

Bedford Sign Bylaw Committee
October 18, 2012, 7:30 p.m.
Town Hall, 2nd Floor Conference Room

Minutes

Attending: Jeff Cohen, Kevin Latady, Mark Siegenthaler, Karen Kenney, Lisa Mustapich and Ralph Zazula.
Absent: Chris Laskey (Staff)
Others: Rick Reed, Town Manager

7:34 pm meeting called to order by Jeff Cohen.

Handouts: Draft Minutes of October 11 meeting; SBRC Status Report to the Selectmen; Up-to-Date Redline edited Sign Bylaws (through October 11 meeting); Updated Table 40.1 *Schedule of Signage Regulations*; and a copy of The Bedford Citizen article, *Sign Bylaw Review Committee Deals with Questions, Large and Small*, dated October 2, 2012.

The committee reviewed the minutes from the October 11 meeting. Motion to approve the minutes with minor changes by Karen; Mark seconded the motion. Vote: Unanimous.

The members reviewed the latest iteration of Table 40.1 *Schedule of Sign Regulations*. There were no comments.

The members reviewed the committee's status report to the Selectmen. There were no comments. The report will be submitted to Rick Reed, who will forward it to the Selectmen. It was agreed that appearing before the Selectmen prior to Special Fall Town Meeting would not be necessary. Mark would respond to Selectmen's questions after they reviewed the status report.

A brief committee report will be presented at Special Fall Town Meeting to publicize the committee's efforts and educate the public that amendments/updates to the Sign Bylaw are in the works and will be presented on the floor of Annual Town Meeting in March, 2013. The report will inform the public that they will have an opportunity to review the updated Sign Bylaw at a public meeting on December 13, 2012. The Town Moderator will be informed of the committee's desire to present a report at Special Fall Town Meeting.

Rick Reed discussed methods for packaging the committee's recommendations into Warrant Articles that will be presented at Annual Town Meeting. He passed out a portion of the 2010 ATM Warrant wherein several Articles demonstrated methods for organizing revisions to the General Bylaws. He noted that amending the General Bylaws requires a simple majority vote and that only minor typographical changes may be made to the Articles on the floor of ATM. Rick had the following suggestions for the committee to consider:

- Organize minor and miscellaneous amendments into one Article.
- Organize various sections or Zoning Districts by-section or by-District under dedicated Articles.
- Isolate controversial issues into separate Articles.

Rick distributed Town Counsel's (TC) opinion letter wherein TC responded to the committee's request to review the existing Sign Bylaw and offer comments on deficiencies/issues that should be addressed. The letter is attached to these minutes.

- The committee discussed TC's comments and noted that the subject line for Item A should have read, "The Sign Bylaw should be moved to the Zoning Bylaws" (not General Bylaws). The committee discussed this recommendation and although they discussed this issue but did not recommend pursuing this change, it may be worthwhile to present this on the Warrant and allow the public to decide.

- The committee had several questions for Town Council about the process as well as what TC would recommend be revised. Rick asked that questions be submitted to him in writing and he would forward them to Town Council.

Rick suggested that once the Bylaw is amended, Table 40.1 and the Bylaw should be coordinated such that after revisions are codified and the Table is amended, the Table could be incorporated into the Bylaws. Dimensional requirements would appear in the Table and could be stricken from the narrative paragraphs, which would only contain descriptive text (list dimensional requirements once).

Rick said the Warrant for Spring ATM goes to the printer in mid-February. The third week in January would be the latest timeframe or a public hearing before the Selectmen to present the Bylaw amendments. The committee needs to prioritize long-term and short-term priorities for updating the Bylaw and determine exactly what will appear on the ATM Warrant in Spring, 2013.

Town Counsel must review the proposed amendments and Warrant Articles. It was suggested that an additional meeting would be advisable at the end of November to meet with Town Council.

The committee discussed edits to the Sign Bylaws, including the following:

- 40.2.A Sign definition – Delete, “temporary or” from first sentence.
- 40.3, Section 3 Enforcement, Paragraph B – Delete “(Chapter 93, Section 22 of the General Laws)” per Town Counsel recommendation.
- 40.4, Section 1 Permitted and Prohibited Signs, Add Item 5, as follows: “5. Traffic Control Signs on private property, as authorized by an approved site plan, shall be exempt from the provisions of this Bylaw.”
- 40.4, Section 2 Residential Zone, Paragraph B, Item 4 – Correct recommended amendment text to denote “six (6) square feet”, not “four (4) square feet.”
- 40.4, Section 3 Business Zones, Paragraph D Window Signs – Delete “temporary” and “each” from the first sentence, such that paragraph will read as follows: “Without obtaining a permit from the Building Inspector, unlighted window signs may be placed in a window of a building not to exceed more than twenty-five percent (25%) of the window area of the window in which the sign is displayed.”

The committee decided that Kevin and Jeff would meet with the Council on Aging’s Current Events Group on November 8 at 1 pm and that Jeff and Lisa would appear on BCAT (taping at the end of January, to air in February). Karen to make arrangements with CoA & BCAT.

Regarding the Bedford Patch, Chris Gambon is the person to contact. The committee will reach out to him after the updates are finalized.

The next meeting is November 15th at 7:30 pm.

Additional meetings were scheduled: November 29 – invite Town Counsel to discuss updates
December 13 – Unveil proposed amendments to the public & entertain public comments.

9:27 p.m. Lisa moved to adjourn; Mark 2nd. Vote: Unanimous

Respectfully submitted by Jeff Cohen

Attachment: Town Counsel Letter – Review of Existing Sign Bylaw, dated October 18, 2012

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Please Respond to Quincy

October 18, 2012

VIA FIRST CLASS MAIL
AND EMAIL (rreed@bedfordma.gov)

Richard T. Reed, Town Manager
Town of Bedford
Town Hall
10 Mudge Way
Bedford, MA 01730

Re: Sign Bylaw

Dear Mr. Reed:

You asked for our review of the Sign Bylaw. We understand that the Ad-Hoc Sign Bylaw Review Committee is currently editing the Sign Bylaw and we base our comments upon the proposed revisions as of October 11, 2012.

A. The Sign Bylaw should be moved to the General Bylaws.

As a starting point, the Sign Bylaw is part of the General Bylaws. In content, however, the Sign Bylaw shares several characteristics of zoning regulation, rather than a general bylaw. The Sign Bylaw regulates the “use of land, buildings and structures,” which is the definition of “zoning.” M.G.L. c. 40A, § 1A. Additionally, the Sign Bylaw is intertwined with the Zoning Bylaws because permitted and prohibited signs specifically vary by zoning district (Article 40.4). See Rayco Inv. Corp. v. Bd. of Selectmen of Raynham, 368 Mass. 385, 393 (1975).

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Under the Sign Bylaw, the Board of Appeals handles appeals of permit denials by the Building Inspector (Article 40.3, Section 2) and is the special permit granting authority (Articles 40.2.D and 40.5). Yet, the Zoning Act created the zoning board of appeals to address zoning appeals, not appeals under a general bylaw. M.G.L. c. 40A, §§ 12, 14. The Sign Bylaw also incorporates the administrative appeal procedures under the Zoning Bylaws (Article 40.3, Section 2). Therefore, we suggest that the Sign Bylaw be moved to the Zoning Bylaws because, as a matter of substance and procedure, it is a zoning regulation.

B. The Sign Bylaw does not address protected uses under Massachusetts law.

Because the Sign Bylaw is located in the General Bylaws, it does not address the special protection for certain uses under the Zoning Act. In particular, M.G.L. c. 40A, § 3 affords special protection to commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture on land zoned for agricultural use or on more than five (5) acres of land; the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; and child care facilities. Similarly, Article 97 of the Amendments to the Massachusetts Constitution recognizes the utilization of agricultural resources as a protected public purpose.

The Sign Bylaw does not adequately address signs involving uses protected by M.G.L. c. 40A, § 3 and Article 97. For example, Article 40.6.C subjects signs for houses of worship to the requirements in a Business Zone.

C. The Sign Bylaw does not contain standards for review by local officials.

Equal protection requires the uniformity of standards and enforcement. Fafard v. Conservation Comm'n of Reading, 41 Mass. App. Ct. 565, 569 (1984). The Sign Bylaw also operates as a prior restraint because Town approval is required before certain signs are installed. Shuttlesworth v. City of Birmingham, 394 U.S. 147, 151 (1969). A prior restraint is unconstitutional if it confers unbridled discretion upon local officials or lacks narrow, definite and objective standards for the issuance of a permit or special permit. See id.; City of Lakewood v. Plain Dealer Publ'g Co., 486 U.S. 750, 757 (1988).

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The Sign Bylaw does not provide the standards for the Building Inspector to grant or deny a permit (Article 40.3, Section 1). Signs within the Bedford Historic District are only permitted “as the Historic District Commission may allow,” but this provision expressly lacks standards (Article 40.3, Section 3.F). There are no standards for the Board of Selectmen to grant temporary exemptions for special events (Article 40.6.H).

D. The Sign Bylaw should not regulate the content of signs.

Signs are subject to constitutional protection because they communicate expression. Matthews v. Town of Needham, 764 F.2d 58, 60 (1st Cir. 1985). A regulation of sign content is subject to strict scrutiny, the most demanding standard of review, which requires that the “regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.” Perry Educ. Ass’n v. Perry Local Educators’ Ass’n, 460 U.S. 37, 45 (1983). “[O]nly the most extraordinary circumstances will justify regulation of protected expression based upon its content.” Dimmitt v. City of Clearwater, 985 F.2d 1565, 1570 (11th Cir. 1993). For example, courts have invalidated content-based ordinances that regulated the content of a flag or prohibited displaying “For Sale” and “Sold” signs on residential property. Id.; Linmark Associates, Inc. v. Twp. of Willingboro, 431 U.S. 85 (1977).

On the other hand, a regulation of the “time, place and manner” of speech is constitutional if it is “narrowly tailored to serve a significant government interest, and leave[s] open ample alternative channels of communication.” Perry Educ. Ass’n, 460 U.S. at 45. A content-neutral regulation may include the physical characteristics of signs, such as dimensions. See City of Ladue v. Gilleo, 512 U.S. 43, 48 (1994).

Article 40.4 regulates the content of signs, including Real Estate Signs, Yard Sale or Garage Signs, Flags, Grand Opening Banners, Gasoline Stations and Garages, and Hotels and Motels, through the actual message communicated by these signs. Unless a compelling state interest is demonstrated, the Sign Bylaw should not regulate content.

E. The Sign Bylaw does not adequately address political, religious or personal messages.

Political speech is entitled to “great protection” and a restriction that favors commercial speech over noncommercial speech is unconstitutional. Matthews v. Town

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of Needham, 764 F.2d 58 (1985). This means that political signs cannot be subject to more restrictive size or durational requirements than commercial speech. Similarly, the expression of political, religious and personal messages (*i.e.*, non-commercial speech) on residential property cannot be prohibited or subject to a duration limitation. See Gilleo, 512 U.S. at 54-58. The provisions of the Sign Bylaw for non-commercial signs violate these constitutional limitations.

F. The Sign Bylaw does not address permit fees.

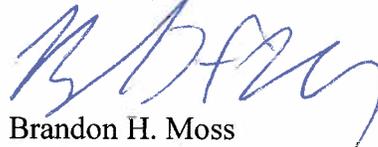
Sign permits require payment of a fee in accordance with the schedule established by the Board of Selectmen (Article 40.3, Section 1.C). Where a fee is charged for activity involving free expression, the fee must "fairly reflect costs incurred by" the government. Baldwin v. Redwood City, 540 F.2d 1360, 1372 (9th Cir. 1976). Courts have invalidated permit and fee requirements involving political or residential signs, because such requirements otherwise increase the cost and reduce the convenience of displaying protected expression. See id.; Curry v. Prince George's County, Md., 33 F. Supp. 2d 447, 455 (D. Md. 1999).

G. The Sign Bylaw references a repealed statute.

Finally, Article 40.3, Section 3.B refers to M.G.L. c. 93, § 22 as the source of authority for penalties. This reference should be deleted because M.G.L. c. 93, § 22 was repealed by the Legislature in 1963.

We hope this information is useful. We would be pleased to assist the Committee in the task of drafting by-law language which addresses the concerns expressed in this letter.

Very truly yours,



Brandon H. Moss
Office of the Bedford Town Counsel

/bhm

cc: Robert S. Mangiaratti, Bedford Town Counsel
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