

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
APRIL 14, 2016**

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

PRESENT: Todd Crowley, Chair; Angelo Colasante, Vice Chair; Carol Amick, Clerk; Jeffrey Dearing; Michelle Puntillo; Kay Hamilton; Robert Kalantari

ABSENT: Arthur Smith

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

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

PETITION #037-16 – Katie Gauvin, for The Body Boutique, at 54 Loomis Street, seeks a Special Permit per Article 39.5 Section 1 of the Sign Bylaw to illuminate wall sign.

Katie Gauvin and her husband, Derek, greeted the Board and explained that she was opening a business at the new Bedford Crossings building at 54 Loomis Street, and requested a Special Permit to illuminate the sign with one gooseneck light. She noted that the sign had been permitted and had already been installed, so this request was solely for the lighting.

Ms. Puntillo asked whether the location of the lighting fixtures on the other two businesses would be consistent across the building. Ms. Gauvin said she believed the condominium association had planned for the lighting fixtures to be uniform. Mr. Colasante said that he would feel more comfortable having a letter from the condo association certifying the position of the lighting fixture, particularly because there was a residential unit above this and he worried about overspill.

Mr. Crowley noted that the Sign Bylaw required all sign illumination to be turned off between the hours of 11:00 PM and 6:00 AM, and the Board typically placed a condition on the Special Permit that the lights shall be on a timer to ensure that the lighting is off. The applicants said that they had no problem with such a condition.

Mr. Crowley opened the hearing to the public. With no comments or questions from those in attendance, Mr. Crowley closed the public hearing.

DELIBERATIONS:

Mr. Crowley said that this was a Special Permit application, for which the requirements were that the proposal was in keeping with the intent and purpose of the Bylaw and was

not injurious or detrimental to the neighborhood. He said that, with the conditions stipulated before, he felt that this sign illumination met those requirements. The other Board members agreed. There was further discussion about the consistency of the lighting fixtures for the other tenant spaces. Mr. Crowley said that it was the hope and wish of the Board that the fixtures would all be at even heights, and he would like that to be stated for the record; however, he did not believe the Board could mandate such a thing.

MOTION:

Ms. Amick moved to grant Katie Gauvin, for The Body Boutique, at 54 Loomis Street, a Special Permit per Article 39.5 Section 1 of the Sign Bylaw to illuminate wall sign, substantially as shown on Exhibit 1 (west elevation), Exhibit 2 (light specifications), Exhibit 3 (photograph of sign), Exhibit 4 (sign design), and Exhibit 5 (letter from electrician certifying foot lambert calculations), and with the following conditions:

- 1) Applicant shall submit to the Code Enforcement Department a letter from the condominium association indicating approval of fixture location;
- 2) The lights shall not be illuminated between the hours of 11:00 PM and 6:00 AM;
- 3) A timer shall be used to ensure that the illumination is off during the required hours.

Ms. Puntillo seconded the motion.

Voting in favor: Crowley, Colasante, Amick, Dearing, and Puntillo

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Crowley 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 applicant may illuminate the sign.

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

PETITION # 037-16 – Katherine Townsend, at 10 Perham Street, seeks a Variance from Table II: Dimensional Regulations and from Section 14.7 of the Zoning Bylaw to construct garage addition within rear and side yard setbacks, and seeks a Special Permit for addition totaling more than 600 square feet.

Ms. Townsend introduced herself and her husband, Douglas, along with their architect, Faith Baum, and their contractor, Angelo Busa. Ms. Townsend said that they currently had a detached garage on the property that they hoped to knock down in order to build a detached garage in its place. She noted that the proposed garage would be larger than the

existing, because in addition to the vehicles, they hoped to house Mr. Townsend's beekeeping equipment inside it.

Ms. Baum showed photographs of the property, noting that there was a great deal of ledge on the entire left side of the house, which was why the garage could not be located anywhere else on the lot.

Ms. Townsend commented that they had talked to their neighbors, who were all in favor of the application; she noted that the two closest abutters had written in letters of support.

The Board talked in great detail about the dimensions, aesthetics, and layout of the existing and proposed garage.

Mr. Crowley opened the hearing to the public.

Mr. Crowley read into the record letters of support from C. Lewis and Karen Bragaw, of 12 Perham Street, and Michael Broderick, of 8 Pine Knoll Road in Lexington.

With no further comments or questions from the public, Mr. Crowley closed the public hearing.

DELIBERATIONS:

Mr. Crowley said that this application involved two requests, first for the Variance and then for the Special Permit. He suggested that the Board discuss the Variance first and go through the four conditions required to grant one.

There are circumstances relating to the soil conditions, shape, or topography of such land or structures. Mr. Crowley said that this was the case here, since there was a great deal of ledge on the property, although he added that there was still nothing keeping the owners from having a detached garage ten feet in from the right property line by right.

Those circumstances especially affect the land or structures of the petitioner but do not affect generally the zoning district in which the land or structures are located. The Board members all agreed that this was the case here.

A literal enforcement of the provisions of the by-law would involve substantial hardship, financial or otherwise, to the petitioner. Ms. Amick said that she was having difficulty finding a substantial hardship with this application. It was suggested that the hardship was the ledge on the property; Mr. Crowley stated that the ledge prevented the applicants from building on that side of the house, but there was still room to build a detached garage on the proposed side of the house without infringing on the setback. Mr. Dearing said that the applicants could construct a detached garage to the ten-foot setback line by right, so he felt that requiring the additional five feet of setback added for an attached garage could conceivably be looked at as a hardship. Ms. Hamilton said that seemed like a reasonable argument. Mr. Kalantari said that the use of this structure would, therefore,

come into play. Mr. Dearing said it would, because a traditional addition would not be able to be detached by right, but a garage would, so the argument only worked for a garage. Ms. Puntillo said that she could agree with Mr. Dearing's argument if the proposed garage were located ten feet from the property line instead of eight feet; she said that a ten-foot setback would be more defensible from a legal standpoint if this were ever appealed. The other members agreed.

That desirable relief may be granted without substantial detriment to the public good and does not nullify or substantially derogate from the intent or purpose of the Bylaw.

Mr. Colasante said that the Board had received two letters from the immediate abutters, and it was a tight neighborhood to begin with. Ms. Hamilton asked whether the applicants had physically shown their neighbors the location of the house on the lot, or just shown them a rendering on paper. Ms. Townsend said that they were all together in the yard and they did show them the proposed location in person.

Mr. Dearing talked with Ms. Baum about ways to redesign the structure to meet a ten-foot setback. Ms. Amick said that the applicants might want to consider requesting a continuation to modify the plans and try to make the proposal work with a ten-foot setback, because she worried that the request before the Board as currently proposed would not pass. After further discussion, the applicants agreed to continue the hearing to the May 12 meeting date.

MOTION:

Ms. Amick moved to continue Katherine Townsend, at 10 Perham Street, seeking a Variance from Table II: Dimensional Regulations and from Section 14.7 of the Zoning Bylaw to construct garage addition within rear and side yard setbacks, and seeking a Special Permit for addition totaling more than 600 square feet, to May 12, 2016 at 7:30 PM.

Mr. Dearing seconded the motion.

Voting in favor: Crowley, Colasante, Amick, Dearing, and Puntillo

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

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

PETITION #034-16 – CONTINUATION – Pamela Brown, Esq., for Peter Salem, at 175 South Road, seeks to appeal the Building Inspector's decision that a new two-family dwelling may not be built on a lot with an existing structure.

Ms. Brown greeted the Board members and stated that, at their previous meeting, they had requested further information regarding intent and interpretation of Section 4.2.2.2 of

the Zoning Bylaw. She said that Mr. Laskey had pulled from the archives Planning Board and Selectmen minutes from 1992 when the section was written, but she felt strongly that the words of the Bylaw stand for themselves as law. She said that nothing in the meeting minutes from 1992 specifically mentioned that the Bylaw was to apply only to existing vacant lots. She said that the minutes referenced the discussion of potential lots that the Bylaw could affect, and the number "25" was mentioned, but in her opinion that number was irrelevant because the Town did not have a GIS system or any efficient way to come up with such a number so no one knew now whether it referred only to vacant lots or all lots in general.

Ms. Brown passed out a memo that referenced several pieces of case law about the interpretation of Bylaws. She reiterated that the word "lot" was defined in the Bylaw, and there was nothing in the public record or the text of the Bylaw to restrict the provision to vacant lots. She concluded that the Board must look solely to the text of the Bylaw to determine its intent.

Mr. Colasante said that he read the word "conversion" as not only referring to modifying a single-family home to a two-family home but also demolishing a single-family home and constructing a new two-family home, because the end result is a conversion.

Ms. Amick said that she could understand both Mr. Laskey's interpretation and Ms. Brown's interpretation, so she had to look to the intent behind the Bylaw, even though Ms. Brown felt that intent should not be considered as much as the wording. Ms. Amick said that she called two people who had served on the Planning Board at the time this Bylaw section was drafted, Joe Piantedosi and Donald Corey, who both specifically recalled that the section in question referred to vacant lots, because they wanted the number of two-family homes limited. She stated that ultimately she had to fall back on the intent because the wording was simply not clear enough, and she truly felt that the intent was only to allow two-family dwellings on existing vacant lots. Ms. Brown said that, regardless of intent, the Bylaw never specified "vacant."

There was more conversation about the number of homes that would be affected if Mr. Laskey's interpretation stood as opposed to the interpretation that the lots need not be vacant. Ms. Brown stressed that looking at the number of homes affected was not part of the Board's purview in this instance; the Board's sole purpose was to read and interpret the Bylaw as written.

Ms. Puntillo suggested that the applicant build a house with an in-law apartment. Mr. Salem said that he did not intend to live in the house once it was built. He said that he planned to sell it and thought a two-family dwelling would be a welcome addition in the neighborhood.

Ms. Hamilton said that her problem was not specifically with this property or this two-family house, but the precedent that would be set moving forward. Ms. Brown said that, if the Board members were truly worried about precedent, then they should get the

wording clarified in the near future; however, things like precedent should not be taken into account here, as the only thing that mattered was the words written in the Bylaw.

Mr. Crowley opened the hearing to the public.

Robert Iovino, of 183 South Road, said that they had a big water problem in their neighborhood, and he didn't believe that the lot could handle the water and runoff-related issues of a two-family dwelling. He showed the Board photographs of flooding in his back yard from this property and said that it was not an appropriate lot for a two-family house.

Mark Lawrence, of 179 South Road, said that he understood the desire for a diversity of houses in Bedford, but there were already enough duplexes on South Road and they did not need more. He said that he agreed with Mr. Iovino that the water was a great concern to all the abutters.

Mr. Dearing said it was important for the abutters to understand that this hearing wasn't specific to a house proposal on this lot so much as it was an interpretation of the Bylaw.

Amy Lloyd, a resident of 45 South Road and a member of the Planning Board, said that a set of Bylaws was a stand-alone document that must be examined for its black and white text. She said that the Bylaws carried the weight of the law, and the Board must look to the specific wording. She stated that, if the Bylaw did not specify the word "vacant," then it should not be assumed that it referred solely to vacant lots.

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

DELIBERATIONS:

Mr. Kalantari said that it seemed crystal clear to him that the Bylaw was referring to vacant lots. He commented that he dealt with law on a daily basis as part of his job, so he was familiar with the way legal documents were written, and he felt strongly that this section was intended for vacant lots. Mr. Colasante agreed, stating that he also thought it was extremely clear that the word "vacant" was intended.

Ms. Amick said that the Bylaw should have been clearer, and she wished that the people who wrote Section 4.2.2.2 had used the word "vacant," but she did believe that they intended the Section to refer to vacant lots. Mr. Dearing said that he was very torn on this issue, because to him the intent of the Bylaw wasn't clear. He said that he did not necessarily agree with Mr. Colasante's belief that "conversion" referred to a teardown. Ms. Hamilton said she agreed with Ms. Amick's comments.

After further discussion, Mr. Crowley called for a motion.

MOTION:

Ms. Amick moved to uphold the decision of the Building Inspector that, pursuant to Section 4.2.2.2 of the Zoning Bylaw, a new two-family dwelling may not be built on a lot with an existing structure.

Mr. Dearing seconded the motion.

Voting in favor: Crowley, Amick, Puntillo, and Hamilton
Voting against: Dearing
Abstained: None

The motion carried, 4-1-0.

Mr. Crowley said that the Building Inspector's decision now stands. He explained that the Board had 14 days to write a decision, after which time there was a 20-day appeal period, during which time any parties aggrieved by the Board's decision may appeal it to land court.

BUSINESS MEETING:

March 10 Meeting Minutes

MOTION:

Ms. Amick moved to approve the minutes of the March 10, 2016 meeting, as written.

Mr. Colasante seconded the motion.

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

The motion carried, 5-0-2.

March 24 Meeting Minutes

MOTION:

Ms. Amick moved to approve the minutes of the March 24, 2016 meeting, as amended.

Mr. Dearing seconded the motion.

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

The motion carried unanimously, 7-0-0.

Adjournment

MOTION:

Ms. Amick moved to adjourn the meeting.

Mr. Colasante seconded the motion.

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

Voting against: None

Abstained: None

The motion carried unanimously, 7-0-0.

The meeting adjourned at 9:35 PM.

Todd Crowley, Chair

Date

Respectfully Submitted,

Scott Gould
ZBA Assistant