

**ZONING BOARD OF APPEALS  
MINUTES OF MEETING  
DECEMBER 10, 2015**

Town of Bedford  
Bedford Town Hall  
Second Floor Conference Room

**PRESENT:** Angelo Colasante, Vice Chair / Acting Chair; Carol Amick, Clerk; Jeffrey Dearing; Michelle Puntillo; Kay Hamilton

**ABSENT:** Todd Crowley, Chair; Arthur Smith; Robert Kalantari

**GUESTS:** Christopher Laskey, Code Enforcement Director; Amy Lloyd and Jeffrey Cohen, Planning Board; Boy Scouts of Troop 194

Mr. Colasante introduced himself as Acting Chair and read the emergency evacuation notice. The Zoning Board of Appeals (ZBA) members and assistant introduced themselves. Mr. Colasante commented that the Boy Scouts of Troop 194 were in attendance tonight, witnessing a public hearing for their citizenship badges; he welcomed them and talked briefly about the Zoning Board's charter and purpose.

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

**CONTINUATION** – Kristina O'Brien, at 16 Fayette Road, seeks a Variance per Section 4.2.9.2 Section (a) (v.) of the Zoning Bylaw to allow accessory apartment to exceed 30% of gross floor area of dwelling, and seeks a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning Bylaw to construct garage addition within front yard setback.

Mr. Colasante stated that two of the members present at the last meeting were not present tonight, so Mr. Dearing and Ms. Puntillo had read the minutes and would therefore invoke the exception to the Mullen Rule in order to vote and preserve the five-member quorum.

Ms. O'Brien greeted the Board and introduced her boyfriend, Scott Osborne. She stated that, as per the Board's request at the previous meeting, they had modified the design of the proposed accessory apartment and had rotated it so that it now met all the setbacks. She said that they reduced the proposed garage in scale from four bays to three and changed the roof pitch to match the house more closely. She commented that they had brought three options with them, each progressively smaller than the last, but "Option 1" was their preference. Mr. Osborne said that, because of the water table in the area, there was no finished basement, which greatly reduced the amount of square footage allowed in calculating the size of the accessory apartment; therefore, without this Variance, the by-right size of the apartment would be 531 square feet, but the Variance would bring it to 799 square feet, a much more workable number. He added that they worked hard to keep the number below 800 feet due to the Board's wishes.

The Board talked with Ms. O'Brien and Mr. Osborne about the proposed floor plan of the house, garage, and apartment and how they were laid out on the lot. Ms. O'Brien noted that, if this plan were approved, she planned to take out the existing driveway and create a new one leading to the new garage.

Ms. Amick said that she appreciated the applicant's ability to redesign the proposed addition in order to make it less massive and have it more in keeping with the neighborhood. She said that she would suggest placing two conditions on the Variance:

1. The existing driveway will be removed;
2. The porch will not be enclosed.

Mr. Colasante noted that the condition regarding the enclosure of the porch was typically only placed on porches that were infringing into the setback, but he believed it was a reasonable condition here as well, since the porch was part of the accessory apartment for which the Variance was being granted. He asked the applicant whether she had any issue with the two stated conditions. Ms. O'Brien said she did not.

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

#### **DELIBERATIONS:**

Mr. Colasante remarked that the Special Permit portion of the application was no longer necessary, as the applicant was no longer proposing to place the garage outside the allowed setbacks, so the Board now only had to vote on the Variance. He suggested that the Board go through the four pieces of the recently-updated Variance "puzzle," for which all the pieces needed to be met in the affirmative:

*There are circumstances relating to the soil conditions, shape, or topography of such land or structures.* The Board members agreed that the water table in the area affected the applicant's ability to count a finished basement towards the square footage calculation, so this condition was met.

*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 agreed that this condition was also met.

*A literal enforcement of the provisions of the by-law would involve substantial hardship, financial or otherwise, to the petitioner.* Mr. Colasante said that the 531 foot accessory apartment allowed by right was, in his opinion, unworkable and too small to meet the needs of a couple, so he believed this did constitute a hardship. 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.* It was decided that the proposed addition, as amended by the new plan, easily met these criteria.

Mr. Colasante called for a motion, with the conditions specified earlier.

**MOTION:**

Ms. Amick moved to grant to Kristina O'Brien, at 16 Fayette Road, a Variance per Section 4.2.9.2 Section (a) (v.) of the Zoning Bylaw to allow accessory apartment to exceed 30% of gross floor area of dwelling, substantially as shown on Exhibit 1 (floor plan) and Exhibit 2 (plot plan), and subject to the following conditions:

1. The existing driveway will be removed;
2. The porch will not be enclosed.

Mr. Dearing seconded the motion.

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

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, the applicant may apply for a Building Permit.

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

**PETITION #019-16** – Pamela Brown, Esq., for Subway, at 158E Great Road, seeks a Special Permit per Sections 4.5.7 and 14.6 of the Zoning Bylaw to relocate restaurant in new building, and seeks a Special Permit per Article 39.5 Section 1 of the Sign Bylaw to illuminate sign.

Ms. Brown greeted the Board and stated that she was requesting two Special Permits – a Special Use Permit to relocate the restaurant in the new building within the renovated shopping center, and a Special Permit to illuminate the sign. She suggested discussing each item separately and making two separate motions, and the Board members agreed that this was the best way to move forward.

**Restaurant Use**

Ms. Brown introduced Niral Ghandi, manager of the Bedford Subway. She stated that the proposed floor plan was almost identical to that of the floor plan in the old restaurant, but a bit larger, moving from 1,157 square feet to 1,328 square feet. She said that there would still be 18 seats as before, and the hours would stay the same, from 7:00 AM to 9:30 PM.

Ms. Puntillo asked whether the number of employees would remain the same as well.  
Ms. Brown responded that it would.

Ms. Amick noted that there were conditions on the existing Special Permit that would carry over to this modification, and asked whether Mr. Ghandi would have a problem with any of them: That there be no detached trailer deliveries on Sundays; that all deliveries be made through the back door; that all deliveries be made between the hours of 7:00 AM and 5:00 PM; and that the hours of operations be limited to no earlier than 7:00 AM and no later than 11:00 PM. Mr. Ghandi said he had no problem with those conditions, as they were already being applied to the operation of his store.

Mr. Colasante opened the hearing to the public, stating that any comments should be related only to the restaurant use portion of the application. With no comments or questions from those in attendance, Mr. Colasante closed this section of the hearing.

### **DELIBERATIONS (ON USE)**

Mr. Colasante said that this was a very straightforward Special Permit application, for which the Board had to decide whether this relocated restaurant was in keeping with the intent and purpose of the Bylaw and was not injurious or detrimental to the neighborhood. He said that he felt it met those conditions. The other Board members agreed.

### **MOTION:**

Ms. Amick moved to grant Pamela Brown, Esq., for Subway, at 158E Great Road, a Special Permit per Sections 4.5.7 and 14.6 of the Zoning Bylaw to relocate restaurant in new building, substantially as shown on Exhibit A (plan showing restaurant location in shopping center), with the following conditions:

1. That there be no detached trailer deliveries on Sundays;
2. That all deliveries be made through the back door;
3. That all deliveries be made between the hours of 7:00 AM and 5:00 PM.
4. That the hours operations be limited to no earlier than 7:00 AM and no later than 11:00 PM.

Mr. Dearing seconded the motion.

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

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, the applicant may apply for a Building Permit.

### **Signage**

Ms. Brown said that the sign itself would be the same one previously used on the old building. She said they would be placing it over the entrance to the new location and would use the same gooseneck lights for which Learning Express was approved; she circled around a design and catalogue cut for the goosenecks. There was discussion about how many fixtures were appropriate and how they would be spaced over the sign.

After further dialogue about the sign and illumination, Ms. Amick suggested the following three conditions on the Special Permit:

1. Lights to be tested and confirmed by a certified lighting engineer to ensure compliance with the Sign Bylaw;
2. The lights shall be on a dimmer;
3. The sign shall be on a timer to ensure that it is not illuminated between the hours of 11:00 PM and 6:00 AM.

Ms. Brown said she had no issues with those conditions.

Mr. Colasante opened the hearing to the public, stating that any comments should be related only to the sign portion of the application.

Vishal Borra, a Boy Scout of Troop 194 and a resident of 4104 Thompson Farm, said that he was very happy to know that Subway was coming back into the new Bedford Marketplace, as he and his friends loved it.

With no further comments or questions, Mr. Colasante closed this section of the hearing.

### **DELIBERATIONS (ON SIGN)**

Mr. Colasante said that it was unfortunate that there was not more detail on the illumination fixtures and how they would be placed, but he felt comfortable that, with the conditions provided, this lighting proposal would meet the two Special Permit requirements: that it would be in keeping with the intent and purpose of the Bylaw and would not be injurious or detrimental to the neighborhood. The rest of the Board agreed.

### **MOTION:**

Ms. Amick moved to grant to Pamela Brown, Esq., for Subway, at 158E Great Road, a Special Permit per Article 39.5 Section 1 of the Sign Bylaw to illuminate sign, substantially as shown on Exhibit 1 (gooseneck detail showing three fixtures spaced evenly above sign) and Exhibit 2 (elevation), subject to the following conditions:

1. Lights to be tested and confirmed by a certified lighting engineer to ensure compliance with the Sign Bylaw;

2. The lights shall be on a dimmer;
3. The sign shall be on a timer to ensure that it is not illuminated between the hours of 11:00 PM and 6:00 AM.

Ms. Puntillo seconded the motion.

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

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, the applicant may illuminate the sign.

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

**PETITION #020-16** – Pamela Brown, Esq., for Comella’s Restaurant, at 158H 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, and seeks a Special Permit per Article 39.5 Section 1 of the Sign Bylaw to illuminate sign.

Ms. Brown introduced Matt Comella, one of the owners of the proposed restaurant. She suggested that, similar to the Subway application, the Board look at the Special Permits for the Use and sign illumination as separate matters. Mr. Colasante agreed to proceed that way.

### **Restaurant Use**

Ms. Brown stated that this was a similar application as the previous one for Subway, with the notable difference that this was a brand new tenant that has not existed in the Bedford Marketplace. She said that Comella’s was a family restaurant that would take up a 3,309 square foot space within building B at the Marketplace, the same building that will contain Subway and Bruegger’s Bagels. She stated that the proposed hours of operation were from 11:00 AM to 11:00 PM and there would be 100 seats; she added that they were comfortable with the same conditions placed on the Subway Special Permit regarding deliveries.

Mr. Dearing asked whether this restaurant would have a liquor license, as he knew there were very few left for the Selectmen to give out. Ms. Brown replied that it would have a liquor license, and it would be transferred from Ka-Noon Thai Cuisine, which was no longer operating.

There was dialogue about the floor plan of the restaurant. Mr. Comella stated that this was not a traditional sit-down restaurant, in that customers order at the counter; however, the wait staff does bring the food and drinks to the customers. He said this cut down on some of the wait time and allowed families to go to dinner with a bit more expediency than other restaurants.

Mr. Colasante commented that Red Heat Tavern was open until midnight on Fridays and Saturdays, and he suggested allowing this restaurant to have the same hours. It was agreed that it was fair to allow the same hours here.

Mr. Colasante opened the hearing to the public, stating that any comments should be related only to the restaurant use portion of the application.

Mr. Laskey asked the Board to phrase the seating condition to state "Up to 100 seats," because he had not yet done his seat count and the allowable number may fall slightly shorter, so a statement that it must be 100 seats exactly could become a problem for the applicant.

With no other comments or questions from those in attendance, Mr. Colasante closed this section of the hearing.

#### **DELIBERATIONS (ON USE)**

Mr. Colasante said that this was a Special Permit application, and the Board had to determine that the proposed restaurant was not injurious or detrimental to the neighborhood and was in keeping with the intent and purpose of the Bylaw. The Board members all agreed that it met those requirements, with conditions limiting delivery times and hours.

#### **MOTION:**

Ms. Amick moved to grant to Pamela Brown, Esq., for Comella's Restaurant, at 158H Great Road, a Special Use Permit per Table I: Use Regulations and per Section 4.5.7 of the Zoning Bylaw to construct new restaurant, substantially as shown on Exhibits 1 and 2 (site plans), and subject to the following conditions:

1. That there be no detached trailer deliveries on Sundays;
2. That all deliveries be made through the back door;
3. That all deliveries be made between the hours of 7:00 AM and 5:00 PM;
4. The hours of operation shall be from 11:00 AM to 11:00 PM, Sunday through Thursday; and 11:00 AM to midnight on Friday and Saturday;
5. There will be no more than 100 seats in the restaurant.

Ms. Hamilton seconded the motion.

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

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, the applicant may apply for a Building Permit.

### Signage

Ms. Brown handed out a rendering for the proposed sign, noting that it would be placed above the door, under the gable roof architectural feature. She said that the proposed sign was approximately half the restaurant width, at 22'6", and the total sign height would be 63 inches, representing a total sign area of 118 square feet. She stated that a Special Permit would, therefore, be required to increase the first floor wall area to more than 10%, as this sign would be 13.3% of that wall area. She concluded that the sign would be halo lit, and that the lighting details and certification letter were included in the new handout.

There was extensive conversation about the size of the sign and how it would look in the context of the building.

Mr. Colasante opened the hearing to the public, stating that any comments should be related only to the sign portion of the application.

Mr. Laskey said that the lighting fixture page in the application made reference to red light, and he stressed that only white light should be allowed, so that should be changed before any final exhibit was marked.

After more consideration, it was the consensus of the Board that the proposed sign was too large for the location. Ms. Brown said that, as they had already received the Special Permit for the use, they would not have a problem continuing the hearing to the next meeting and modifying the proposal. Mr. Colasante agreed that this was the best option, and called for a motion to continue the hearing.

### **MOTION:**

Ms. Amick moved to continue Pamela Brown, Esq., for Comella's Restaurant, at 158H Great Road, seeking a Special Permit per Article 39.5 Section 1 of the Sign Bylaw to illuminate sign to January 7, 2016 at 7:30 PM.

Mr. Dearing seconded the motion.

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

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Colasante wished Mr. Comella luck moving forward and said he would see him and Ms. Brown on January 7. Ms. Brown thanked the Board members for their time.

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

**PETITION #021-16** – William Simons, at 31 Sweetwater Avenue, seeks a Variance per Section 4.2.9.2 Section (a) (v.) of the Zoning Bylaw to allow accessory apartment to exceed 30% of gross floor area of dwelling.

Mr. Simons greeted the Board and stated that this application had involved some miscommunication between himself and the Code Enforcement Department that resulted in him having to withdraw. Mr. Laskey explained that Mr. Simons's original application provided very little information, and when he dropped it off he only mentioned that he needed a Variance because he wanted an accessory apartment; he and the ZBA assistant then took that to mean that Mr. Simons wanted relief from Section 4.2.9.2 of the ZBL to allow an accessory apartment greater than 30% of the gross floor area of the dwelling. He said that it eventually became clear, however, that the applicant was not applying for a Variance for the gross floor area but was instead applying for a Special Permit for an addition larger than 600 square feet, but by the time they realized this, the petition had already been advertised. Mr. Laskey said that he called the applicant and explained that, because it was wrongly advertised – not only the wrong type of relief (Variance vs. SP) but the wrong section of the ZBL – it was in his best interest to withdraw the application in order to allow for a re-advertisement.

Mr. Simons said that Mr. Laskey told him that he could present his application the Board on an informal basis tonight, just for general feedback, so that if the Board members felt that anything significant should be changed, he could have it changed by the January 7 meeting date. He stated that he was proposing an addition that would serve as an accessory apartment for his wife's parents, and the addition would be larger than 600 square feet, which was why it required a Special Permit.

There was discussion about the general plan of the proposal. The Board members agreed that the addition seemed reasonable. Mr. Colasante stated that neighborhood support was always helpful, so if Mr. Simons received letters from abutters stating that they were in favor of the application, it would go a long way to help the Board in granting the Special Permit.

Mr. Simons thanked the Board members for their time. Mr. Colasante apologized that the application could not be heard tonight and said they would see him on January 7.

**MOTION:**

Ms. Amick moved to withdraw without prejudice the application of William Simons, at 31 Sweetwater Avenue, seeking a Variance per Section 4.2.9.2 Section (a) (v.) of the Zoning Bylaw to allow accessory apartment to exceed 30% of gross floor area of dwelling.

Ms. Puntillo seconded the motion.

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

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

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

**PETITION #022-16** – William Delaney, at 427 Davis Road, seeks a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning Bylaw to demolish house and construct larger house on non-conforming lot.

Justin Delaney introduced himself and explained that he and his father, William, had purchased the lot at 427 Davis Road with the hope of demolishing the existing structure and building a new house on it. He said that they had driven around the neighborhood along Davis Road to get an idea of the kinds of structures build within the last five years, and decided on the proposed home, which was a traditional Colonial. He said that it was his understanding that this was the first application under the Town's new policy of requiring the ZBA to approve new structures being built on non-conforming lots when proposed the structures were larger than what was originally on the lot. He said that, because of this, there were not any real guidelines to advise applicants on how to proceed through this process, but he believed that his proposal met the criteria of a Special Permit and thought the house would be an attractive addition to the neighborhood.

There was extensive dialogue about the details of the proposed house plans. Mr. Dearing said that his biggest concern with this proposal was the height; he said that, in his opinion, the Town's 37 feet height restriction was too lenient, and most towns in which he worked had a 30 feet restriction. He said that, as an architect, he often had to design similar proposals that were not as tall, to work within those limitations, and the houses always looked attractive and were no less functional. The other Board members agreed that the proposed house was very high.

The Board talked about the neighborhood; several members noted that they wished they had had an opportunity to drive around the area to get a better idea about the size of the surrounding homes.

Jack Mara, of 2 Harvard Drive, said that he feared this new policy was potentially discouraging developers from purchasing smaller, older homes such as the house on this proposed lot, which he felt was ripe for development. Mr. Colasante said that he wanted

to work with applicants through this new process and did not want the process to be difficult or discouraging, but some compromises may need to be made in order to ensure that the conditions of a Special Permit were always met.

Amy Lloyd, a resident of 45 South Road and the Chair of the Planning Board, said that she thought it was very important to clarify that this was not a new Bylaw created by the Town residents or Board members; this was a policy based on Massachusetts case law that required all towns to consider the implications of square footage, lot coverage, height, and massing for new houses built on non-conforming lots. She said that it should also be noted that the overall massing is a more important consideration than usable square footage, as height is just as important as footprint in determining how a house fits into a neighborhood.

Mr. Colasante said that he echoed the sentiments of the Board that the proposed house was too high and was concerned about approving a home that was out of place in the neighborhood. After further conversation about the massing, it was decided that Mr. Delaney's best course of action would be to continue the application and return to the next available meeting with a modified plan. Mr. Colasante commented that this would also give the Board members the chance to drive around the neighborhood to get a better sense of the area. Mr. Delaney agreed to return on January 21 with a modified plan.

**MOTION:**

Ms. Amick moved to continue William Delaney, at 427 Davis Road, seeking a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning Bylaw to demolish house and construct larger house on non-conforming lot.

Mr. Dearing seconded the motion.

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

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

**BUSINESS MEETING:**

**Great Road Zoning Bylaw Changes**

Ms. Amick said that she, Ms. Hamilton, and Mr. Kalantari had completed their final proposed changes to the Limited Business section of the Zoning Bylaw. She said that she had forwarded the final proposed changes, which took into account language suggested by Town Counsel, to the other Board members and would be sending them to the Selectmen through Richard Reed, the Town Manager, along with a cover letter detailing the proposal. She said that these proposed changes would become a warrant article for Annual Town Meeting in March.

After some general discussion about these proposed changes, Mr. Colasante called for a motion to approve them.

**MOTION:**

Ms. Amick moved to submit a warrant article to the Selectmen regarding changes to Section 4.5 (Business Uses) of the Zoning Bylaw.

Ms. Hamilton seconded the motion.

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

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

**October 8 Meeting Minutes**

Mr. Colasante called for a motion to approve the October 8 meeting minutes.

**MOTION:**

Ms. Amick moved to approve the minutes of the October 8, 2015 meeting, as amended.

Mr. Dearing seconded the motion.

Voting in favor: Colasante, Amick, Dearing, and Hamilton

Voting against: None

Abstained: Puntillo

The motion carried, 4-0-1.

**November 12 Meeting Minutes**

Mr. Colasante called for a motion to approve the November 12 meeting minutes.

**MOTION:**

Ms. Amick moved to approve the minutes of the November 12, 2015 meeting, as amended.

Ms. Hamilton seconded the motion.

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

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

**November 19 Meeting Minutes**

Mr. Colasante commented that there were not enough members present tonight who were present at the November 19 meeting to approve the minutes, so they would instead have to be voted on at the next meeting.

**Adjournment**

Mr. Colasante called for a motion to adjourn the meeting.

**MOTION:**

Ms. Amick moved to adjourn the meeting.

Mr. Dearing seconded the motion.

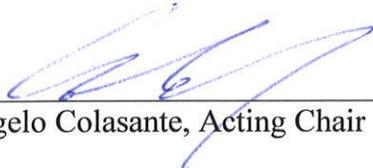
Voting in favor: Colasante, Amick, Dearing, Puntillo, and Hamilton

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

The meeting adjourned at 10:50 PM.

  
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Angelo Colasante, Acting Chair      Date      1-7-16

Respectfully Submitted,

Scott Gould  
ZBA Assistant