

**ZONING BOARD OF APPEALS  
MINUTES OF MEETING  
APRIL 23, 2015**

Town of Bedford  
Bedford Town Hall  
Lower Level Conference Room

**PRESENT:** Todd Crowley, Vice Chair; Carol Amick, Clerk; Jeffrey Dearing; Kay Hamilton; Arthur Smith; Robert Kalantari

**ABSENT:** Angelo Colasante, Chair; Michelle Puntillo

Mr. Crowley introduced himself and read the emergency evacuation notice. He explained that the Chair was absent this evening and he would therefore be serving as Acting Chair. The Zoning Board of Appeals (ZBA) members introduced themselves.

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

**PETITION #024-15 – CONTINUATION** – Christopher Bussey, at 315 Old Billerica Road, seeks a Special Permit per Section 5.1.4 of the Zoning By-Law to allow one additional commercial (oversized, if applicable) vehicle.

Mr. Crowley stated that this was a continuation, and he, Ms. Amick, Mr. Dearing, and Ms. Hamilton were present at the original hearing. As Mr. Smith had read the minutes of that hearing, Mr. Crowley said that the Board would invoke the exception to the Mullin rule and allow Mr. Smith as the fifth voting member.

Mr. Bussey greeted the Board and said that he had brought the information about his two vehicles that the Board had requested at the last hearing. He said that he learned that both of his vehicles were technically oversized because they had 137” wheel bases when the Bylaw had a cutoff of 135”, but it was very rare to find any pickup truck under the Bylaw’s allowed wheel base, most of the modern trucks being between 138” and 141.”

Mr. Dearing said he wasn’t as concerned about the wheel base of a truck being a few inches over what the Bylaw allowed so much as what the vehicle was being used for.

Ms. Hamilton asked what was in the garages on the property. Mr. Bussey replied that they were hobby garages. Ms. Hamilton asked whether he lived at this address. Mr. Bussey said that he paid utilities and taxes on it, and will own it in the near future when all the paperwork is finalized, but did not currently reside there.

Ms. Amick asked whether the applicant was aware that there had been years of complaints regarding a landscaping business being run out of this residentially-zoned property. Mr. Bussey said that he was aware of two complaints.

Mr. Dearing said he still didn't understand why the applicant needed an extra oversized vehicle. Mr. Bussey said that he used both vehicles for work and it would make it easier if he were able to continue doing so; having the approval for both trucks meant he could choose whichever vehicle was more convenient for him that day and then drive it home at night without having to switch one out at his garage in Billerica.

Mr. Crowley opened the hearing to the public.

Tom Busa, of 321 Old Billerica Road, said that he was the direct abutter to the property in question, and what originally started as a small business has developed into a full-scale, 24/7 operation. He said there were three commercial vehicles parked there the night before this meeting, and it went on all year with snow plowing and landscaping. He said that he had absolutely no problem with allowing Mr. Bussey to have one oversized vehicle at the property so that he could travel back and forth easily, but he would like to see the area returned to its residential character instead of continuing to have a landscaping business next door to him.

Ms. Amick asked Christopher Laskey, the Code Enforcement Director, about his dealings with this address. Mr. Laskey replied that he had been involved with this property off and on since 2008; when he got a complaint he would send a violation letter and the business seemed to calm down, but then it inevitably always got bigger again. He said that Mr. Bussey had claimed to have obtained a garage in Billerica and his understanding was that Mr. Bussey would be moving his vehicles there.

Mr. Bussey said that he had indeed obtained a garage in Billerica, but admitted that he had many family issues going on at present and had dragged his feet in getting all the vehicles to the garage.

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

#### **DELIBERATIONS:**

Mr. Dearing said that his biggest challenge with this application was that the applicant seemed to have shown no good faith that he would be a better neighbor and follow the Town's Bylaws. He said that the Board had no assurance from Mr. Bussey that he would do what he claimed to do and stop operating a business out of the residential property.

There was discussion about how the Board could best handle the application and whether it was worthwhile to grant a temporary Special Permit to allow the extra vehicle for six months or one year and then revisit the matter. Mr. Dearing said he was hesitant even to grant a temporary Special Permit since the problems at this site have been ongoing for so long.

Mr. Crowley asked whether the Board wanted to vote to allow a single oversized vehicle

instead of two. Ms. Amick said she wasn't sure that was permissible, since the application was to allow a second vehicle. Mr. Smith said that he did not have any issue with the applicant having one truck at this property, and it sounded to him that, regardless of whether the truck was technically allowed under the Bylaw, nobody else had any problem with it, either; however, the request before the Board was whether or not to allow a second oversized vehicle, so he suggested the Board deny this application and let Mr. Bussey work out the details of a single truck with Mr. Laskey. The other Board members agreed that this appeared to be a reasonable solution.

Mr. Crowley explained to the applicant that the application as presented would not be granted, so he offered Mr. Bussey the opportunity to withdraw the application without prejudice. Mr. Bussey agreed that withdrawing the application was his best option.

**MOTION:**

Ms. Amick moved to withdraw without prejudice the application of Christopher Bussey, at 315 Old Billerica Road, seeking a Special Permit per Section 5.1.4 of the Zoning By-Law to allow one additional commercial (oversized, if applicable) vehicle.

Ms. Hamilton seconded the motion.

Voting in favor: Crowley, Amick, Dearing, Hamilton, and Smith

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

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

**PETITION #028-15** – John Minty, for 339 North Road, seeks a Variance from Sections 6.2.7 and 14.7 of the Zoning Bylaw to construct detached garage not behind the rearmost point of the house.

Mr. Dearing recused himself from this hearing.

Mr. Minty introduced himself and said that he was seeking a Variance to allow a two-car garage to be built in front of the existing dwelling. He talked about the history of the property, noting that the house was originally built in 1908 as a hunting lodge for the Lane family. He stated that the current house was situated at the back of the lot, and all that was behind it were steeply pitched boulders, so it was impossible to build anything in that area without extreme excavating or even blasting. Mr. Minty showed a plot plan and topographic map of the property and commented that the soils on the site were made up principally of rock ledge and granite rock outcroppings. He said that he could attach the garage to the house without needing any zoning approval, but he felt it would not be historically appropriate for the house and would therefore rather go through the Variance process. He explained that the proposed garage would perfectly mimic the architectural

tenor of the existing hunting lodge's architectural elements, and it had been designed to be built into an existing slope on the site so that its mass will be neatly tucked into the existing hillside, reducing its presence on the site and its visual impact to the street.

Ms. Hamilton asked how far the proposed garage would be from the house. Mr. Minty replied that it would be 10 feet from the edge of the existing porch to the wall of the garage.

Mr. Smith talked more with the applicant about the soil conditions on the site.

Mr. Crowley opened the hearing to the public.

Richard Daugherty, of 49 Elm Street, said that this looked like a lovely addition to the neighborhood, although he would have placed the new garage a bit farther from the existing house.

Amy Lloyd, of 17 Fayette Road, said that she applauded the applicant for the effort he had spent to keep the existing house and build a structure that was in keeping with the architecture and history of it.

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

#### **DELIBERATIONS:**

Mr. Crowley stated that, as this was a Variance application, it had to meet seven requirements listed in the "Variance puzzle." He suggested that the Board go through those seven requirements to determine whether they have been met.

*A particular use must be sought.* Mr. Crowley stated that the proposed use was for a two-car garage, so this condition was met. The other Board members concurred.

*The use must be for one not requiring a Special Permit.* The Board concluded that this was clearly the case here, as this structure would be a new non-conformity on the lot.

*The project must relate to a particular parcel or existing building.* The Board agreed that this was obvious here.

*There must be conditions affecting the parcel but not the whole neighborhood.* The Board concluded that the boulder issues and topography looked to be unique to this property.

*The project must be without detriment to the public good.* The Board members agreed that this was without any detriment to the neighborhood.

*There is no derogation from the intent and purpose of the Bylaw.* Mr. Crowley said he felt that there was no derogation from the Bylaw here, and the other members concurred.

*A substantial hardship, financial or otherwise, must be proved.* Mr. Crowley stated that, with the rock outcroppings and the slope and the soil conditions, there was clearly a hardship on this property. Mr. Smith said he felt that some of the conditions on the lot might not be considered worthy of a hardship if taken individually, but taken together as a whole on the property, they certainly created a hardship. The other members agreed.

Mr. Crowley called for a motion.

**MOTION:**

Ms. Amick moved to grant John Minty, for 339 North Road, a Variance from Sections 6.2.7 and 14.7 of the Zoning Bylaw to construct detached garage not behind the rearmost point of the house, substantially as shown on Exhibit 1 (existing features and topography map), Exhibit 2 (site plan and topography map showing proposed garage), Exhibit 3 (foundation and floor plans), Exhibit 4 (elevation plans), and Exhibit 5 (roof framing plan).

Ms. Hamilton seconded the motion.

Voting in favor: Crowley, Amick, Hamilton, Smith, and Kalantari

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

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 apply for a Building Permit.

Mr. Minty thanked the Board for its time. Ms. Amick thanked Mr. Minty for preparing such a thorough application.

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

**PETITION #029-15** – Robert Donnelly, for Whole Foods Market, at 170 Great Road, seeks a Variance from Table II: Dimensional Regulations and from Section 6.2.10 of the Zoning Bylaw to allow entrance structure taller than 37 feet.

Robert Donnelly, of Whole Foods, and Kevin Kacamburas, of Jacobs Architects, introduced themselves. Mr. Kacamburas stated that the petition before the Board was a Variance from the Zoning Bylaw's height restriction to permit an entryway "portal" to be 39.7 feet high – 2.7 feet higher than the allowed 37 feet. He said that the reason for this request was that Whole Foods felt that the visibility of the store from The Great Road was hampered due to how far back the building was set from the street.

Ms. Amick asked about the construction of the entryway itself. Mr. Kacamburas said that the proposed portal would be attached to the existing building by two pieces of steel on either side of it. Mr. Dearing noted that it sounded more like a freestanding sign than an entryway.

Ms. Amick said that the entrance portal appeared to be 45 feet high, not 39.7 feet high. Mr. Kacamburas stated that the Zoning Bylaw defined height as being measured to the midpoint of the pitched roof – in this case, the mean average between the roof's plate and the ridge, which was 39.7 feet.

Mr. Dearing said that the applicants for every Variance application needed to prove a hardship in order for it to be granted, and he asked what the applicants considered the hardship to be here. Mr. Kacamburas replied that they felt that the setback from The Great Road was a hardship to the business, because it was very difficult to see it from the street. He added that the Sunoco gas station blocked part of the view from the street, and several trees also impeded the view. Mr. Dearing noted that if the sign were actually placed lower on the building, it would be more visible, because the renderings showed that the thickest part of the trees are along the same line as the proposed "Whole Foods" wording.

There was extensive discussion about the design and construction of the entryway and whether it should be considered strictly as an entryway or as a sign. Ms. Amick commented that she felt this single entry portal might make the façade look lop-sided and make building look awkward since the Whole Foods end of the building does not match the Marshalls end of the building.

Mr. Crowley opened the hearing to the public.

Allan Chertok, of 359 North Road, said that, in his opinion, the proposal was extremely unattractive. He said that, regardless of his opinion about the aesthetics, he saw no hardship for a Variance here, and he also felt that this application was unnecessary because everyone already knew where Whole Foods was. Mr. Donnelly said that Whole Foods was trying to broaden its customer base and wanted to attract people who didn't already know the store was there. Mr. Crowley said he agreed that every store, regardless of how well-known it may already be in the area, needed signage to make itself known, but he did agree that there did not seem to be a true hardship here.

Jeffrey Cohen, a resident of 17 Houlton Street and a member of the Planning Board, said that this portal seemed a great deal like a freestanding sign. He also agreed that there was no hardship on the land that would allow a Variance to be granted.

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

**DELIBERATIONS:**

Mr. Crowley said that, regardless of whether this entrance was considered a sign, it had to pass the Variance test in order to be granted. He said that the Board could go through the entire Variance puzzle but he felt that it was more efficient only to consider the hardship aspect, and he felt the application failed on that condition. The other Board members concurred.

Mr. Crowley stated that it was clear that the Variance would not be granted, so he offered the applicants the opportunity to withdraw the application without prejudice. The applicants agreed to withdraw.

**MOTION:**

Ms. Amick moved to withdraw without prejudice the application of Robert Donnelly, for Whole Foods Market, at 170 Great Road, seeking a Variance from Table II: Dimensional Regulations and from Section 6.2.10 of the Zoning Bylaw to allow entrance structure taller than 37 feet.

Mr. Dearing seconded the motion.

Voting in favor: Crowley, Amick, Dearing, Hamilton, and Smith

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Donnelly thanked the Board members for their time. Mr. Crowley wished them luck as they moved forward.

**BUSINESS MEETING:**

**March 12 Minutes**

**MOTION:**

Ms. Amick moved to accept the minutes of the March 12, 2015 meeting, as corrected.

Mr. Dearing seconded the motion.

Voting in favor: Crowley, Amick, Dearing, Hamilton, Smith, and Kalantari

Voting against: None

Abstained: None

The motion carried unanimously, 6-0-0.

**March 26 Minutes**

**MOTION:**

Ms. Amick moved to accept the minutes of the March 26, 2015 meeting, as corrected.

Mr. Dearing seconded the motion.

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

Voting against: None

Abstained: Smith and Kalantari

The motion carried unanimously, 4-0-2.

**Adjournment**

**MOTION:**

Ms. Amick moved to adjourn the meeting.

Ms. Hamilton seconded the motion.

Voting in favor: Crowley, Amick, Dearing, Hamilton, Smith, and Kalantari

Voting against: None

Abstained: None

The motion carried unanimously, 6-0-0.

The meeting adjourned at 9:50 PM.

  
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Todd Crowley, Acting Chair

01-21-15  
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Date

Respectfully Submitted,

Scott Gould  
ZBA Assistant