

**ZONING BOARD OF APPEALS  
MINUTES OF MEETING  
MAY 28, 2015**

Town of Bedford  
Bedford Town Hall  
Lower Level Conference Room

**PRESENT:** Angelo Colasante, Chair; Todd Crowley, Vice Chair; Jeffrey Dearing; Michelle Puntillo; Robert Kalantari

**ABSENT:** Carol Amick, Clerk; Kay Hamilton; Arthur Smith

**GUESTS:** Christopher Laskey, Code Enforcement Director; Margot Fleischman, Selectmen Liaison; Amy Lloyd and Jeffrey Cohen, Planning Board

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

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

**PETITION #033-15** – Matthew and Paula Gilarde, at 18 Paul Revere Road, seek a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning Bylaw to construct farmer’s porch within front yard setback.

Matthew Gilarde greeted the Board and explained that he and his wife wanted to build a farmer’s porch that would extend into the front setback. He stated that the current setback was 38 feet from the front property line, and this porch would extend six feet out from the house, making the new setback 32 feet.

Mr. Colasante asked whether there would be a roof over the porch. Mr. Gilarde replied that there would.

The Board talked about whether the application should be viewed as a Special Permit or a Variance. Mr. Colasante said he felt that, since it was advertised as a Special Permit, it should be voted as such.

Mr. Colasante said that the Board typically conditioned open porches not to be enclosed in the future, and asked whether that would be amenable to the applicant. Mr. Gilarde said he would be fine with such a condition, as they had no plans ever to enclose it.

Mr. Colasante opened the hearing to the public.

Pamela Brown, of 12 Sorens Way, said she was in support of this petition and thought it would be a great addition to the neighborhood.

Mr. Colasante asked whether the applicant had talked with his neighbors about this project. Mr. Gilarde said that he had talked to the surrounding neighbors and all were in support of it.

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

**DELIBERATIONS:**

Mr. Colasante said that this was a Special Permit application, and the two conditions of a Special Permit were that the project was not injurious or detrimental to the neighborhood and was in keeping with the intent and purpose of the Bylaw. He said he felt this application met those two requirements, and he thought this looked like a nice addition to the neighborhood. The other Board members agreed.

**MOTION:**

Mr. Dearing moved to grant to Matthew and Paula Gilarde, at 18 Paul Revere Road, a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning Bylaw to construct farmer's porch within front yard setback, substantially as shown on Exhibits A and B, and subject to the condition that the porch shall not be enclosed at a future date.

Mr. Crowley seconded the motion.

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

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 applicants may apply for a Building Permit.

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

**PETITION #034-14** – Pamela Brown, Esq., for Learning Express, at 166-168 Great Road, seeks to overturn the Building Inspector's decision, or any relief from the Zoning Bylaw that the Board deems necessary, to allow indoor amusement facility over 2,000 square feet.

Ms. Brown greeted the Board and introduced the founder and CEO of Learning Express (L.E.), Sharon DiMinico, and her husband Lou. She also introduced Mike Derse, of the L.E. home office, and Dan Edmonson, the director of Learning Express Play. Ms. Brown explained that this proposal involved two separate sides of the Learning Express business going in to one space at Bedford Marketplace: Learning Express Toys, a proposed 2,000 square foot retail toy shop,

and Learning Express Play, a proposed 1,967 square foot space for classes and activities. She said that, although this entire space was only half the size of the Bedford CVS, the fact that it was zoned Limited Business instead of General Business limited the entire space to 2,000 square feet. She said that she hoped the Board would determine that the multitude of different types of uses in this space resulted in an allowed expansion of its size.

Ms. DiMinico talked about the history of the business, stating that Learning Express Toys is the nation's leading franchisor of educational toys. She said that the product mix was carefully selected from manufacturers around the world that produce toys with excellent play value.

Mr. Dersé stated that Bedford would be the flagship for a new concept called Learning Express Play. He stated that this would be a membership-based, "open imagination" play area that included a classroom, a gym, and open areas such as a townscape, construction zone, doctor's office, and market. He said that it would include drop-off classes targeted at preschool children, but parental supervision would be required for all children in the play area. He noted that, although the business would not be licensed as a daycare, the number of employees and children would be based on guidelines from the Department of Early Education & Care.

Mr. Kalantari asked what age group the business would cater to. Mr. Dursley replied that the toy store included toys for kids zero to 12 years old, and the activity and learning center was geared primarily towards children from seven months old to approximately six years old.

The applicants talked with the Board about market research conducted which led the business to Bedford, noting that they specifically chose Bedford to be the flagship location for Learning Express Plus, the new model that included the store with the additional play area.

There was extensive discussion about the uses allowed under Section 4.5 ("Business Uses") in the Zoning Bylaw and the kinds of uses this business could be considered. Mr. Colasante said that the Bylaw was antiquated in many ways, and he believed that this business could be considered "Indoor Amusement" even though the Bylaw's definition of Indoor Amusement was "Theater, cinema and bowling alley."

Mr. Colasante opened the hearing to the public.

Mr. Colasante read into record an email of support for Learning Express from Sonya Kalajian, owner of Toy Shop of Westford, dated May 28, 2015.

Margot Fleischman, a resident of 145 Page Road and a member of the Bedford Selectmen, said that she could not speak on behalf of the Selectmen because they had not officially discussed this business, but they were always supportive of new business and she felt that the community would be delighted by this one. She commented that the upgraded site would be very pedestrian-friendly, so she thought it would be wonderful for parents to walk children to the Learning Express area. She said that the Zoning Bylaw had many limitations that needed to be addressed as warrant articles at Town Meeting, but since that has not yet happened, she hoped that the ZBA could find some way to work within the limitations of the Bylaw to grant this application.

Amy Lloyd, a resident of 17 Fayette Road and the Chair of the Bedford Planning Board, agreed with Ms. Fleischman's sentiments and stated that this business would be a wonderful addition to the Town. She said that the Zoning Bylaw was indeed very limited and it was unfortunate that this section of the property was zoned Limited Business instead of General Business, because then the applicants would not even need to be here.

Jeffrey Cohen, a resident of 17 Houlton Street and a member of the Bedford Planning Board, said that this was certainly a desirable business for Bedford, but unfortunately the Zoning Bylaw was antiquated and did not easily make room for this type of business. He said that the purpose of limiting the size of businesses was to avoid giant department stores like Target or Wal-Mart, but it never took into consideration a use like this. He said that he believed the Board had discretion to make an intelligent interpretation of the Bylaw's intent in order to grant a Special Permit for Learning Express, so long as the conditions in that SP were carefully crafted.

The Board members talked about the business itself, and all agreed that they were in support of Learning Express coming into this location. Mr. Colasante said that, with this in mind, it was now simply a matter of finding a way to grant the Special Permit within the limitations of the Zoning Bylaw.

Mr. Dearing said the biggest challenge for the Board was the precedence it set for future businesses, and he agreed with Mr. Cohen that it was important that the Special Permit have carefully crafted conditions.

Mr. Colasante said that, although Learning Express was one business, it involved several uses, and the Board needed to find some way to reflect those uses in the Special Permit.

There was conversation about traffic circulation at the site. Ms. Brown pointed out that traffic was a site plan issue and had already been reviewed and approved by the Planning Board at the time of the site plan review.

Ms. Puntillo asked about the anticipated hours of operation for the business. Mr. Derse stated that it would most likely be 8:00 AM to 8:00 PM, but that was not yet set in stone.

Mr. Dearing said that, when the Zoning Bylaw was first written, the term "business" generally referred to "mom and pop" stores, because the majority of businesses at that time were much smaller; however, the market has changed drastically since that time and the Bylaw should be updated if Bedford wants to be a viable place for new business.

The Board talked about the fenced-in "play area" outside the building. Mr. Colasante said he would like to see some more detail about that area, in terms of hours, security, and layout.

Mr. Colasante said that he thought it would be pertinent to come up with a set of conditions and have Town Counsel review them, just to ensure that the conditions were viable. Ms. Brown said that waiting another two weeks for Town Counsel to look at the conditions was a waste of Learning Express's time, and their time was of the essence right now. Mr. Dearing asked when Learning Express planned to occupy this space. Mr. Derse replied that they planned to open in

the Spring of 2016. Ms. Brown said that they needed to expedite this process in order to ensure that they could sign the lease. Mr. Crowley said that this was an entirely new type of business in Bedford and this Special Permit would be precedent-setting, so it was important to take the time to do it right. Mr. Colasante agreed, adding that he refused to rubber stamp this application simply because it was a desirable business.

After further discussion about potential conditions, Mr. Colasante said that he would like to present the following three conditions to Town Counsel for review:

1. The Special Permit shall run specifically to the Learning Express business, not the address;
2. The Special Permit will allow only the following two uses at this location: Indoor Amusement & Retail;
3. The square footage of the uses will be limited to the following; 3,500 square feet for retail (currently existing) and 4,000 square feet for Indoor Amusement.

The Board agreed to present those conditions to Town Counsel and meet again in two weeks to vote on the Special Permit. Mr. Colasante called for a motion to continue the hearing.

**MOTION:**

Mr. Dearing moved to continue Pamela Brown, Esq., for Learning Express, at 166-168 Great Road, seeking to overturn the Building Inspector's decision, or any relief from the Zoning Bylaw that the Board deems necessary, to allow indoor amusement facility over 2,000 square feet to June 11, 2015 at 7:30 PM.

Ms. Brown thanked the Board for its consideration. Mr. Colasante said he hoped that this application could be voted on at the next meeting.

**BUSINESS MEETING:**

**251 Concord Road** – Pamela Brown, Esq. seeks a finding that modifying the condition requiring a fence in the Special Permit is an insignificant change.

Ms. Brown said that the new house at 251 Concord Road was approved by a Special Permit from the Zoning Board. She stated that the requirement of a fence was included in the Special Permit because the abutters, Peter and Mona Barck, had requested it; however, the Barcks no longer want the fence there, and have submitted a letter stating this fact. She therefore requested a finding by the Board that removing the requirement of the fence was not a significant change to the Special Permit. After further discussion, the Board concluded that this was not a significant change, and Mr. Colasante called for a motion for a finding.

**MOTION:**

Mr. Dearing moved that the Board make a finding that requesting the removal of the fence from the conditions of the Special Permit for 251 Concord Road is an insignificant change.

Mr. Crowley seconded the motion.

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

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

### **Memorandum from Town Counsel regarding residential demolitions**

Mr. Laskey talked with the Board about a recent ruling from Town Counsel which states that any demolition and re-build that occurs on a non-conforming lot required relief from the Zoning Board. He said that the way he had been doing it for the last ten years or so was that, as long as the new house met the current zoning setbacks, it was allowed to be built on a non-conforming lot, but now Town Counsel has provided new case law that indicates that any house built on a non-conforming lot that will be *larger than the existing footprint* required a Special Permit from the ZBA.

There was conversation about whether the Board wanted to consider these kinds of applications in the future or continue to operate as it had been operating in the past. Ms. Fleischman said that the Board seemed to spend a lot of its time hearing applications from homeowners regarding relatively small projects, from farmers porches to sheds, but teardowns of smaller houses with the intent of building a vastly larger structure in their place changes the character of the Town in a way that smaller projects do not; therefore, she felt it was more important for the ZBA to look at the latter applications than the former.

Mr. Colasante said that it might be wise to include a Floor Area Ratio (FAR) in the Zoning Bylaw. Mr. Laskey stated that he worried about an FAR affecting the average homeowner who wanted to finish a basement or attic. The Board agreed that limiting lot coverage was more important than limiting square footage.

Julie Turner, of the Bedford Citizen, said that she had heard a great deal of opposition to these houses in recent years, so perhaps the time had indeed come to have the Board review them.

There was dialogue about economic development and the revenue that large homes bring in versus smaller homes. Ms. Fleischman said that she did not want Bedford to be the kind of town that gets its tax revenue on the backs of people who can no longer afford to live there.

Ms. Lloyd said it was important to note that these cases would only involve non-conforming lots; she noted that there were several areas in Bedford with fully conforming lots where larger homes are appropriate. She said that the strongest consideration for the Board here was context, because neighborhoods with small houses are being drastically changed by the addition of these much larger homes. The Board members agreed that context was one of their most important considerations.

Mr. Colasante said that this was something that needed to be considered, and he was sure the Board would be discussing it further in the coming months.

**Adjournment**

**MOTION:**

Mr. Dearing moved to adjourn the meeting.

Ms. Puntillo seconded the motion.

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

Voting against: None

Abstained: None

The motion carried unanimously, 4-0-0.

The meeting adjourned at 9:55 PM.

  
\_\_\_\_\_  
Angelo Colasante, Chair

6-25-15  
\_\_\_\_\_  
Date

Respectfully Submitted,

Scott Gould  
ZBA Assistant