

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
MARCH 26, 2015**

Town of Bedford
Bedford Town Hall
Multi-Purpose Room/Auditorium

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

ABSENT: Arthur Smith; Robert Kalantari

GUESTS: Richard Reed, Town Manager; Robert Mangiaratti, Town Counsel; Christopher Laskey, Code Enforcement Director; Margot Fleischman, Board of Selectmen; Jeffrey Cohen and Amy Lloyd, Planning Board

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

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

PETITION #017-15 – Red Heat Tavern, LLC, at 150 Great Road, seeks a Special Use Permit per Table I: Use Regulations and per Section 4.5.7 of the Zoning Bylaw to construct new restaurant.

Mr. Colasante said that one of the voting members at the original Red Heat hearing was Robert Kalantari, who was not present tonight; therefore, Mr. Crowley would be voting in his place, as he had listened to the recording of the previous meeting. He said that the voting members for this hearing would, then, be himself, Mr. Crowley, Ms. Amick, Ms. Puntillo, and Ms. Hamilton.

Mr. Colasante stated that, at the last meeting, he closed the public hearing, and would now like to re-open it to allow further comments from residents.

MOTION:

Ms. Amick moved to re-open the hearing for Red Heat Tavern, LLC, at 150 Great Road.

Mr. Dearing seconded the motion.

Voting in favor: Colasante, Crowley, Amick, Puntillo, and Hamilton
Voting against: None
Abstained: None

The motion carried unanimously, 5-0-0.

Pamela Brown, Esq., greeted the Board and talked about the parking and site plan of Bedford Marketplace, which was currently being redeveloped. She noted that the proposed restaurant would take up one third of the new building at the site. She said that Red Heat Tavern would be a sit-down restaurant, which was allowed under the Zoning Bylaw, and it would also have an outdoor patio with 46 seats, open seasonally. She added that the site plan was fully approved, with this use in mind, by the Planning Board in 2008, and the Selectmen had already approved Red Heat's liquor license, so the only thing left for the ZBA to approve was the restaurant use itself.

Ms. Brown introduced Ross Hamlin, the owner of Bedford Marketplace, and Kevin Harron, owner of Burton's Grill and Red Heat Tavern. Mr. Harron said he was excited about the opportunity to open a restaurant in Bedford, as he felt it was a market in need of a good sit-down restaurant. He said that Burton's goal was to create a restaurant of high quality for the middle class, and the business has had a great track record and known for being highly ethical and always a great member of any community. He introduced the executive chef at the Red Heat Tavern in Wilmington, who talked about the kinds of food that the restaurant offered, noting that allergy awareness was a big part of the company's goal, and they had the ability to make any dish based on any individual's needs, from vegetarian to vegan to gluten-free.

Mr. Colasante asked about outdoor seating and how the applicants envisioned it being used. Mr. Harron replied that patio dining was becoming more and more common all across New England, and this would be similar to many other restaurants. He stated that this would not be the loud atmosphere of a rock concert but a subdued environment where people can dine outside. He said that the patio would, naturally, not be open all year because of cold and snow, but would be open seasonally to allow diners another option other than eating inside. The Board conversed more with Mr. Harron about noise levels, music, and hours of the patio seating. Mr. Colasante said that, since the patio seating would be seasonal anyway, perhaps there might be a condition on the Special Permit stating that the patio seating will not be open between November 15 and March 15. Mr. Harron said he would be amenable to that.

Ms. Amick talked with Mr. Harron about the restaurant's hours of operation. It was ultimately agreed that the restaurant would be open between 11:30 AM and 11:00 PM from Sunday through Thursday and between 11:30 AM and midnight on Friday and Saturday. Mr. Harron agreed that he could be amenable to limiting the patio seating hours to 10:00 PM on weeknights.

Mr. Colasante opened the hearing to the public, stating that the Board wanted to address any concerns that the public might have.

Margot Fleischman, a resident at 135 Page Road and a Bedford Selectman, read a letter stating that the Selectmen were, by a 4-1 vote, in favor of the Red Heat Tavern going in to this location. She said to Mr. Harron that the Selectmen wanted her to pass on the

message that they would love it if Red Heat supported some of the local businesses in Bedford, and that there were many opportunities for corporate synergy in the Town.

David Goldbaum, of 12 Maple Street and 18 Hillside Avenue, said that he went to the Wilmington location several days ago and his primary concern was the outdoor seating and outside noise affecting neighbors.

The Board talked with the applicants about the potential noise issues and perhaps limiting the hours of patio seating. Ms. Amick asked whether the applicant would consider not having any speakers outside the restaurant. Mr. Harron said he would entertain such a notion.

Catherine van Praagh, of 69 South Road, said she was very much in favor of approving this restaurant use. She said that she had celiac disease and was severely limited in what she can eat, and there was hardly a restaurant in Bedford at which she could eat. She said that Burtons is known for its policies about making food from scratch to accommodate people with allergies and unique needs. She stated that she would be extremely grateful to have a restaurant in Bedford that she could go to with her family.

Betty Tenwolde, the manager of Bedford Village apartments, stated that Bedford Village consisted of 96 apartments behind the Bedford Marketplace property, so the community had a concern about the noise coming from the restaurant. She said she went to the Red Heat Tavern in Wilmington and saw speakers outside the building, so she worried that the music would emanate from the restaurant. She stated that the residents' other primary concern was the garbage compactor, especially being used at night.

Ms. Brown responded that the trash compactor was approved by the site plan review and was shared between tenants.

Amy Lloyd, a resident of 17 Fayette Road and a member of the Planning Board, urged the Board not to put restrictions on the hours of operation. She said Red Heat's proposed hours were quite reasonable, and she knew that many people were excited about having a restaurant in town that would be open later than 8:00 or 9:00 PM.

Kate Faulkner, of 18 Woodland Road, said that she too was in favor of this establishment. She noted that she also had celiac disease and was excited to have a restaurant in Bedford where she could eat safely.

Kim Walters, of 2 Selfridge Road, said she was in support of Red Heat, noting that Burtons Grill had an excellent reputation.

Deb Picciuto, of 1 Overlook Drive, said she supported this proposal. She said that it sounded as though the Board were trying to micromanage the business in terms of limiting seating and noise. She suggested that the Town allow the organization to move forward as it saw fit and deal with any potential problems if and when the time came.

Adam Schwartz, of 34 Glenridge Drive, said that he felt the Red Heat Tavern was meeting a need that Bedford had, and he was fully in favor of it. He said that he was concerned about limiting hours of operation or outdoor seating, because the company should be allowed to run the business as they see fit. He said that Café Luigi's was not too far removed from this proposed location and it had outdoor music, and no one seemed to have any problems with that.

Carrie Penman, of 15 Hillside Avenue, said that she and her husband were the closest abutters to the Red Heat Tavern, and they were in full support of it. She said she was confident that if there ever were a noise problem, she would be able to call Mr. Harron or the Code Enforcement Department and it would be taken care of. She added that she didn't want Bedford to be so restrictive that the only businesses that wanted to come to the town were banks.

Jeff Cohen, a resident of 17 Houlton Street and a member of the Planning Board, said that he served 18 years as a member of the ZBA; many restaurants came before the Board in that time and all were approved. He said that the primary concern with this new proposed restaurant was noise, and he felt that it was important for the Board to consider hard facts about noise rather than opinions from people guessing how loud it might be. He stated that he therefore did his own sound study using a sound meter, although he stressed that he was not a sound technician and his information should not be mistaken for that of an engineer. He talked about sound and the way it is perceived, with waves radiating out like ripples on a pond and decreasing when those waves hit objects like trees or buildings. He said that, as a point of reference, normal conversation is 60 decibels, bird calls are about 44 decibels, and living room music is 76 decibels.

Mr. Cohen said that he took direct readings outside the Red Heat Tavern in Wilmington on a Friday night around 7:00 PM; there was no one eating outside at this time but the music was on, and he measured approximately 74 decibels from the parking lot. He commented that a 10-decibel increase sounds twice as loud to the normal ear, and a 10-decibel decrease sounds twice as soft. He provided a handout to the Board where he used a GIS map to measure from the proposed restaurant to all the close surrounding abutters, and his calculations showed that the decibel level that those abutters would hear would be approximately 20, which was the sound of a soft whisper or a rustle of leaves. He said that he felt that this was further proof that the proposed restaurant would not be substantially more detrimental or injurious to the neighborhood.

Mr. Cohen concluded by noting that he worked with a Wilmington Planning Board member, who said that Red Heat Tavern was an excellent corporate citizen, did a lot of charity work in town, and was a model tenant. Mr. Cohen urged the ZBA to grant the Special Permit without any conditions.

Mr. Colasante thanked Mr. Cohen for his detailed analysis. He said that Mr. Cohen was not a sound technician but he nevertheless trusted his information.

Karen Kenney, of 33 Evergreen Avenue, said that Bedford needed to stop making it so difficult for new businesses to come in. She said she supported this restaurant, without any conditions.

Ken Clayton, of 47 Dunster Road, said that if Red Heat Tavern wanted to operate a business in a similar manner as Café Luigi's, with similar noise levels, then he did not see any problem allowing it.

Frank Cargiuolo, of 24 Hillside Avenue, said he was also in favor of this restaurant coming to town, as he liked what they offered and thought it was a much-needed use. He said he would be in favor of a condition requiring the restaurant to turn its speakers off or generally limiting noise after 10:00 PM.

Christina Wilgren, of 2 Bedford Village, said she was concerned about noise, especially that of the trash compactor at the site. She stated that she was also concerned about smells such as from the coal stove or from cigarettes of employees smoking outside the building.

Ms. Lloyd said that she thought it was important to reinforce that the dumpster was not a restaurant issue, as it was part of the site itself, so it should not be the responsibility of Red Heat Tavern.

Mr. Cohen said that the Planning Board had, in its discussions about the Comprehensive Plan and visions for Bedford, talked about creating gathering places for residents so they could feel like they were part of a community. He said that Red Heat would be a step in that direction and help achieve that goal.

Joe Morgan, of 14F Bedford Village, said that he was 86 years old and had for 30 years lived within a hundred feet of this proposed tavern. He said that he thought the noise would be an issue, regardless of what Mr. Cohen said, especially since wind was not taken into consideration in his sound study. He said he had arrhythmia and he thought this proposed restaurant would have a debilitating effect on his health.

Mr. Colasante read into the record letters of *opposition* from:

- Carol and John Carlson, of 16 Bedford Village
- Richard Burnes, of 53 Notre Dame Road
- Wayne Braverman, of 6J Bedford Village

Mr. Colasante read into the record letters of *support* from:

- Paulo and Susan Sepe, of 43 Fletcher Road
- David DiGangi, of 19 Robinson Drive
- Jane Patterson (no address provided)
- Marge Heckman, of 36 Wildwood Drive
- Carrie Penman and Jon Roseman, of 15 Hillside Avenue

- Sally Okoniewski, of 96 Sweetwater Avenue
- Lucille Courtney, 8 Bedford Village
- Catherine V.G. Van Praagh, of 69 South Road
- Colin Valentine, of 26 Putnam Road
- Emily Mitchell, of 4 Heritage Drive
- Lisa Hafer, of 1 Selfridge Road
- Sandy Morvillo, of 9 Bonair Drive
- Ann Marie Bernardon, of 288 Davis Road
- Suzanne Johnson, of 23 Sweeney Ridge Road
- Shawn and Jean Doherty, of 36 Buehler Road
- Robin Citrano, of 35 Buehler Road
- Paul Flynn, of 15 Buehler Road
- Beth Doyle, of 26 Sweetwater Avenue
- Lori Alper, of 18 Robinson Drive
- Tom Engel, of 121 Springs Road
- Bob Shelmire, of 3 Francis Kelley Road
- Jeannette Green, of 1 Sweeney Ridge Road
- Lisa Mustapich, of 1 Clark Road
- Rich Kilroy, of 19 Otis Street

Ms. Brown handed the Chair a petition with signatures from residents in favor of the restaurant.

Mr. Colasante said he thought it was important that the record show that all parking and site plan concerns had already been addressed and approved by the Planning Board.

In closing, Ms. Brown stated that there was clearly an outcry in Bedford for this type of restaurant. She said that any neighborhood concerns could easily be handled by limiting the hours to no later than midnight and potentially closing the outdoor patio to 10:00 PM, although she didn't feel that the latter condition was necessary. She said that everything the Board has heard tonight pointed to overwhelming support, and she urged the Zoning Board to grant the Special Permit for this restaurant use.

DELIBERATIONS:

For clarification, Ms. Amick asked Mr. Harron whether he intended to have live music at this restaurant as he did at the Wilmington location. Mr. Harron said that every restaurant decision was independently made, but it was not their intent to have live music at this location.

Mr. Crowley said he was in full support of this restaurant and felt that Bedford needed it. He said the only restriction he might like to see on the Special Permit was that the trash compactor not run from 8:00 PM to 6:00 AM, but he realized that might be a site issue more than a restaurant issue.

Ms. Amick said that, regardless of what some people have said, she could only go by what she experienced when she went to the Red Heat Tavern in Wilmington, and she believed this was a sports bar that served food rather than a restaurant that served alcohol. She said that this establishment could be situated on Middlesex Turnpike or the empty Staples space, but she didn't feel that it met the small town character of Bedford and in her opinion would therefore be detrimental and injurious to the neighborhood. She said she wouldn't see a sports bar in the center of Lexington or Concord, and didn't feel that it was appropriate in Bedford center, either.

Mr. Dearing said that the Board's charge was to determine whether this property was significantly more injurious or detrimental to the neighborhood, and this same plaza contained Café Luigi's, Ka-Noon, Whole Foods, Subway, and B-Good, so he felt it was already well established that this center was an appropriate location for a restaurant. He said he believed that the location was ideal because of the accessibility for not only cars but bicycles and walkers. He added that it would be a great place for friends to gather, and that Bedford was lacking an establishment like that. He said that he would hesitate adding conditions about noise or music, because Mr. Harron has a long and proven track record of working with communities, so he felt that the Board should give him the benefit of the doubt.

Ms. Puntillo agreed, stating that she was in support of a restaurant in this location and was in support of Red Heat Tavern. She said that she believed any concerns would be addressed by the owner in a fair manner.

Ms. Hamilton also agreed, noting that she thought this would be a good addition to Bedford. She said that Mr. Harron seemed like a fair and approachable person, so she believed that any noise issues that ever came up would be fairly addressed.

Mr. Colasante asked whether the Board members felt it was necessary or appropriate to put conditions on the permit limiting the hours of patio seating or limiting noise from the restaurant. Ms. Amick said that she thought the condition that the patio not be open from November 15 to March 15 was a good idea. Mr. Dearing said he did not feel it would be wise to do so; he doubted there would be any problems, but if there were they could be dealt with by the Code Enforcement Department. Ms. Puntillo and Ms. Hamilton agreed. Mr. Colasante said that half the Board was not in favor of conditions, so that indicated to him that the Special Permit should be issued without any.

Ms. Amick said she thought it was important to include the hours of operation in the Special Permit, and she asked Mr. Harron to confirm that those hours would be from 11:30 AM to 11:00 PM Sunday through Thursday and 11:30 AM and midnight on Saturday and Sunday. Mr. Harron said that was correct.

Mr. Colasante noted that Mr. Cohen's documentation should be entered into the record, but not listed as an exhibit.

MOTION:

Ms. Amick moved to grant Red Heat Tavern, LLC, at 150 Great Road, a Special Use Permit per Table I: Use Regulations and per Section 4.5.7 of the Zoning Bylaw to construct new restaurant, to operate between 11:30 AM and 11:00 PM from Sunday through Thursday and between 11:30 AM and midnight on Friday and Saturday, substantially as shown on Exhibit 1 (site plan, signed by landlord) and Exhibit 2 (Red Heat Tavern rendering).

Mr. Crowley seconded the motion.

Voting in favor: Colasante, Crowley, Puntillo, and Hamilton

Voting against: Amick

Abstained: None

The motion carried, 4-1-0.

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 move forward.

Ms. Brown and Mr. Harron thanked the Board members and the members of the community who spoke in support of the application.

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

PETITION #016-15 – CONTINUATION – Pamela Brown, Esq., for 120 Great Road, seeks a Special Use Permit per Table I: Use Regulations and per Section 4.5.7 of the Zoning Bylaw to construct new restaurant.

Ms. Brown said that she would like to withdraw this application without prejudice. She said that she and her brothers, who own the property together, were working on some of the architectural and zoning issues that had come up at past meetings. She added that they had a positive meeting with the Historic District Commission recently and they were all confident that they could reach a design that the applicants and the Town liked. She said she planned to resubmit a new application in the near future.

MOTION:

Ms. Amick moved to withdraw without prejudice the application of Pamela Brown, Esq., for 120 Great Road, seeking a Special Use Permit per Table I: Use Regulations and per Section 4.5.7 of the Zoning Bylaw to construct new restaurant.

Mr. Crowley seconded the motion.

Voting in favor: Colasante, Crowley, 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 #022-15 – Pamela Brown, Esq., for 10-12 Maple Street, seeks a Special Permit per Section 7.1.2 and 7.1.4 of the Zoning Bylaw to demolish and rebuild non-conforming structure within front and side lot lines.

Ms. Brown introduced David Goldbaum, the new owner of the two-family home at 10-12 Maple Street, which was located at the corner of Elm Street and Maple Street. She said that Mr. Goldbaum was in the business of historic restorations but has determined, along with fellow historic preservationist Kevin Latady, that there is nothing salvageable about this structure. She said that Mr. Goldbaum's proposal was, therefore, to demolish the house and rebuild a new two-story home on the same lot. This new house would improve two of the current non-conforming setbacks, moving the 7.5 foot side yard setback to a conforming 15 feet, and moving the Elm Street setback from a negative 5 foot setback (as it currently sits 5 feet onto the adjacent property) to zero feet; the remaining front and side yard setbacks of 8.9 feet and 8 feet, respectively, would remain the same.

Mr. Dearing said this was an unusual request because the proposed structure had a zero setback on the side, and he was concerned that if the foundation was directly on the setback, the overhangs or drip lines might be over the setback. He asked whether the foundation could be pushed a foot or two back, so that there could be assurance that any overhangs or drip lines would not be over the property line. Ms. Brown said that would not be a problem.

Mr. Colasante opened the hearing to the public.

Mr. Colasante read into the record a letter from William Moonan, Chair of the Historic District Commission, encouraging the ZBA to grant the Special Permit.

With no 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 requirements of a Special Permit were that the project was in keeping with the intent and purpose of the Bylaw and was not injurious or detrimental to the neighborhood. He stated that the Board typically requested that a conforming structure is built when a nonconforming structure is demolished and rebuilt, but the Board had to look at each application individually, and this was clearly a unique case. He said that it was in the Historic

District, and the proximity to the street actually had some historical significance that the Board must consider. He said he supported this application, especially since the HDC supported it as well. The other members agreed.

MOTION:

Ms. Amick moved to grant Pamela Brown, Esq., for 10-12 Maple Street, a Special Permit per Section 7.1.2 and 7.1.4 of the Zoning Bylaw to demolish and rebuild non-conforming structure within front and side lot lines, substantially as shown on Exhibit 1 (site plan), Exhibits 2, 3, 4, 5 (elevations) and Exhibit 6 (proposed building plan, as amended).

Mr. Crowley seconded the motion.

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

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

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

PETITION #024-15 – 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.

Ms. Puntillo recused herself from this hearing. Mr. Colasante said that the voting members would, therefore, be himself, Mr. Crowley, Ms. Amick, Mr. Dearing, and Ms. Hamilton.

Mr. Bussey stated that he needed a Special Permit to keep a second commercial vehicle at his house. He said he had a landscaping business in Billerica but he lived in Bedford, and occasionally it was easier to drive his truck home rather than going to the garage in Billerica to pick up his car. He noted that the garage at his house in Bedford was located 300 feet back from the road, so he didn't feel that it was a burden for the neighborhood.

Mr. Dearing asked why one vehicle was not sufficient. Mr. Bussey said that one of his trucks had a car seat in it, so he wasn't able to use it as a work vehicle, and if he was driving his work truck from a town like Lexington, it added an extra hour to his commute to bring the truck back to Billerica and switch it out with his car.

There was discussion about Section 5.1.4 of the Zoning Bylaw, which reads: *“In the Residential Districts, garaging or parking for one commercial automobile or for one light commercial vehicle (maximum 10,000 pound gross vehicle weight and 135-inch wheel base) shall be permitted, provided that garaging and parking of more than one such vehicle(s) or large commercial vehicle(s) may be authorized by the Board by Special Permit.”*

Mr. Colasante asked for clarification from the Code Enforcement Director, Christopher Laskey, regarding this section. Mr. Laskey stated that his understanding of this section was that Mr. Bussey was allowed one commercial vehicle by right, provided that it was under 10,000 pounds and having no more than a 135-inch wheel base; if he wanted a single vehicle over this size *or* wanted two vehicles under this size, he needed a Special Permit from the ZBA.

Mr. Dearing asked whether the applicant had specifications of his trucks so that the Board could determine whether they met the requirements of the Bylaw. Mr. Bussey said he did not have the specs with him.

Mr. Colasante opened the hearing to the public. He read into the record a letter from Tom and Dianne Busa, of 321 Old Billerica Road, who stated that Mr. Bussey had been running his landscaping business out of his home for many years, including using it as a hub for a snow plowing business in the winter. The letter noted that the Busas were concerned that granting this application would mean that Mr. Bussey would be able to continue using the property as a business.

Mr. Colasante said that the Board would have to look more into the history of this property to determine whether it was being used as a commercial landscape business; he noted that he might not have a problem allowing an extra truck to be garaged in the rear but was adamantly against the notion that the residence be used as a commercial business.

Ms. Amick said she didn't feel that the Board had enough information to make an informed decision tonight. Mr. Colasante agreed, suggesting that the Board keep the hearing open and continue it until a future date. Mr. Bussey said he would, in the meantime, get the specifications for his trucks.

MOTION:

Ms. Amick moved to continue 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 to April 23, 2015 at 7:30 PM.

Mr. Crowley seconded the motion.

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

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Colasante thanked the applicant for his time and said they would see him again on April 23.

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

PETITION # 023-15 – Pamela Brown, Esq., for 57 Hartwell Road, seeks a Special Permit per Section 7.1.2 and 7.1.4 of the Zoning Bylaw to reconfigure lot lines; or other action deemed appropriate by the Board, up to and including a Variance from Table II: Dimensional Regulations.

Ms. Brown introduced the owners of 57 Hartwell Road, Bonus Varghese and Reena Thopurathu. She stated that the homeowners wished to modify their non-conforming lot into a conforming lot and allow the house to remain when two new lots are created. She said that this would be done by adding a piece of the property at 75 Hartwell Road, which will create a fully conforming lot at 57 Hartwell Road, although the non-conforming structural setbacks at the front and side would stay the same; the Special Permit request was to allow those two non-conforming front and side yard setbacks to remain.

Mr. Crowley asked what the ultimate goal of this lot configuration was. Ms. Brown replied that this came about because of a subdivision that had gone before the Planning Board; the subdivision would be the result of an Approval Not Required (ANR) to create this lot, but the creation of this lot required zoning relief, and the Planning Board did not want to create a lot with structural nonconformities.

Mr. Colasante asked Christopher Laskey, the Code Enforcement Director, about whether this relief should be granted through a Special Permit or a Variance. Mr. Laskey said that he had spoken with Town Counsel, who indicated that his opinion of the law was that, as long as the applicant was not creating any new nonconformities, the Board could grant the relief as a Special Permit under Section 7.1.2 of the Zoning Bylaw.

Mr. Dearing said it appeared that the owners could reconfigure these lots by right with an Approval Not Required (ANR) plan. Ms. Brown said that was correct, but they wanted to keep the existing historic home in its current state, which is why they needed Zoning relief.

There was extensive discussion about the shape, size, and dimensions of the lots, and the Board talked about the potential addition of a four-house subdivision in this area and whether that subdivision should be considered by the Board. Mr. Colasante said that the subdivision was not before this Board, and therefore should not be considered.

Mr. Colasante opened the hearing to the public.

Philip Lombardo, an attorney with Lombardo, DeVellis and Smith, said that the Board had a plan in front of it that showed the effects of this lot reconfiguration on the neighborhood, and therefore the Board must agree that this project was injurious and detrimental to the neighborhood. He said this subdivision had many issues that had not been properly dealt with, including lack of wetlands buffering, insufficient lot lines, and drainage issues. Mr. Colasante said that he understood the concern, but the only item before this Board tonight was to leave the existing house on a lot after the reconfiguration of the lot lines. He said it was not remotely within the Board's jurisdiction to rule on a potential subdivision.

Ms. Amick asked one of the Planning Board members in attendance to clarify that Board's position. Jeffrey Cohen, a resident of 17 Houlton Street and a member of the Planning Board, said that the Planning Board received a request for this subdivision and did not want to act on the proposal because it would have been contingent on zoning relief for this lot configuration.

Michael Harrington, of 9 Patriot Circle, said that his neighborhood will be severely impacted by the time this subdivision was pushed through, and there were many issues that were of great concern to the residents there. He said that this Special Permit was only the first step towards changing his neighborhood for the worse. Ms. Brown pointed out that this zoning relief does nothing but allow the current house to stay; the subdivision is entirely under the purview of the Planning Board.

The Board talked more with the applicants, the abutters, and Mr. Cohen and Ms. Lloyd of the Planning Board about the impact and density of the neighborhood. Ms. Brown pointed out that the new lots would be much larger than the other lots in the neighborhood. Mr. Colasante agreed, noting that he wasn't sure that the density of a subdivision would be great, but he reiterated that it was not for the Zoning Board to decide.

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

DELIBERATIONS:

Mr. Colasante said that the two requirements of a Special Permit were that the project 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 the proposal before the Board to reconfigure the two lots and leave the house at 57 Hartwell Road met those requirements. The other Board members agreed.

Mr. Colasante talked about possibly conditioning the Special Permit on demolishing the house at 75 Hartwell Road, because if the ANR was recorded, it would result in a lot line going through an existing house. Ms. Amick said that she supported the application and said that she didn't think it was necessary to require the second house to be razed; she

said that the house would have to be demolished if the plan went into effect anyway. The other Board members agreed.

Ms. Hamilton said that the knowledge of a future subdivision made the decision a bit more difficult than it might normally have been, but the fact remained that the proposal before the Board easily met the requirements of a Special Permit.

MOTION:

Ms. Amick moved to grant Pamela Brown, Esq., for 57 Hartwell Road, a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning Bylaw to allow the existing house to remain after the reconfiguration of lot lines, substantially as shown on Exhibit A (“existing and proposed lots” plan) and Exhibit B (new lot proposal plan).

Mr. Crowley seconded the motion.

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

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, the applicant may move forward.

Adjournment

MOTION:

Ms. Amick moved to adjourn the meeting.

Mr. Crowley seconded the motion.

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

Voting against: None

Abstained: None

The motion carried unanimously, 6-0-0.

The meeting adjourned at 11:45 PM.

Angelo Colasante, Chair

Date

Respectfully Submitted,

Scott Gould
ZBA Assistant