

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
AUGUST 25, 2016**

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

PRESENT: Todd Crowley, Chair; Angelo Colasante, Vice Chair; Carol Amick, Clerk; Jeffrey Dearing; Michelle Puntillo; Kay Hamilton; Robert Kalantari

ABSENT: None

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

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

PETITION #005-17 – Shihong Huo and Xiaojie Xue, at 6 Madawaska Street, seek a Variance from Table II: Dimensional Regulations and from Section 14.7 of the Zoning Bylaw to construct deck within rear yard setback.

Mr. Huo and Ms. Xue introduced themselves and explained that they hoped to rebuild their deck, because it was very old and in poor condition. He said that his children enjoyed sitting and playing on the deck, so they hoped to make it bigger to give them more room.

Mr. Dearing pointed out that the previous deck, as Mr. Huo had called it, wasn't really a deck but a landing required by Code for egress out of the back door. He said that stairs and egresses were allowed to infringe on Zoning setbacks because of safety issues, but once a landing became bigger, such as this proposed deck, then Zoning criteria had to be met. He stated that a Variance was very difficult for the Board to grant, as there were specific criteria mandated by the State that the ZBA had to meet.

Ms. Amick read from Section 14.7 of the Zoning Bylaw, which states that a Variance could only be granted when "the Board specifically finds that, owing to circumstances relating to the soil conditions, shape or topography of land or structures, and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw." Ms. Amick stated that, as Mr. Dearing stated, these were very specific criteria which were difficult for the Board to meet, and she didn't feel that they could be met in this case.

Ms. Xue said that their neighbors had a deck that did not appear to be within the setbacks, and asked whether that had been granted by a Variance. Mr. Crowley said that he didn't know the circumstances of that deck or that lot; he said the house on that lot might have been non-conforming, and that would require a Special Permit, which was an easier type of relief to grant. Ms. Puntillo explained that a Variance was necessary when a structure was entirely conforming, as this house at 6 Madawaska Street was; when a house was non-conforming in some way, a Special Permit was required. She pointed out that a Variance was more difficult to grant because of the fact that a conforming structure was being transformed into a non-conforming structure, as opposed to a pre-existing non-conforming structure simply becoming more non-conforming.

There was extensive discussion about the size and shape of the lot and the dimensions of the house and deck, and the kinds of topographical issues that usually warranted a Variance being granted.

The applicants talked with the Board about what could possibly be built within the setbacks that would meet Zoning. Mr. Huo asked whether the deck could run the length of the house as long as it met the 30 foot setback. Mr. Crowley said that it could.

Mr. Crowley opened the hearing to the public.

Kyle Draper, of 15 Houlton Street, said that he and his wife owned the property directly behind this one at 6 Madawaska Street. He handed out photographs of the deck, noting that it had been started without a permit. He said that it was higher than their own fence and would, in their opinion, be a great infringement on their property. He said that he and his wife got along well with the applicants and this was nothing personal, but they simply did not feel that this proposed deck was appropriate on the lot or in the neighborhood.

Mr. Crowley read into the record a letter from Guangming Wang and Bingbing Chen, of 10 Madawaska Street, signed and dated July 28, 2016.

Mr. Crowley read into the record a letter from Jeffrey and Laurie Cohen, of 17 Houlton Street, signed and dated August 16, 2016.

Mr. Crowley noted that the application had included signatures of support from some surrounding abutters.

Mr. Draper said that his wife had written a separate letter to the Board stating that she had initially signed the letter of support circulated throughout the neighborhood, but only because she was of the understanding that the new deck would be the same size as the existing and would only be a replacement due to rotting.

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

DELIBERATIONS:

Mr. Crowley said that it was clear from previous discussions that the Board could not grant a Variance for this application. He explained that, if the Board voted and the petition was denied, the applicants would not be able to return with the same plan for two years; he said that it might be in their best interest, therefore, to request to withdraw the application without prejudice. Mr. Colasante said that the applicants should go to the Code Enforcement office and talk with Christopher Laskey, the Building Commissioner, about their options. After further discussion, the applicants agreed to withdraw without prejudice.

MOTION:

Ms. Amick moved to withdraw without prejudice the application for Shihong Huo and Xiaojie Xue, at 6 Madawaska Street, seeking a Variance from Table II: Dimensional Regulations and from Section 14.7 of the Zoning Bylaw to construct deck within rear yard setback.

Mr. Colasante seconded the motion.

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

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

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

PETITION #006-17 – Frank Kling, of Elite Builders, for 272 Great Road, seeks a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning Bylaw to demolish house and construct larger house on non-conforming lot.

Peter Bemis, of Elite Builders, greeted the Board and introduced Frank Kling, the contractor for this proposed project. He stated that the property owner, Nancy Martines, could not be here but did include a letter authorizing them to speak on her behalf. He said that the proposal before the Board involved razing the existing house and constructing a new dwelling in its place. He said that the house would meet all setbacks and other necessary dimensional criteria, but it required a Special Permit due to the fact that the lot in question was undersized.

Ms. Amick said that it appeared, from the plot plan, that the new dwelling was set farther back than the existing. Mr. Kling said that it would be set about 10 feet farther back in order to preserve some of the trees on the lot which were very close to the existing house.

There was discussion about the shape, size, and topography of the lot. Mr. Kling noted that the lot was only 400 square feet shy of the meeting the 30,000 square foot lot size

requirement for this District, so it was very close to being conforming. There was also conversation about aesthetics of the house, including height and roof pitch. Mr. Kling noted that the house would fall under the new 35-foot height requirement.

Mr. Crowley opened the hearing to the public.

Gail Mead, of 268 Great Road, asked about the placement of the new house and the orientation of trees on the property. Mr. Kling said that the house would be a smaller footprint, although it would be two stories. He said that they would be removing a few of the trees at the very back of the lot but all the other trees would remain.

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

DELIBERATIONS:

Ms. Amick said that she was familiar with this neighborhood and was sad to see that it will slowly evolve into two-story house, although she understood that it was happening all over town and was part of the reality of modern building. She said that, since the lot was so large and the house was set so far back, she could support the application.

Ms. Puntillo said she was not sure whether this was in keeping with the neighborhood. Mr. Colasante noted that there was a two-story house right next to this one, to which Ms. Puntillo responded that the massing of that house was smaller than this proposed one.

Mr. Crowley said that the two requirements of a Special Permit were that the proposal was in keeping with the intent and purpose of the Bylaw and was not injurious or detrimental to the neighborhood. He said he felt that this application met those requirements. Mr. Dearing agreed, noting that, as Ms. Amick pointed out, the size of the lot and the front yard setback of the house helped to minimize any potential impact.

MOTION:

Ms. Amick moved to grant Frank Kling, of Elite Builders, for 272 Great Road, a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning Bylaw to demolish house and construct larger house on non-conforming lot, substantially as shown on Exhibit 1 (front and side elevation plan) and Exhibit 2 (proposed site plan).

Mr. Dearing seconded the motion.

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

Voting against: None

Abstained: Puntillo

The motion carried, 4-0-1.

Mr. Crowley explained that the Board had 14 days to write a decision, after which time there was a 20-day appeal period. The applicant was then responsible for getting the decision recorded at the Registry of Deeds. Once the decision was recorded, the applicant may move forward with the project.

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

PETITION #002-17 – CONTINUATION – Pamela Brown, Esq., for Bedford Marketplace, at 170 Great Road, seeks a Special Permit per Article 39.5 Section 1 of the Sign Bylaw to illuminate freestanding sign.

Mr. Crowley stated that Ms. Brown had sent an email earlier that day requesting a continuation to the next available meeting. He called for a motion to continue the hearing to the September 8 meeting date.

MOTION:

Ms. Amick moved to continue Pamela Brown, Esq., for Bedford Marketplace, at 170 Great Road, seeking a Special Permit per Article 39.5 Section 1 of the Sign Bylaw to illuminate freestanding sign to September 8, 2016 at 7:30 PM.

Mr. Colasante seconded the motion.

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

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

BUSINESS MEETING:

July 28 Meeting Minutes

Mr. Crowley called for a motion to approve the minutes of the July 28 meeting.

MOTION:

Ms. Amick moved to approve the minutes of the July 28, 2016 meeting, as written.

Mr. Dearing seconded the motion.

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

Voting against: None

Abstained: Amick and Puntillo

The motion carried, 5-0-2.

