

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
MAY 24, 2012**

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

PRESENT: Angelo Colasante, Chair; Kenneth Gordon, Vice Chair; Brian Gildea, Clerk; Jeffrey Cohen; Jeffrey Dearing; Carol Amick; Stephen Henning

ABSENT: Todd Crowley

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

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

PETITION #028-12 – Center Barber Styling, at 168 Great Road, seeks a Special Permit per Article 40.4 Section L of the Sign By-Law to illuminate existing barber pole.

Mr. Dearing stated that he has been a customer of Center Barber Styling for over 15 years and he therefore must recuse himself from this hearing.

Christopher Simone, one of the owners of Center Barber Styling, greeted the Board and explained that the barber shop at 168 Great Road has an existing red, white, and blue pole that he would like to illuminate. He stated that the barber pole is an iconic symbol of small businesses and small-town America, and part of that iconic image is the illumination of the pole. He said this illumination will be particularly helpful for cars passing through the plaza, to alert drivers that there is a barber shop there.

Mr. Colasante asked whether the shop is open at night. Mr. Simone replied that they are usually open until 5:00 PM, but they have been experimenting with opening the shop until 8:00 PM on Mondays.

Mr. Gordon asked what the dimensions of the barber pole were. Mr. Simone stated that the pole is 24 inches high and 6 inches wide.

The Board talked with Mr. Simone about how the pole is mounted and bracketed to the wall.

Mr. Colasante read the section of the Sign By-Law regarding barber poles, which reads:

Upon approval of a Special Permit by the Board of Appeals a traditional striped barber pole may be installed directly in front of a licensed barber shop. Said barber pole may be free standing or mounted on a wall, but in no event shall it

exceed nine (9) inches in diameter at its widest point or project more than twelve (12) inches beyond the face of the building nor shall it revolve or incorporate any moving parts. Said barber pole may be illuminated in accordance with the requirements of and limitations of Article V of this bylaw.

Mr. Colasante asked the applicant whether there were any moving or revolving parts inside the barber pole. Mr. Simone replied that there was a small section in the middle that spun and made the pole revolve.

Mr. Gordon asked about the specifics of the illumination. Mr. Simone responded that it is a normal, incandescent, 15-watt light bulb. Ms. Amick noted that 15 watts is extremely dim, adding that a reading light is typically 40 watts.

The Board discussed the language and limitations of the Sign By-Law. Ms. Amick said she doesn't know that the Board can allow either the illumination or spinning of the pole, given the specificity of the By-Law.

Mr. Simone said he was only looking for a level playing ground with the other barbers in Town, especially since the shop at 200 Great Road has an illuminated pole and Supercuts has a very large illuminated sign.

Mr. Colasante opened the hearing to the public.

Pamela Brown, of 12 Sorens Way, suggested that the ZBA liaison to the Sign By-Law Review Committee bring up barber poles at a future meeting, so even if the Special Permit couldn't be granted tonight, the pole could spin and be illuminated as of right under the new By-Law.

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

DELIBERATIONS:

Mr. Colasante asked whether any of the Board members had specific concerns about the illumination of the barber pole. Mr. Henning said he had a concern, since the By-Law prohibits internal illumination. Mr. Colasante pointed out that the Board did grant a Special Permit in 1997 for the internal illumination of the barber pole at 200 Great Road. Mr. Cohen said that it should be noted that 1997 preceded the By-Laws prohibition on internally illuminated signs.

Mr. Simone reiterated that he only wanted the Board to do what was fair, especially since his business has been in Bedford since 1978 and the 200 Great Road barber shop which has a pole has only been there since 1997.

Mr. Colasante noted that the Sign By-Law language regarding barber poles references Article 5 of the By-Law, which specifically states, in Section 1(A): *Internally illuminated*

signs on the premises collectively total not more than fifteen thousand (15,000) initial rated lamp lumens. He said that, in his opinion, the writers of the Sign By-Law had written this section to allow certain types of internal illumination, and this barber pole was one those instances. He stated that, while the By-Law is very specific regarding the moving parts, the Board did have leeway to allow the internal illumination. Upon further reading of the By-Law, Mr. Gordon agreed.

Mr. Colasante said that the intent of the Sign By-Law in separating barber poles into their own section may have been to exclude barber poles from being classified as signs. Mr. Cohen said that he could agree with that interpretation, and he could support the illumination of this pole, although he could not vote in favor of the pole revolving.

Mr. Gildea agreed, stating that it was clear to him that the Board could not possibly allow the pole to revolve but he could side with the interpretation that the barber pole is considered separate from other signs under the By-Law. He suggested that the Board grant a Special Permit for the illumination only, with the condition that the pole not revolve. Mr. Colasante asked the applicant whether he wanted the Board to vote on the Special Permit with such a condition, or wanted to withdraw the application. Mr. Simone requested that the Board vote on the Special Permit with the condition that the pole not revolve.

MOTION:

Mr. Gildea moved to grant to Center Barber Styling, at 168 Great Road, a Special Permit per Article 40.4 Section L of the Sign By-Law to illuminate existing barber pole, as substantially shown on Exhibits A through F, subject to the condition that barber pole only be illuminated during regular business hours or per the hours set forth in the Sign By-Law, and also on the condition that the pole not revolve.

Mr. Gordon seconded the motion.

Voting in favor: Colasante, Gordon, Gildea, and Cohen

Voting against: Amick

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 apply for a Sign Permit at the Code Enforcement Department.

Mr. Simone thanked the Board members for their time and consideration.

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

PETITION #026-12 – CONTINUATION – David Patterson, 122 Page Road, seeks a Special Permit per Section 5.1.4 of the Zoning By-Law to park oversized commercial vehicle.

Pamela Brown, Esq., greeted the Board members and reminded them that, at the last meeting, she and Mr. Patterson were tasked with reaching out to the neighbors to come up with conditions that might help alleviate the neighbors' concerns about the parking of an oversized commercial vehicle. She said that they have had some success with that task and had a productive meeting with the neighbors. She explained that Mr. Patterson has removed all the water bottles and installed several sections of fencing along Dunster Road, both of which the neighbors wanted to see happen. She said there was a lengthy discussion about the screening of the truck, and Mr. Patterson agreed to screen it in any way that would make the abutters happy. Ms. Brown stated that they have also come up with a parking and screening plan, which she handed out to the Board members. She added that Mr. Patterson would also be perfectly amenable to a condition which states that the truck will never have any vehicles stored on it, and he will always bring the truck back to his shop in Billerica to drop off any towed vehicle before driving home.

Mr. Colasante asked whether the applicant's request was to only park the truck at his property during the weeks when he is on call with the Police Department or to park it there all the time. Ms. Brown said that their request is to allow Mr. Patterson to park the truck at his property all the time, with conditions for screening.

Mr. Gordon asked whether the applicants knew what towns the other two tow truck drivers who are on call for the Police Department operate in. Mr. Patterson replied that one of the drivers operates out of Bedford and the other is in Arlington.

Mr. Gordon talked in detail with the applicant about the times, dates, and duration of his towing jobs. Mr. Gordon stated that he received a copy of the Town's towing contract with Mr. Patterson and the list of all Town towing jobs that have been performed in the past year. He explained that he had made a spreadsheet compiling the data he researched (see attached), which showed that, in an average month, Mr. Patterson performs ten towing jobs for the Town of Bedford. He said that Mr. Patterson receives approximately \$75 to \$90 for each tow, and then paid \$10 back to the Town for insurance expenses; therefore, Mr. Patterson makes approximately \$800 a month for Bedford Police towing jobs, and a great deal less for night tow jobs. He noted that, at the last meeting, the applicant said it would cost anywhere from \$500 to \$700 to garage his vehicle at a commercial location in Bedford; he asked Mr. Patterson to confirm these numbers. Mr. Patterson said the numbers were correct. Mr. Gordon said that, keeping these numbers in mind, he saw that absolutely no one would pay that amount of money to garage his or her truck, because it would make no financial sense at all.

Mr. Dearing asked how tall the cab of the truck was. Ms. Brown replied that it is approximately 7.5 feet high. There was more conversation about the size, length, and height of the truck.

Mr. Colasante opened the hearing to the public.

Andy Murray, of 10 Dunster, stated that he was a direct abutter to Mr. Patterson's property. He said that the neighborhood meeting which Ms. Brown mentioned was poorly organized and consisted of the applicants knocking on neighbors' doors two nights before at 5:30 PM and gathering in the street. He stated that he was disappointed that a better effort was not made. He said that he appreciated Mr. Patterson's efforts to alleviate the neighbors' concerns about the aesthetics of the house by removing the water bottles and putting up the sections of fence, but ultimately those can't solve the problem of the oversized truck.

Mr. Murray said that he understood the concept of a Special Permit to allow flexibility in the Zoning By-Law in certain situations, such as if an applicant lived on a five-acre parcel and no one ever saw his truck coming or going. He said that Mr. Patterson's lot is, however, far from five acres; it is a small property in a small neighborhood, one that should not have commercial vehicles coming and going at all hours of the night. He stated that the truck, quite simply, did not belong in this neighborhood. He noted that one of the other tow truck drivers under contract with the Bedford Police Department lived in Arlington, and he had no problem fulfilling his 20-minute response time contract with the Town.

Debbie Hughes, of 7 Dunster Road, asked the Board to read the specific section of the By-Law that references oversized commercial vehicles. Mr. Cohen read the section aloud for those in attendance. Ms. Amick pointed out that the By-Law does give the Board the ability to grant a Special Permit to allow an oversized commercial vehicle, provided that the Board believes it meets the two requirements of all Special Permits: that the truck is in keeping with the intent and purpose of the By-Law and is not detrimental or injurious to the neighborhood.

Don Hunt, of 126 Page Road, asked to what town Mr. Patterson pays the excise tax for the truck. Mr. Patterson said he paid the excise tax to the Town of Billerica.

Joan Freeman, of 3 Dunster Road, commented that Mr. Patterson does many other jobs besides just towing, so if he is allowed to park the truck at his property, he will not only be leaving in the middle of the night for tow jobs. She said he has been going in and out of his property in the middle of the night for years, and if the Board were to grant this Special Permit, that would only continue.

Diane Hughes, of 120 Page Road, said she liked the notion that the truck would be parked behind a fence to help shield it, but in the end all of the neighbors are paying high residential taxes for a residential neighborhood, and this truck made it feel more like a commercial zone.

Ms. Freeman said that Mr. Patterson's trucks coming and going at all hours of the night has, in her opinion, decreased the property values of the neighborhood. Mr. Colasante

said that he didn't want to discuss property value, because it is speculative and ultimately has no bearing on the application.

Robert Wolner, of 15 Dunster Road, said that this neighborhood is zoned residential, and having such an oversized commercial vehicle at the applicant's property greatly changes the character of the neighborhood. He said Mr. Patterson has always been a good neighbor, but he doesn't feel that the truck is appropriate for Page Road.

There was discussion about the regulation and enforcement of the conditions of a Special Permit.

Mr. Colasante read into the record an email from Richard Reed, the Bedford Town Manager, dated May 24, 2012.

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

DELIBERATIONS:

Ms. Amick pointed out that she had met that afternoon with Robert Bongiorno, the Bedford Police Chief, who was kind enough to provide for her a chart illustrating all towing incidents covered by the Bedford Police Department from May 1, 2011 through April 30, 2012. She pointed out that, according to the chart – which tallies similar findings to Mr. Gordon's, – there were 47 tow incidents in that year between the hours of 6:00 PM and 6:00 AM. She stated that this comes out to four tows per month, and with three tow truck drivers performing these tows, that equals slightly over one night tow every month for Mr. Patterson. Ms. Amick stated that, even if there were not a letter from the Town Manager urging the Board not to take the Police contract into consideration, she does not feel that one night tow per month is enough for the Town Police contract to be even brought into question, anyway. She explained that, during her meeting with the Police Chief, Mr. Bongiorno stated that he would be happy to meet with Mr. Patterson about making the twenty-minute response time more flexible, so the urgency of that time limit may not be as pressing. She concluded that she must vote against this petition, because the neighbors have made it clear that they don't want the truck in their neighborhood, and she did not consider it necessary or appropriate for a residential area.

Mr. Dearing said he had been going back and forth but ultimately supported the application, because a Special Permit with conditions would actually be more beneficial to the neighborhood than Mr. Patterson's bringing home the smaller truck with no conditions. He said that the larger truck would be screened and would never have any cars brought home on it, two things that Mr. Patterson would not have to do with the smaller truck.

Ms. Amick said that one of the main reasons the public is always encouraged to attend ZBA meetings is the Board can get an idea of how much any project is or is not

detrimental or injurious to the neighborhood. She said that she cannot, therefore, ignore an entire room full of neighbors speaking against this application.

Mr. Gordon said that he agrees with Mr. Dearing that a Special Permit for conditions would be very helpful to the neighborhood, rather than detrimental to it. He said that he felt, from the numbers and spreadsheet he provided earlier, that the Town has put Mr. Patterson in a difficult and unfair position. He said that the Town contract specified that the applicant must respond to any night call within 20 minutes, but if Mr. Patterson were to do that from his facility in Billerica, it would actually be a detriment to *him*.

Mr. Gordon said that he is grateful that Mr. Patterson does the kind of work he does, because it is a job that he himself would not want to do. He said that it may be inconvenient for neighbors if someone occasionally drives in and out of his driveway in the middle of the night, but Mr. Patterson was performing a service that few people would want to do in the middle of the night – which must be taken into consideration. He said that he didn't feel the Police Chief's statement that he would be flexible regarding the 20 minutes was fair, either, and if the Town wanted to make the response time 30 or 40 minutes, that would be a very different story; he said he would, in fact, not vote in favor of this application were the response time 40 minutes, but the contract specifically states that the response time is 20 minutes. He concluded that a Special Permit with conditions – including conditions that the truck would always be screened and that no vehicles will ever be parked atop the truck when brought home – would satisfy his concerns about any detriment to the neighborhood, and it would ultimately be the best option for all the involved parties.

There was extensive discussion about what conditions should be placed on the Special Permit. Mr. Cohen said that, at the very least, he would want to see a condition stating that the truck may only be brought home during the weeks when Mr. Patterson is on call for the Police Department. Mr. Gildea said he had prepared a list of conditions, which he read aloud for the Board:

- No tow vehicle shall be brought to the property at any time;
- All commercial vehicles shall be parked behind the fence;
- Applicant shall erect additional fencing for screening to shield the view from the neighbor at 10 Dunster Road;
- The oversized vehicle may only be parked on the property when the applicant is on call for his towing contract;
- The Special Permit is granted only to Patterson Towing for this particular vehicle, or vehicle of similar size and gross vehicle weight;
- A gate shall be placed as shown on Ms. Brown's drawing.

The Board members agreed that these conditions should be placed on the Special Permit, if it were to be granted.

Mr. Henning commented that the most authoritative perspective on whether an application was or was not detrimental to the neighborhood came the neighbors

themselves, and it was clear that the neighbors had spoken here. He said that, if he were voting on this matter, he would vote against this Special Permit, because it is clear from the abutters that the project is detrimental.

Ms. Amick said that granting this Special Permit would also set a bad precedent from the Town and the ZBA, and if it were granted tonight, the Board will have a flood of applications for the parking of oversized vehicles on residential properties.

Mr. Cohen said that this is an extremely difficult application, and at the end of the night either the applicants or the neighbors will go home extremely disappointed. He said he could see both sides of the argument, and did agree with Mr. Dearing that a Special Permit with conditions may help the neighbors more than they may even realize. He noted that he was struggling with the notion of how detrimental to the neighborhood this truck was, and how much it was in keeping with the intent and purpose of the By-Law to allow it. He said that he was still unsure how he would vote, and probably would stay unsure until the motion is made.

Ms. Amick added that one concern that hadn't been addressed much tonight was the noise of the truck, and the noise of the oversized vehicle would be very loud and jarring in a residential neighborhood. She said she would not want to hear a truck like that coming or going in the middle of the night in her own residential neighborhood.

Mr. Colasante stated that he has listened carefully to both sides of the argument tonight and at the last hearing, and he has heard persuasive arguments from both, but in the end it came down to the two requirements that all Special Permits must meet: the project is not injurious or detrimental to the neighborhood and is in keeping with the intent and purpose of the By-Law. He said that, in his opinion, this application meets neither of those requirements. He noted that the neighbors have clearly made their case that it is detrimental, and this wasn't just one or two neighbors complaining; it was an entire room full of abutters who were adamantly against it. He added that he also believed the application failed to meet the purpose of the By-Law, because he felt that Mr. Patterson was not simply "parking or garaging" his commercial vehicle here; it was being used at night, which went beyond being parked or garaged. He concluded that he could not vote in favor of this application.

Ms. Amick suggested the Board make a motion to deny the application. Mr. Cohen said that the Board always voted in the affirmative, so a motion would have to be made in favor of the application.

For clarification, Mr. Gildea asked whether the six previously-mentioned conditions were acceptable to the applicants. Ms. Brown stated that they were.

MOTION:

Mr. Gildea moved to grant David Patterson, 122 Page Road, a Special Permit per Section 5.1.4 of the Zoning By-Law to park oversized commercial vehicle, subject to the

following conditions: 1) No tow vehicle shall be brought to the property at any time; 2) All commercial vehicles shall be parked behind the fence; 3) Applicant shall erect additional fencing for screening to shield the view from the neighbor at 10 Dunster Road; 4) The oversized vehicle may only be parked on the property when the applicant is on call for his towing contract; 5) The Special Permit is granted only to Patterson Towing for this particular vehicle, or vehicle of similar size and gross vehicle weight; 6) A gate shall be placed as shown on Exhibit D. Further exhibits are marked as Exhibits A, B, C, and E.

Mr. Cohen seconded the motion.

Voting in favor: Gordon and Dearing
Voting against: Colasante, Cohen, and Amick
Abstained: None

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

Mr. Colasante explained that the Board has 14 days to write a decision, followed by a 20-day appeal period, during which time the applicant may appeal the Board's decision to land court.

Ms. Brown thanked the Board for trying to work through the petition.

MOTION:

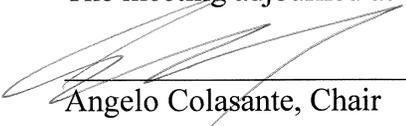
Mr. Gildea moved to adjourn the meeting.

Mr. Gordon seconded the motion.

Voting in favor: Colasante, Gordon, Gildea, Cohen, Dearing, Amick, and Henning
Voting against: None
Abstained: None

The motion carried unanimously, 7-0-0.

The meeting adjourned at 10:25 PM.


Angelo Colasante, Chair

6-14-12
Date

Respectfully Submitted,

Scott Gould
ZBA Assistant