bedford as

much as he was concerned about noise or smells drifting to Bedford Village, because it was the Board's obligation to ensure that this business wasn't detrimental to any surrounding residences.

Mr. Colasante stated that it might be wise for the applicant to request a continuation in order to work out some of the details that have been mentioned here tonight, including mitigation of noise and lights and finding out about the site plan approval. Mr. Harron said that was probably a good idea, and he would be willing to get the necessary details together in order to answer all the Board's questions.

Ms. Amick said she thought the next agenda was full but she wasn't entirely sure. She suggested continuing the application to the next meeting with the condition that, if the agenda is full, the application be pushed back to the meeting after.

MOTION:

Ms. Amick moved to continue Red Heat Tavern, LLC, at 150 Great Road, seeking a Special Use Permit per Table I: Use Regulations and per Section 4.5.7 of the Zoning Bylaw to construct new restaurant to February 26, 2015 at 7:30 PM, unless that agenda is already full, in which case the application shall be continued to March 12, 2015 at 7:30 PM.

Ms. Puntillo seconded the motion.

Voting in favor: Colasante, Amick, Puntillo, Hamilton, and Kalantari

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

PRESENTATION: Ms. Amick read the notice of the meeting.

PETITION #018-15 – Pamela Brown, Esq., for 2 Hamilton Road, seeks a Variance from Sections 14.7, 6.2.7, and 6.2.8 of the Zoning Bylaw to construct detached garage within side and rear yard setbacks.

Pamela Brown, Esq., greeted the Board and introduced Gary and Ann Blanchard, the homeowners from 2 Hamilton Road. She explained that the Blanchards were proposing a detached garage to be located five feet from the rear and side property lines rather than the 10 feet allowed under the Bylaw. She stated that the reason for this was that, if the garage sat 10 feet from the property lines, it would sit directly in the path of a drainage pattern from the house behind the property, which was on a hill that sloped downwards towards the Blanchards' property.

Ms. Brown stated that several iterations of the garage location were considered; she said that one possibility was having an attached garage, but that would have extended into the

front yard setback, which would have, in their opinion, been more of a detriment to the neighborhood. She said that they all felt this proposed location was the best, not only for the Blanchards themselves but for the abutters and the neighborhood.

There was dialogue about the topography, shape, and drainage patterns of the lot.

Mr. Colasante opened the hearing to the public.

Danielle Beck, of 66 Pine Hill Road, stated that she was the daughter of the Blanchards and fully supported the application, as she felt it was important for her parents to be safe and have a garage as they moved into older age. She said that this addition would allow her parents to stay at this house, especially because downsizing in Bedford was almost impossible.

There was discussion about landscaping and screening. Ms. Blanchard noted that there were pine trees and a fence that helped with visual screening.

Ms. Amick said there was a lot of open space behind this property, so the proposed garage was not, in her opinion, detrimental to the neighborhood. The other members agreed.

With no further comments or questions from those in attendance, Mr. Colasante closed the public hearing.

DELIBERATIONS:

There was conversation about whether this application should be treated as a Special Permit or a Variance. Ms. Amick noted that, in his synopsis, Mr. Laskey expressed his belief that it should be a Variance, as a garage was a brand new non-conformity on the property. After further discussion, Mr. Colasante said he would feel most comfortable granting a Special Permit for this application. He called for a motion.

MOTION:

Ms. Amick moved to grant to Pamela Brown, Esq., for 2 Hamilton Road, a Special Permit per 14.6 of the Zoning Bylaw to construct detached garage within side and rear yard setbacks, substantially as shown on Exhibit 1 (site plan) and Exhibit 2 (GIS plan).

Ms. Puntillo seconded the motion.

Voting in favor: Colasante, Amick, Puntillo, Hamilton, and Kalantari

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Colasante explained that the Board had 14 days to write a decision, after which time there was a 20-day appeal period. The applicant was then responsible for getting the decision recorded at the Registry of Deeds. Once the decision was recorded, barring any appeals, the applicants may apply for a Building Permit.

PRESENTATION: Ms. Amick read the notice of the meeting.

PETITION #015-15 – CONTINUATION – Pamela Brown, Esq., for 4 Highland Avenue, seeks a Variance from Table II: Dimensional Regulations and from Section 14.7 of the Zoning Bylaw to construct addition within front yard setback.

Ms. Brown stated that the applicants had altered the original plans to meet with the Conservation Commission's approval, and as such they now met the setbacks and no longer needed a Variance. She asked that the Board withdraw the application without prejudice.

MOTION:

Ms. Amick moved to withdraw without prejudice the application of Pamela Brown, Esq., for 4 Highland Avenue, seeking a Variance from Table II: Dimensional Regulations and from Section 14.7 of the Zoning Bylaw to construct addition within front yard setback.

Ms. Puntillo seconded the motion.

Voting in favor: Colasante, Amick, Puntillo, Hamilton, and Kalantari
Voting against: None
Abstained: None

The motion carried unanimously, 5-0-0.

BUSINESS MEETING:

David Goldbaum, the new owner of the two-family house at 10-12 Maple Street, stated that he would be coming before the Zoning Board in the near future with an application to demolish the structure and rebuild a new two-family structure in its place. He said this house was in the Historic District and he had been before the HDC informally as well, to get their thoughts on the matter. He said that he was a preservationist, and he came to every new project with an eye towards preservation, and it always pained him to propose the demolition of any historic structure; however, in the case of this house, there was extremely little left to preserve. He stated that there have been several additions and changes to the structure over the years, and each new change had compromised not only the history but the structural integrity of the home. He said that this project would need zoning relief due to the closeness of the house to the front and side property lines, although the proposed structure would be less non-conforming than the current structure was.

