

**ZONING BOARD OF APPEALS  
MINUTES OF MEETING  
MARCH 22, 2012**

Town of Bedford  
Bedford Town Hall  
Lower Level Conference Room

**PRESENT:** Angelo Colasante, Chair; Kenneth Gordon, Vice Chair; Brian Gildea, Clerk; Jeffrey Dearing; Carol Amick; Todd Crowley

**ABSENT:** Jeffrey Cohen; Stephen Henning

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

**PRESENTATION:** Mr. Gildea read the notice of the hearing.

**PETITION #019-12** – Pamela Brown, Esq. seeks a Variance per Section 14.7 of the Zoning By-Law to create two non-conforming lots at 247 and 251 Concord Road.

Ms. Brown greeted the Board and stated that she was before the Board in 2010 for a Variance to allow the creation of two slightly non-conforming lots, which would each contain an existing legal house; the houses in question, at 247 and 251 Concord Road, were created in 1914 and 1900, respectively. She talked about the history of the lots, noting that the Planning Board approved an Approval Not Required (ANR) plan in 2004 to subdivide the land into two lots. She read from her application cover letter, which states:

“While the statutes of the Commonwealth [of Massachusetts] have for years allowed such a division, the Zoning Act was never amended to avoid a resulting zoning non-compliance. The property was non-conforming prior to the lot division, in that it contained multiple dwellings on a lot. The lot division eliminated the original non-conformity but created new non-conformities, triggering the necessity of a Variance.”

Ms. Brown said that the house at 251 Concord Road is not currently inhabitable, is in a state of disrepair and is not up to Code. She said that she recently applied for a Building Permit to repair the house but Christopher Laskey, the Code Enforcement Director, felt ambivalent issuing a permit with all the questions remaining regarding the land, so he suggested she go to the Zoning Board for a Variance to allow the two lots to continue existing in their current non-conforming capacity. Ms. Brown explained that Mr. Laskey had requested an opinion of Town Counsel on whether or not the Board should grant a Variance or Special Permit for this application. Town Counsel responded to that request with a ten-page opinion (see attachment) that discusses several cases, none of which is precedential and some of which are possibly inconsistent (This was entered into the

record as Exhibit B). She said that Town Counsel's opinion supported both the grant of a Variance *or* a Special Permit.

Ms. Brown stated that Section 14.7 of the Bedford Zoning By-Law allows the Board members to grant a Variance so long as they feel that the application meets certain requirements, often referred to as a "Variance test." She went through the pieces of the Variance test, which she had outlined in the application cover letter:

- The circumstances relating to the structures and shape of the land
- Especially affecting the land but not the Zoning District
- Literal enforcement of the By-Law creates a hardship
- No detriment to the neighborhood
- No substantial derogation from the intent or purpose of the By-Law

Ms. Brown said that, as she wrote in her letter, she believes that this application meets all these requirements.

The ZBA members examined the site plan of the parcels in question and the surrounding properties. Ms. Brown was asked to clarify the nature of the building permit request. She explained that the current request for a building permit was only to perform minimal repairs to the uninhabited house but that no the work involved no additions or alterations to the existing structure.

Mr. Dearing said that granting a Variance for this would also require any future applicant to need a Variance to make any additions to the house, rather than a Special Permit. Ms. Brown said that was correct. Mr. Gordon said it seems to him that this granting a Variance wouldn't pass protective judgment on the lots as they stand so much as remove the cloud of a Special Permit from the proceedings; it will be a Variance to recognize two non-conforming lots as legal, Town-approved non-conforming lots.

Mr. Colasante asked where the primary access to the lot would be. Ms. Brown replied that it would be through the opening on Ten Acre Drive.

There was extensive conversation about the history and layout of the two lots, including the fence along the easement connecting Ten Acre Drive to the 251 Concord Road lot.

Mr. Colasante opened the hearing to the public.

Alan Mironer, of 269 Concord Road, said he lives at the corner of Ten Acre Drive and asked whether any of the land at 267 Concord Road will be taken to be used as an easement or access to the lots in question. Ms. Brown explained that they will be using the existing easement and no land will be exchanged, added, or taken as part of this application. She noted that the Variance is only to allow the continued use of these parcels for the exact same purpose that they are now, and no one but the Registry of Deeds will notice any difference.

Mona Barck, of 1 Ten Acre Drive, said she has been following the applications for these lots for many years. She said that at the last Zoning Board meeting, over a year ago, the

Browns proposed to demolish the existing house at 251 Concord Road and build a new home that was much larger – over 3,000 square feet. Ms. Brown said that that is no longer the plan, and the Variance they are now seeking is only to allow a renovation of the existing home.

Ms. Barck talked with Ms. Brown about the easement and what areas will be paved and/or used for access.

Mr. Dearing asked what would happen if the Board votes against this Variance. Ms. Brown said that the 251 Concord Road property essentially would become null and void, leaving a vacant house without any means to even renovate it, let alone occupy it.

Mr. Colasante noted that, before he closes the public hearing, he would like to add Town Counsel's ten-page opinion letter to be added to the record.

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

#### **DELIBERATIONS:**

There was extensive conversation about Town Counsel's opinion letter and what the Board should grant to put this application to rest – a Special Permit, a Variance, or a Finding.

Mr. Dearing said that it seems to him that the best way to handle this situation is in fact with a Variance, as that will require any future changes to the house to also need a Variance.

Ms. Amick said she was uncomfortable granting a Variance for these lots, especially since she is unsure of whether the Town can enforce any conditions for a Variance given for such a peculiar situation.

Mr. Gildea said he is also uncomfortable with a Variance, in particular because he believed any hardship on the land was created by the owners and therefore he doesn't feel that the application passes the Variance test. He said he would prefer that the Board make a finding that the lot is pre-existing non-conforming and would either require a Special Permit if any addition or intensification of the non-conformity is ever proposed, or if no intensification of the non-conformity then no action of the Board would be needed. Mr. Gildea cited the last paragraph of Town Counsel's opinion for support of this position. In this case Mr. Gildea expressed the view that because the building permit request did not seek to intensify the non-conformity, no action by the Board was required.

The Board talked about the fence along the easement from Ten Acre Drive. Mr. Gordon and Mr. Colasante said they would like to see a fence installed on both sides of that easement for public safety purposes, and have the applicants maintain any sections of fence that are existing. Mr. Dearing expressed the view that the fencing was

unnecessary. Applicant agreed to that the requested fencing would be a condition of the Variance.

The ZBA members discussed other potential conditions for the Variance, including limiting the size of any future additions or house on the lot at 251 Concord Road. The applicant agreed to limit the size to 2,400 square feet as a condition of the Variance.

There was further discussion about conditions for a Variance. Given that the lot at 251 sits directly behind the lot at 247, the Board request and applicant agreed to a condition that a minimum 35 foot setback be maintained from rear of lot 247. The Board requested and applicant agreed that if required by the Town for any reason, it would be a condition of the variance that applicants maintain access to Concord Road.

With the discussion of conditions completed, Mr. Colasante requested a motion.

**MOTION:**

Mr. Gildea moved to grant to Pamela Brown, Esq. a Variance per Section 14.7 of the Zoning By-Law to create two non-conforming lots at 247 and 251 Concord Road, substantially as shown on Exhibit A and subject to the following conditions: 1) Size of house on lot 251 will be limited to 2,400 square feet, and any proposed addition or change to house that makes it larger must first come to the Zoning Board; 2) A minimum 35 foot setback will be maintained from rear of lot 247; 3) Applicant shall install and/or maintain a fence, approximately 200 feet long, southerly along N/F Barck property line and maintain the existing fence along northerly easement line of lot 3B as well as install and maintain fence northerly along N/F Burri property line; 4) If required by the Town, applicants will maintain access to Concord Road.

Mr. Gordon seconded the motion.

Voting in favor: Colasante, Gordon, and Dearing

Voting against: Gildea and Amick

Abstained: None

The motion did not carry, 3-2-0.

Ms. Brown said that the only course of action left for the Board that will allow the applicants to do any work on the house is to make a finding. There was discussion about the wording and legal ramifications of a finding. Ms. Brown said it was very disappointing that the Board went through all the trouble of working out the conditions and then not granting the Variance, because a finding will not be nearly as effective – either to the Town or to the applicant – as the Variance would have been. Mr. Colasante agreed that it was disappointing, after all the work that went into creating the conditions, to see the Variance denied.

Ms. Amick said that the Variance concerned her because she didn't feel there was any way for those conditions to be legally binding, or to ensure that the applicants will follow them. Ms. Brown stated that she would be happy to write an agreement to those conditions that would be stated into the record. After further discussion, Ms. Amick stated that she would be willing to reconsider her position on the motion for a Variance if Ms. Brown were to write up such an agreement and have it included as an exhibit.

The Board considered protocol for a new vote. Mr. Dearing said the Board would first have to move to reconsider the vote, and the motion would need to be made by someone who had voted against the original motion.

Ms. Brown created said agreement that was requested by Ms. Amick and it was entered into the record as Exhibit C.

**MOTION:**

Ms. Amick moved for a reconsideration of the following vote:

*Mr. Gildea moved to grant to Pamela Brown, Esq. a Variance per Section 14.7 of the Zoning By-Law to create two non-conforming lots at 247 and 251 Concord Road, substantially as shown on Exhibit A and subject to the following conditions: 1) Size of house on lot 251 will be limited to 2,400 square feet, and any proposed addition or change to house that makes it larger must first come to the Zoning Board; 2) A minimum 35 foot setback will be maintained from rear of lot 247; 3) Applicant shall install and/or maintain a fence, approximately 200 feet long, southerly along N/F Barck property line and maintain the existing fence along northerly easement line of lot 3B as well as install and maintain fence northerly along N/F Burri property line; 4) If required by the Town, applicants will maintain access to Concord Road.*

*Mr. Gordon seconded the motion.*

*Voting in favor: Colasante, Gordon, and Dearing*

*Voting against: Gildea and Amick*

*Abstained: None*

Mr. Dearing seconded the motion to reconsider the previous vote.

Voting in favor of reconsideration: Colasante, Gordon, Gildea, Dearing, and Amick

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Colasante said that, per Ms. Amick's suggestion, a new vote would include a written agreement from Ms. Brown that all the conditions set forth will be followed and upheld by the applicants.

Mr. Gildea read Exhibit C and expressed his view that it was consistent with what the Board was expecting.

**MOTION:**

Mr. Gildea moved to grant to Pamela Brown, Esq. a Variance per Section 14.7 of the Zoning By-Law to create two non-conforming lots at 247 and 251 Concord Road, substantially as shown on Exhibit A and subject to the following conditions: 1) Size of house on lot 251 will be limited to 2,400 square feet, and any proposed addition or change to house that makes it larger must first come to the Zoning Board; 2) A minimum 35 foot setback will be maintained from rear of lot 247; 3) Applicant shall install and/or maintain a fence, approximately 200 feet long, southerly along N/F Barck property line and maintain the existing fence along northerly easement line of lot 3B as well as install and maintain fence northerly along N/F Burri property line; and 4) If required by the Town, applicants will maintain access to Concord Road; all conditions being substantially memorialized in Exhibit C.

Mr. Dearing seconded the motion.

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

Voting against: Gildea

Abstained: None

The motion carried, 4-1-0.

Mr. Colasante explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision recorded at the Registry of Deeds. Once the decision is recorded, the applicant may proceed with the originally submitted Building Permit at the Code Enforcement Department.

Ms. Brown thanked the Board members for their time and for working out a solution with her.

**PRESENTATION:** Mr. Gildea read the notice of the hearing.

**PETITION #020-12** – Pamela Brown, Esq., for Life Technologies, at 2 Preston Court, seeks a Special Permit per Article 40.4 Section 3(H) of the Sign By-Law to allow a non-exempt flag.

Mr. Gildea said that he had to recuse himself from this hearing, as he had previously been employed by Life Technologies. Mr. Colasante said that the voting members would now be himself, Mr. Gordon, Mr. Dearing, Ms. Amick, and Mr. Crowley.

Ms. Brown stated that Life Technologies, at 2 Preston Court, recently has been awarded a great honor and given official recognition by OSHA as a “Star Worksite.” She said that the company has recently erected three flagpoles and will be erecting two flags by right – the United States flag and the Commonwealth of Massachusetts flag – and hopes to erect a third flag, which is shown in the application packet. Ms. Brown said that the proposed flag reads “STAR WORKSITE” at the top with “VPP” underneath, and the flag is in keeping with the dimensions required under the Sign By-Law. She said the flag will also be seven feet in from the property line, which is over the five feet required in the Sign By-Law.

Ms. Brown explained that there is a second issue that the Board may or may not want to address tonight, regarding illumination. She said that these flags will be illuminated, and if the Board does consider a flag a sign, then it may want to address the issue of “sign illumination” with respect to the lighted flag. Mr. Colasante said he does not want to address any illumination tonight because it was not advertised and it is a separate issue.

Mr. Colasante asked the other members their opinion on how much power the Board has in this matter. He said that from his reading of the Sign By-Law, the Board cannot possibly grant this flag. He said that the language of the By-Law specifically reads:

*Each business may display one each flag of the United States of America, the Commonwealth of Massachusetts, and the Town of Bedford without Special Permit. Each such flag shall not be larger than twenty-four (24) square feet in area or six (6) feet in length. Additional flags may be flown upon grant of a Special Permit. Lettering on any flag for which a Special Permit may be granted shall be limited to the name of the institution, fraternal, organization, corporation, or business which is displaying the flag.*

Mr. Colasante said that in his opinion the language does not allow for any other wording on the flag besides the name of the business, and in this case the sign does not read “Life Technologies.” Ms. Amick agreed, but noted that perhaps the Board can find a way to determine that the proposal is a sign, not a flag, which may give more leeway.

Ms. Brown said that the entire purpose of appearing before the Zoning Board for a sign proposal is because the Board has the power to hear appeals and grant signs that will be a benefit to the neighborhood and to Bedford. She said that Section 2 of the Sign By-Law specifically refers to appeals and states that “a person aggrieved by the refusal of the Building Inspector to issue a permit for the erection of a sign or by any order of the Building Inspector under this bylaw may appeal to the Board of Appeals.” She said that Mr. Laskey made a determination, with which she doesn’t disagree, that this flag would need Zoning Board approval, but now she appears before the Board and finds out that there is no way the sign can be approved at all. Ms. Amick asked why she was told to

come before the Board with a proposal that the Board cannot grant. Mr. Laskey commented that he told Ms. Brown that she has every right to appear before the Board in an attempt to get the sign granted, as the members may have a different opinion or interpretation than his own, but he never told her anything along the lines of "Appear before the ZBA and your sign request will be granted." Ms. Brown agreed that Mr. Laskey never did say that, but she was under the impression that the Board could quite easily grant this petition, if not under Article 40.4 Section 3, then at least under Article 40.3 Section 2 for "Appeals."

Ms. Brown said that she finds it very difficult to believe that a company awarded such an honor as an OSHA Star Worksite is not allowed to put this honor on a flag. Mr. Colasante agreed that it is a great honor but he believes the Board's hands are tied. Mr. Gordon agreed. Ms. Brown stated that Bedford's Sign By-Law does a great deal to limit business in Town, and she has heard from many business owners over the years how frustrating it is to have a business in Bedford with such strict sign regulations. She said it is the Board's responsibility to interpret the Sign By-Law in such a way that helps keep businesses in Bedford instead of driving them out. She stated that Life Technologies will be holding a ceremony this coming Saturday, at which officials from all over the world will be attending, and it will be an embarrassment to the company and to Bedford to not have the OSHA Star Worksite flag raised during the flag raising. Ms. Brown said that a permit is not required for a flagpole, and the flagpoles themselves are already up; she noted that Life Technologies may simply choose to fly the flag during the ceremony and pay the fine from the Code Enforcement Director, because it would be absurd to have two flags flying with three flagpoles standing.

Mr. Colasante said that the Sign By-Law may indeed be frustrating for businesses in certain situations, but if Life Technologies is not able to fly this flag, its business will in no way be limited. He stated that the By-Law specifically states that any business may feature its name on the flag, thereby ensuring that business is *not* limited, but this application is not for the business itself but for an honor given to that business. He added that there are other options to display this OSHA honor than flying a flag, and the business could always have a flag inside the building. Mr. Crowley agreed that he sees no way for the Board to allow this flag, given the parameters and restrictions under the By-Law. Mr. Gordon agreed that the applicants could certainly fly the flag inside the building and it would still clearly show the honor that has been awarded the company.

Mr. Colasante opened the hearing to the public.

Brian Gildea, of 31 Buehler Road, said that he would like to speak not as a Board member but as a member of the public, and he noted that the definition of a 'Flag' under Article 40.2 of the Sign By-Law reads as follows:

*A piece of cloth, often attached to a staff or flown from a flagpole with definite colors, patterns, or symbolic devices used as a national, state, municipal or institutional symbol, or to indicate membership in an organization.*

He pointed that this definition is somewhat inconsistent with the view that a permitted flag was limited to the name of the institution (i.e. Life Technologies) since the definitions permits a flag to include membership in an organization such as OSHA.

There was extensive discussion about the wording of the Sign By-Law and whether the flag could be classified as a sign. Mr. Gordon suggested that the wording on the flag could possibly be considered an “institutional symbol.” Mr. Colasante said that this application is very clearly for a flag, not a sign, so he sees no other possible interpretation.

Ms. Amick agreed that the Sign By-Law is indeed flawed, and there is a Sign By-Law Review Committee currently working towards improving it. She suggested that Ms. Brown tell the owners of Life Technologies to write a letter to the Bedford *Minuteman* about this situation in which they state that the By-Law needs to be changed and reworded. She said it is unfortunate that the By-Law is limiting in situations like this, but as the Chair and other members have pointed out, the Board is also limited in what it can allow.

After more conversation about the Sign By-Law Review Committee and the wording and limitations of the By-Law, Ms. Brown asked to withdraw her application without prejudice.

**MOTION:**

Mr. Gordon moved to withdraw without prejudice Pamela Brown, Esq., for Life Technologies, at 2 Preston Court, seeking a Special Permit per Article 40.4 Section 3(H) of the Sign By-Law to allow a non-exempt flag.

Mr. Dearing seconded the motion.

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

Voting against: None

Abstained: None

Recused: Gildea

The motion carried unanimously, 5-0-0.

Ms. Amick moved to adjourn the meeting.

Mr. Dearing seconded the motion.

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

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

4-5-12  
Date

Respectfully Submitted,

Scott Gould  
ZBA Assistant

Attachments:

- Cover letter from Pamela Brown, Esq., signed and dated February 29, 2012
- Letter from Town Counsel, signed and dated March 20, 2012