

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
JUNE 11, 2015**

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

PRESENT: Todd Crowley, Acting Chair; Carol Amick, Clerk; Jeffrey Dearing; Michelle Puntillo; Kay Hamilton; Robert Kalantari; Arthur Smith

ABSENT: Angelo Colasante, Chair

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

Mr. Crowley introduced himself and explained that he would be Acting Chair for this meeting in Mr. Colasante's absence. The Zoning Board of Appeals (ZBA) members introduced themselves.

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

PETITION #034-15 – CONTINUATION – 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.

Mr. Crowley stated that ~~that~~ Mr. Colasante, who voted at the last meeting, was not here tonight, and Ms. Amick, who had read the minutes of the original hearing, would invoke the exception to the Mullin rule and serve as the fifth voting member.

Ms. Brown greeted the Board members and reintroduced Mike Derse, of Learning Express. Ms. Brown reminded the Board that ~~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 the fact that it was zoned Limited Business instead of General Business limited the entire space to 2,000 square feet.

Ms. Brown noted that the Board had written three suggested conditions and had requested that Town Counsel review those conditions; Town Counsel did review them but also noted that this project should be granted as a Variance rather than a Special Permit because it was a new building. She said she understood that rationale and believed a hardship could be found here because of the site itself. She said that it would be possible, but far less desirable to the Town, to put all the buildings behind the zoning line that runs through the property, and then this business would be allowed by right; however, it was clear that the residents and committees of Bedford did not want that, so tenants like Learning Express were left in a difficult position of being in a district ruled by an antiquated Bylaw.

Ms. Amick asked whether this business could be classified as a daycare facility. Ms. Brown replied that the Zoning Bylaw deferred to Massachusetts General Law Chapter 40A, which contained definitions of “child care facility” that Learning Express did not meet; as such, Mr. Laskey and Town Counsel did not feel that this business could be classified as child care.

Mr. Crowley stated that Town Counsel found that the conditions proposed by the Board were fine, except for the first condition, which should only apply to Special Permits and not Variances. There was extensive discussion about whether this application should be voted on as a Special Permit or a Variance. Mr. Dearing said that he didn’t like going against Town Counsel’s opinion of a Variance but he liked the fact that a Special Permit could be tied to a specific business. Ms. Amick agreed.

The Board talked with the applicants about the size of the spaces. Mr. Crowley suggested the Board condition the permit to say “not to exceed 3,500 square feet” for the retail space and “not to exceed 4,000 square feet” for the play space.

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

DELIBERATIONS:

There was more dialogue about whether to grant a Special Permit or a Variance. Mr. Smith said he worried that, if this were ever appealed and brought to court, the Board could be seen as making an “arbitrary and capricious” decision if it granted a Special Permit when Town Counsel specifically stated that a Variance was the only appropriate avenue. After further conversation, Mr. Crowley stated that the Board should first attempt to work through the Variance puzzle:

There are circumstances relating to the soil conditions, shape, or topography of such land or structures. The Board members agreed that the word “structures” in this condition allowed them to find the application in keeping with this requirement.

Those circumstances especially affect the land or structures of the petitioner but do not affect generally the zoning district in which the land or structures are located. Mr. Dearing said this was unique to this parcel, as there was not another structure like it in the entire Limited Business District. Ms. Amick said she had trouble with this condition, because although it was unique to this parcel, it was not unique to this particular building, since there were two other buildings like it in Bedford Marketplace. She said that she worried that it would open up the door for other tenants to seek variances, and use the ZBA’s Learning Express decision as a precedent. Mr. Crowley pointed out that even if another business wanted to do this at the same property, it would still require a Variance from the ZBA. Ms. Amick said that fact helped to alleviate her concern somewhat.

A literal enforcement of the provisions of the by-law would involve substantial hardship, financial or otherwise, to the petitioner. Mr. Crowley said that this parcel was very difficult due to the Limited Business line running through the center of it, and he agreed with Ms. Brown that placing all the buildings behind that line in order to put them in the General Business district

would be undesirable. Mr. Dearing added that a literal enforcement of the Bylaw was onerous to many businesses, because 2,000 square feet for most retail stores was simply not feasible in this day and age.

That desirable relief may be granted without substantial detriment to the public good. The Board agreed that this use would be without any detriment to the public good, and indeed would be welcome in the Town.

The relief does not nullify or substantially derogate from the intent or purpose of the Bylaw. The Board agreed that this was not a substantial derogation from the intent of the Bylaw.

After further dialogue, it was concluded that a Variance could be granted for this application. Once the Board members had come to this consensus, they talked about the conditions for the Variance, and how those conditions should be worded. The discussion included the size and scope of the play area; the restriction of sizes for each of the uses; the hours of operation; reference to exhibits; and hours of delivery (it was decided not to include a condition for deliveries, as deliveries for this type of business tended to be by UPS or Federal Express rather than an early-morning delivery truck often used by restaurants). The following conditions were decided upon:

1) The tenant space, which is identified as the rear of Building C and further described as tenant space C-120 on Exhibit C, shall be restricted in size to a retail space that shall not exceed 3,500 square feet and an indoor amusement space that shall not exceed 4,000 square feet.

2) The general layout of the space shall be substantially consistent with the floor plan identified as Exhibit A.

3) The outdoor play area as shown on Exhibit D shall not exceed 400 square feet and shall be deemed an accessory use to the Indoor Amusement use and be used by the tenant only. The outdoor area shall be fenced in with a 6-8 foot privacy fence; access to the area shall be through the tenant's space only. However, the outdoor play area shall be provided with a gate leading to a sidewalk/pedestrian walkway to be used for emergency egress only, and shall be marked as such. Upon the tenant vacating its tenant space, the fence enclosing the outdoor play area shall be removed.

4) The hours of operation shall be between 6:00 AM and 11:00 PM.

When it was decided that the conditions were satisfactory and the pieces of the Variance puzzle had been met, Mr. Crowley called for a motion.

MOTION:

Ms. Amick moved to grant to Pamela Brown, Esq., for Learning Express, at 166-168 Great Road, a Variance to allow retail and indoor amusement facility over 2,000 square feet, as shown on Exhibits A through D, with the following conditions:

1) The tenant space, which is identified as the rear of Building C and further described as tenant space C-120 on Exhibit C, shall be restricted in size to a retail space that shall not exceed 3,500 square feet and an indoor amusement space that shall not exceed 4,000 square feet.

2) The general layout of the space shall be substantially consistent with the floor plan identified as Exhibit A.

3) The outdoor play area as shown on Exhibit D shall not exceed 400 square feet and shall be deemed an accessory use to the Indoor Amusement use and be used by the tenant only. The outdoor area shall be fenced in a with a 6-8 foot privacy fence; access to the area shall be through the tenant's space only. However, the outdoor play area shall be provided with a gate leading to a sidewalk/pedestrian walkway to be used for emergency egress only, and shall be marked as such. Upon the tenant vacating its tenant space, the fence enclosing the outdoor play area shall be removed.

4) The hours of operation shall be between 6:00 AM and 11:00 PM.

Mr. Dearing seconded the motion.

Ms. Puntillo asked whether the motion should be made to grant the Variance not just to "Learning Express" but to the two separate entities in question – Learning Express Toys and Learning Express Play. Ms. Brown said it probably was not an issue but stated that, if the Board was willing to amend the motion to reflect the two entities, it might be useful.

AMENDED MOTION:

Ms. Amick moved to grant to Pamela Brown, Esq., for Learning Express Toys and Learning Express Play, at 166-168 Great Road, a Variance to allow retail and indoor amusement facility over 2,000 square feet, as shown on Exhibits A through D, with the following conditions:

1) The tenant space, which is identified as the rear of Building C and further described as tenant space C-120 on Exhibit C, shall be restricted in size to a retail space that shall not exceed 3,500 square feet and an indoor amusement space that shall not exceed 4,000 square feet.

2) The general layout of the space shall be substantially consistent with the floor plan identified as Exhibit A.

3) The outdoor play area as shown on Exhibit D shall not exceed 400 square feet and shall be deemed an accessory use to the Indoor Amusement use and be used by the tenant only. The outdoor area shall be fenced in a with a 6-8 foot privacy fence; access to the area shall be through the tenant's space only. However, the outdoor play area shall be provided with a gate leading to a sidewalk/pedestrian walkway to be used for emergency egress only, and shall be marked as such. Upon the tenant vacating its tenant space, the fence enclosing the outdoor play area shall be removed.

4) The hours of operation shall be between 6:00 AM and 11:00 PM.

Mr. Dearing seconded the amended motion.

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

Voting against: None

Abstained: Kalantari

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, barring any appeals, the applicant may apply for a Building Permit at the Code Enforcement Department.

Ms. Brown and Mr. Derse thanked the Board for its time. Mr. Crowley wished the applicants luck as they moved forward.

MOTION:

Ms. Amick moved to adjourn the meeting.

Ms. Puntillo seconded the motion.

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

Voting against: None

Abstained: None

The motion carried unanimously, 7-0-0.

The meeting adjourned at 9:35 PM.

Todd Crowley, Acting Chair Date

Respectfully Submitted,

Scott Gould
ZBA Assistant