ZONING BOARD OF APPEALS
MINUTES OF MEETING
FEBRUARY 27, 2014

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

PRESENT: Angelo Colasante, Chair; Jeffrey Cohen, Vice Chair; Jeffrey Dearing, Acting Clerk; Todd Crowley; Michelle Puntillo

ABSENT: Carol Amick, Clerk; Donald Drouin

Mr. Cohen introduced himself and explained that he would be serving as Acting Chair for approximately the first hour of the meeting, as Mr. Colasante would be arriving an hour late. He read the emergency evacuation notice, and the Zoning Board of Appeals (ZBA) members and assistant introduced himself.

Mr. Cohen explained to the petitioners that there was a four-member Board for this meeting, which meant that any positive vote must be unanimous. He said that in this situation the Board always allowed the applicants the option of continuing to another night when a five-member quorum would be present, at which time one dissenting vote would be allowed out of the five. He noted that the petitioners could also wait until Mr. Colasante arrived in an hour.

PRESENTATION: Mr. Dearing, Acting Clerk, read the notice of the hearing.

PETITION #021-14 – Dana Strayton, for Prince Street Café & Bakery, at 200 Great Road, seeks a Special Permit per Article 39.4 Section 3(Q) of the Sign By-Law to allow movable freestanding sign.

Ms. Strayton introduced herself and said that she would like to move forward with a four-member quorum. She explained that she was applying for a movable freestanding sign, which was now allowed under a new section of the Sign By-Law that had been approved at Town Meeting this past autumn. She noted that a photograph of the sign had been included in the application packet, along with a GIS printout showing the sign's primary location and a "snow" location, in case it had to be moved in the event of weather; she added that the primary location would be the same as it had been for the past year.

Mr. Cohen said that this was the first Special Permit application to the Board under the new section of the Sign By-Law, and this section states that all movable freestanding signs, if granted, must have the following two conditions:

1) In the event that the Sign By-Law requirements for movable freestanding signs become more restrictive in the future, this movable freestanding sign shall be brought into compliance with the most recent edition of the By-Law immediately upon its enactment;

2) The Special Permit shall run with the particular business, not the property where the business is located.

Ms. Strayton said she was aware of those conditions and was amenable to them.

Mr. Dearing asked whether there were dimensional requirements for such signs.
Mr. Cohen said he believed that there were, and if this sign did not comply with them, the Code Enforcement Director would make the applicant aware of it.

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

DELIBERATIONS:

Mr. Cohen stated that the new section of the Sign By-Law allowed movable freestanding signs by a Special Permit from the Board, and the two requirements of a Special Permit were that the sign was not substantially more detrimental or injurious to the neighborhood and was in keeping with the intent and purpose of the By-Law. He said the applicant had been made aware of the conditions for the sign, and he felt this sign met those two requirements. The other Board members agreed.

MOTION:

Mr. Dearing moved to grant to Dana Strayton, for Prince Street Café & Bakery, at 200 Great Road, a Special Permit per Article 39.4 Section 3(Q) of the Sign By-Law to allow movable freestanding sign, substantially as shown on Exhibits A and B and subject to the following conditions:

1) In the event that the Sign By-Law requirements for movable freestanding signs become more restrictive in the future, this movable freestanding sign shall be brought into compliance with the most recent edition of the By-Law immediately upon its enactment;

2) The Special Permit shall run with the particular business, not the property where the business is located.

Ms. Puntillo seconded the motion.

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

The motion carried unanimously, 4-0-0.

Mr. Cohen 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.

PRESENTATION: Mr. Dearing, Acting Clerk, read the notice of the hearing.

PETITION #023-14 – David Brundage, for Oracle, at 100 Crosby Drive, seeks a modification to Special Permit #032-10 and seeks a Special Permit per Section 39.5 Section 1(C) of the Sign By-Law to internally illuminate wall sign.

David Brundage greeted the Board and stated that he felt comfortable moving forward with a four-member quorum. He said that he had been notified the week before that there was a new condition of the Sign By-Law requiring calculations signed and sealed by a Massachusetts engineer. He said he now had that letter and handed it out to the Board members.

Mr. Brundage explained that Oracle recently purchased Acme Packet, the previous tenant at this building which had been granted a Special Permit a few years ago to allow an oversized wall sign above the first floor. He said that Oracle proposed replacing that wall sign with a new, internally illuminated sign in the same place. He noted that the application packet included a schematic drawing of the sign, along with details of the dimensions and color. He added that this site was set far back in the Industrial Zone, with limited viewpoints from all angles, so an illuminated sign was necessary for any semblance of company visibility.

Mr. Crowley asked whether the sign would be on a timer to ensure that the illumination would be off during the hours of 11:00 PM and 6:00 AM, as required by the Sign By-Law. Mr. Brundage stated that it would.

Mr. Brundage talked about the technical details of the sign, and assured the Board that the illumination would not exceed the 50 foot lamberts allowed under the By-Law.

Mr. Cohen opened the hearing to the public.

James O'Neil, of 21 Clark Road, said that when the Sign By-Law Review Committee (SBRC) created the new section of the By-Law that allowed internal illumination, the language "Any illumination on Wall Signs must be white in color" was carried over from the section regarding externally illuminated signs. He said he believed the intention of the Committee was that that language would also apply to internally illuminated signs. Mr. Cohen said that Mr. O'Neil must have assumed incorrectly, because the white light mentioned in the By-Law was for externally illuminated signs, and it was never the intent of the SBRC that internally illuminated signs be limited to white light.

Mr. Cohen explained to the applicant that the new Sign By-Law required the following condition to be placed on the Special Permit for all internally illuminated signs: "In the event that the Sign By-Law requirements for internally illuminated signs become more restrictive in the future, this internally illuminated sign shall be brought into compliance with the most recent edition of the By-Law within a period of one year from its enactment." Mr. Brundage said he had no problem with that condition.

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

DELIBERATIONS:

Mr. Cohen said that the two requirements of a Special Permit were that the sign was not substantially more detrimental or injurious to the neighborhood and was in keeping with the intent and purpose of the By-Law. He said that Mr. O'Neil's comment was acknowledged, but he personally felt that the light of this sign was appropriate and that the sign met the two conditions of the Special Permit. The other Board members agreed.

MOTION:

Mr. Dearing moved to grant to David Brundage, for Oracle, at 100 Crosby Drive, a modification to Special Permit #032-10 and seeks a Special Permit per Section 39.5 Section 1(C) of the Sign By-Law to internally illuminate wall sign, substantially as shown on Exhibits A through G and contingent on the following conditions:

1) That the illumination be on a timer to ensure that the sign is not illuminated between the hours of 11:00 PM and 6:00 AM;

2) In the event that the Sign By-Law requirements for internally illuminated signs become more restrictive in the future, this internally illuminated sign shall be brought into compliance with the most recent edition of the By-Law within a period of one year from its enactment.

Mr. Crowley seconded the motion.

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

The motion carried unanimously, 4-0-0.

Mr. Cohen 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 apply for a Sign Permit at the Code Enforcement Department.

PRESENTATION: Mr. Dearing, Acting Clerk, read the notice of the hearing.

PETITION #024-14 – BSC Group, for Tremview Investments, LLC, at 201 Burlington Road, seeks a Special Permit per Section 7.4.3 of the Zoning By-Law to increase number of parking spaces from 411 to 438.

Steven Martorano, of BSC Group, greeted the Board and explained that this application was part of a larger plan to renovate the site at 201 Burlington Road. He referenced BSC

Group's cover letter, which reads: "The approximate 135,000 square foot building on the subject property has been partially or completely vacant for an extended period of time and is currently under new ownership. An aggressive redevelopment program is currently underway to reposition this property from its former R&D/flex use to Class A office. A 'demo-to-structure' redevelopment program is being executed, with a projected completion date of June 2014. The building is being re-skinned...and will receive all-new, energy-efficient, mechanical and HVAC systems."

Mr. Martorano stated that the relief they seek tonight is for parking, under Section 7.4.3 of the Zoning By-law. He said that the site was currently approved for 411 spaces and the proposal was to add 49 more to bring the total up to 460 spaces. He stated that they would not be expanding the footprint of the parking area, and all of the spaces would be added within the existing footprint. He explained that this project was approved by the Conservation Commission the night before and would also be getting a Site Plan Review by the Planning Board within the next month.

Mr. Cohen said it appeared that the proposal did not involve adding any more pavement. Mr. Martorano said that was correct; he added that the plan was to reduce over 5,000 square feet of impervious surface.

Todd Freemont Smith, of Tremview Investments, LLC, introduced himself and talked about the site, noting that it contained a vacant office building and was located across from the MITRE property. He said this part of Bedford was valuable for commercial and industrial buildings, and he hoped to turn this into a Class-A office building. He noted that the market demanded more parking, and many buyers don't even want to look at buildings that have as little parking as this site currently has, so it was necessary for the growth of this site to add parking.

Mr. Martorano stated that this site was one of the best-served sites in Bedford from a transportation perspective. He said that the entrance leads to a signalized intersection shared with the MITRE entrance. He noted that it is also quite close to Crosby Drive and Middlesex Turnpike, both of which have recently been widened.

At this time, Mr. Colasante arrived at the meeting.

Mr. Martorano talked about the environmental issues at the site, and discussed how this renovation would help remove the invasive bittersweet near Vine Brook and add more stormwater management within the property. He said that BSC Group was comfortable that it found a way not only to add parking but also improve the aesthetics and environmental nature of the site.

Ms. Puntillo asked whether there was a backup plan if it turned out this was still not enough parking. Mr. Freemont-Smith said that it would not be a problem because a tenant would not purchase the property if the parking wasn't adequate for the tenant's needs.

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

DELIBERATIONS:

Mr. Cohen noted that, since Mr. Colasante arrived in the middle of the hearing, he would not vote for this application, so the voting members would be himself, Mr. Dearing, Mr. Crowley, and Ms. Puntillo.

Mr. Cohen stated that this was a Special Permit application, and as such it must meet the conditions that the project was not substantially more detrimental or injurious to the neighborhood and was in keeping with the intent and purpose of the By-Law. He said he felt this was a reasonable plan, especially since the applicants worked within the confines of the existing parking footprint and decreased the impervious surface. The other Board members agreed.

MOTION:

Mr. Dearing moved to grant to BSC Group, for Tremview Investments, LLC, at 201 Burlington Road, a Special Permit per Section 7.4.3 of the Zoning By-Law to increase number of parking spaces from 411 to 460, substantially as shown on Exhibits A and B.

Mr. Crowley seconded the motion.

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

The motion carried unanimously, 4-0-0.

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.

Mr. Colasante said he looked forward to having a viable new tenant in Bedford, and wished the applicants luck with the project. The applicants thanked the Board members for their time.

PRESENTATION: Mr. Dearing, Acting Clerk, read the notice of the hearing.

PETITION #010-14 – CONTINUATION – Jennifer Soillis, at 330 South Road, seeks a modification to Special Permit #050-93 to allow commercial kitchen for wholesale baking.

Mr. Colasante read into the record a letter from Pamela Brown, Esq., signed and dated February 25, 2014, requesting a continuation to the March 13 meeting date.

Mr. Colasante called for a motion to continue the hearing.

MOTION:

Mr. Cohen moved to continue Jennifer Soillis, at 330 South Road, seeking a modification to Special Permit #050-93 to allow commercial kitchen for wholesale baking to March 13, 2014 at 7:30 PM.

Mr. Dearing seconded the motion.

Voting in favor: Colasante, Cohen, Dearing, Crowley, and Puntillo
Voting against: None
Abstained: None

The motion carried unanimously, 5-0-0.

PRESENTATION: Mr. Dearing, Acting Clerk, read the notice of the hearing.

PETITION #020-14 – Pamela Brown, Esq., for Hampton Inn, at 49 Middlesex Turnpike, seeks a Special Permit per Article 39.5 Section A(1) to internally illuminate freestanding sign and per Article 39.5 Section 3 to allow illumination to remain on between the hours of 11:00 PM and 6:00 AM.

Pamela Brown, Esq., greeted the Board and stated that she was here on behalf of the Hampton Inn, a parcel located in Billerica but with a sign located in Bedford. She explained that she had been here several years ago and received a Special Permit for 24-hour external illumination of the hotel sign, but the sign has been relocated with the reconstruction of Middlesex Turnpike. She said this is, therefore, a new petition under the new section of the Sign By-Law for internal sign illumination. She noted that the sign itself was fully conforming to the By-Law, in that it was 100 square feet in size and was located 10 feet from the property line, so the only aspects of the signage that needed ZBA relief was the internal illumination and the allowance of the sign to be lit for 24 hours.

There was discussion about the sign illumination and the letter of certification from the engineer regarding the details of the lighting. Mr. Cohen noted that the engineer's letter states that the sign "will" comply, not that it currently does comply. Ms. Brown said that the engineer told her that he cannot complete the required calculations until the sign has been installed. Mr. Cohen asked whether she would object to the Special Permit being conditioned upon the lighting engineer's post certification that it complied with the maximum illumination allowed under the Sign By-Law. Ms. Brown replied that she would not object.

Mr. Cohen explained to the applicant that the new Sign By-Law required the following condition to be placed on the Special Permit for all internally illuminated signs: "In the

event that the Sign By-Law requirements for internally illuminated signs become more restrictive in the future, this internally illuminated sign shall be brought into compliance with the most recent edition of the By-Law within a period of one year from its enactment." Ms. Brown said she was aware of that condition and had no issues with it.

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 stated that this was a Special Permit request, and the requirements for a Special Permit were that the sign illumination was not substantially more detrimental or injurious to the neighborhood and was in keeping with the intent and purpose of the By-Law. He said he felt this application met those requirements, especially since the sign was located in an industrial neighborhood. He noted that he had no problem with the sign being illuminated between the hours of 11:00 PM and 6:00 AM, because 24-hour illumination was necessary for a hotel. The other Board members agreed.

For clarification, Ms. Puntillo asked whether the Heritage or Village at Bedford Woods residences were near this site. Ms. Brown said those residences were set far back from this site, so overspill wouldn't be an issue. Mr. Cohen said that there was actually less overspill from internal illumination than from external, so he was not concerned about the residences along Middlesex Turnpike.

MOTION:

Mr. Dearing moved to grant to Pamela Brown, Esq., for Hampton Inn, at 49 Middlesex Turnpike, a Special Permit per Article 39.5 Section A(1) to internally illuminate freestanding sign and per Article 39.5 Section 3 to allow illumination to remain on between the hours of 11:00 PM and 6:00 AM, and subject to the following two conditions:

1) The lighting engineer will provide post certification that the sign illumination complies with the maximum illumination allowed under the Sign By-Law.

2) In the event that the Sign By-Law requirements for internally illuminated signs become more restrictive in the future, this internally illuminated sign shall be brought into compliance with the most recent edition of the By-Law within a period of one year from its enactment.

Mr. Cohen seconded the motion.

Voting in favor: Colasante, Cohen, Dearing, Crowley, and Puntillo
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 applicant may apply for a Sign Permit at the Code Enforcement Department.

PRESENTATION: Mr. Dearing, Acting Clerk, read the notice of the hearing.

PETITION #022-14 – Pamela Brown, Esq., for 251 Concord Road, seeks to modify conditions of Variance #019-12 to allow construction of a home greater than 2,400 square feet with a side yard of less than 35 feet.

Pamela Brown, Esq., greeted the Board and introduced Carla Brown, the new owner of 251 Concord Road. Ms. Brown explained that, in 2012, the ZBA granted a Variance from dimensional requirements of the Zoning By-Law to permit non-conforming lot area, frontage, and lot width to allow a new home. She stated that the Variance decision included a condition that the house to be constructed would be limited to 2,400 square feet of living space; she asserted that the 2,400 square feet number came from an expired Special Permit from 2005 and was carried over to this decision. She noted that a second Variance condition required the building setback on 251 Concord Road to be 35 feet from the rear of Lot 247.

Ms. Brown said that Carla Brown bought the property thinking she could work within the confines of the Variance requirements, but has recently found a house plan she loves that would require relief from the setback and footprint requirements. She handed out a floor plan of the type of home that Carla Brown would like to build on the property and stated that the proposed house was larger than 2,400 square feet and would be difficult to place within the setbacks.

Mr. Dearing said that when the Board rules on a Variance, it usually has a specific design to approve or deny; he said it was very strange having a generic plan that may or may not be built. Ms. Brown said she only wanted to allow Carla Brown some "wiggle room" in terms of the design and placement of the house on the lot.

The Board talked with Ms. Brown about the shape and topography of the lot, and how a house might fit onto it within the setbacks. When the Board members expressed concern about altering the setbacks agreed upon previously, Ms. Brown noted that the setback was not as important to her and her client as the size of the house; she added that, in terms of modern construction, 2,400 square feet was rather small.

There was dialogue about what kind of relief was being sought. Mr. Colasante said he didn't know whether this called for a new Variance, a modification of the Variance, or a finding; he said he also didn't know whether the Variance test still applied for a modification. Ms. Brown said she felt this was a Variance modification, and the Board only needed to modify the setbacks of the existing Variance.

Mr. Colasante opened the hearing to the public.

Lorna Hyland, of 29 Selfridge Road, said that this proposal seemed quite vague. She said they wanted to build a house larger than the approved 2,400 square feet, but it may or may not be a house that is 3,108 square feet. Ms. Brown explained that the proposed house plan was most likely the house that would be built, but she was asking for up to 3,200 square feet just to allow for incremental design changes.

Mona Barck, of 1 Ten Acre Drive, asked whether the front door and façade of the proposed house would face Concord Road. Ms. Brown replied that it would.

Mr. Cohen asked whether there would be any vehicular access through Ten Acre Drive. Ms. Brown said there would not.

Ms. Hyland asked whether the 3,200 square feet included garage space. Ms. Brown replied that the 3,200 square feet included living space only, which did not include the garage.

There was further conversation with the neighbors and the applicants about the size and visibility of the proposed house, along with setbacks and parking.

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

DELIBERATIONS:

Mr. Colasante said that he did not feel comfortable altering the setbacks that were set forth in the original Variance, and he would therefore not vote in favor of amending the setbacks; however, he would not have a problem allowing a larger home. He said that 3,200 square feet was not by any means a "McMansion" and would not, in his opinion, look out of place in this neighborhood.

Mr. Cohen said that he had never been much in favor of limiting the size of homes, especially since the Zoning By-Law did not have a Floor Area Ratio. He said that he did not feel that a 3,200 square foot home on a 27,000 square foot lot was unreasonable, so he was in favor of granting it, but he did agree that the setback should be respected. Mr. Dearing and Mr. Crowley both agreed.

Ms. Puntillo said that the lot was not particularly small, so she didn't have a problem with increasing the size of the house to 3,200 square feet. She said she agreed with the other members that she would not vote in favor of altering the previously agreed upon setback.

There was further discussion about whether to grant a Variance modification or a finding. Mr. Cohen suggested the Board make a finding that enlarging the footprint of the proposed house from 2,400 square feet to 3,200 square feet is in keeping with the intent of the original Variance decision, and make another finding that altering the setback is in keeping with the intent of the original Variance decision, and then vote either in favor of

or against each. The other Board members agreed that that seemed to be a reasonable way to proceed.

MOTION:

Mr. Dearing moved that the Board make a finding that enlarging the footprint at 251 Concord Road to allow an increase in area of greater than 2,400 square feet is in keeping with the intent and purpose of the By-Law and the intent of the original Variance (#019-12), and that the Board allow the new home to be no larger than 3,200 square feet.

Mr. Crowley seconded the motion.

Voting in favor: Colasante, Cohen, Dearing, Crowley, and Puntillo
Voting against: None
Abstained: None

The motion carried unanimously, 5-0-0.

MOTION:

Mr. Dearing moved that the board find in favor of modifying the condition of Variance #019-12 to allow construction of home at 251 Concord Road with a side yard setback of less than 35 feet, based on the finding that side yard of less than 35 feet is in keeping with intent of variance.

Ms. Puntillo seconded the motion.

Voting in favor: None
Voting against: Colasante, Cohen, Dearing, Crowley, and Puntillo
Abstained: None

The motion did not carry, 0-5-0.

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. He noted that the other conditions of the original Variance were still in place.

BUSINESS MEETING:

January 23 Meeting Minutes

Mr. Cohen moved to accept the minutes of the January 23 meeting as amended.

Mr. Dearing seconded the motion.

Voting in favor: Colasante, Cohen, Dearing, Crowley, and Puntillo
Voting against: None
Abstained: None

The motion carried unanimously, 5-0-0.

285 Great Road

Mr. Colasante said that the Selectmen sent a letter to MassDOT regarding the bike lanes at the Travel Lodge site at 285 Great Road, at which the Board had recently granted a Special Permit to allow a bank/retail use building. He said he was very disappointed that the Selectmen's letter only reflected the potential negatives of the new site that the Board approved, not any of the positives that were considered at the ZBA hearing. Mr. Cohen said he had drafted a letter of response to the Selectmen. He asked the other members to read it and vote on whether they wanted to approve it.

After the Board members were given time to read and discuss the letter, Mr. Colasante called for a motion to approve sending it to the Selectmen.

MOTION:

Mr. Cohen moved that the Zoning Board send the Board of Selectmen the letter to express concerns of the letter they sent to MassDOT and authorizes the ZBA Chair to sign on behalf of the Zoning Board.

Ms. Puntillo seconded the motion.

Voting in favor: Colasante, Cohen, Dearing, Crowley, and Puntillo
Voting against: None
Abstained: None

The motion carried unanimously, 5-0-0.

Adjournment

Mr. Cohen moved to adjourn the meeting.

Mr. Dearing seconded the motion.

Voting in favor: Colasante, Cohen, Dearing, Crowley, and Puntillo
Voting against: None
Abstained: None

The motion carried unanimously, 5-0-0.

The meeting adjourned at 10:55 PM.

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Angelo Colasante, Chair Date

Respectfully Submitted,

Scott Gould
ZBA Assistant