

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
APRIL 26, 2012**

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

PRESENT: Angelo Colasante, Chair; Brian Gildea, Clerk; Jeffrey Cohen; Stephen Henning; Todd Crowley

ABSENT: Kenneth Gordon, Vice Chair; Jeffrey Dearing; Carol Amick

GUEST: Margot Fleischman, Selectmen Liaison

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

PRESENTATION: Mr. Gildea read the notice of the hearing.

PETITION #024-12 – Dan Temple, of Dan-Ker Construction, for 16 Madawaska Street, seeks a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to construct shed dormer and portico entry roof within front yard setback.

Dan Temple, the applicant for 16 Madawaska Street, introduced himself and explained that he was before the Board to erect a shed dormer and add a portico within the front yard setback. He noted that the Building Inspector had required him to appear before the ZBA because the project will be intensifying a pre-existing non-conformity. He stated that the homeowners would like to add a shed dormer at the front of the house to replicate the dormer on the back, and also install a new 5' x 6' portico entryway in place of the existing entryway; this portico will be within the front yard setback.

Mr. Temple talked in detail about the project and how it would be framed and constructed, and explained that the new shed dormer and portico will be located 27 feet and 20.4 feet from the property line, respectively.

Mr. Colasante asked whether the homeowner were present. Mr. Temple replied that one of the owners, Jo Ann Santiago, was present. Ms. Santiago introduced herself. Mr. Colasante requested that she sign the Zoning Board application, since it had previously only been signed by Mr. Temple. Ms. Santiago signed the application.

Mr. Temple talked with the Board about the details of the plot plan and the dimensions of the house and proposed work.

Mr. Henning asked whether there was a dormer on the back of the house now.

Mr. Temple replied that there was.

Mr. Crowley asked how much the square footage of the home would increase because of this project. Mr. Temple stated that it would not change much at all; it would be no more than a total of 10 square feet.

Mr. Cohen asked whether the applicants had any plans to enclose the portico. Mr. Temple said that these homeowners had no desire to enclose it, although he of course could not be certain what a future homeowner might want to do. Mr. Cohen asked whether the homeowner would have a problem with a condition of the Special Permit stating that the portico never be enclosed. Ms. Santiago said she would have no problem with such a condition.

Mr. Colasante opened the hearing to the public. With no comments or questions from those in attendance, Mr. Colasante closed the public hearing.

DELIBERATIONS:

Mr. Henning said that the addition seems to be in line with the neighborhood, and he didn't see anything injurious or detrimental about it. Mr. Cohen agreed. He said that the two conditions of a Special Permit are that the project is not injurious or detrimental to the neighborhood and is in keeping with the intent and purpose of the By-Law, and he believed that this application met both conditions. Mr. Gildea said that raising the roofline is actually an improvement to the house and to the neighborhood and that the portico entryway was not a significant increase in the non-conformity and was consistent with other houses in the neighborhood. Mr. Colasante and Mr. Crowley agreed.

MOTION:

Mr. Gildea moved to grant to Dan Temple, of Dan-Ker Construction, for 16 Madawaska Street, a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to construct shed dormer and portico entry roof within front yard setback, substantially as shown on Exhibit A and subject to the condition that portico shall not be enclosed.

Mr. Cohen seconded the motion.

Voting in favor: Colasante, Gildea, Cohen, Henning, and Crowley
Voting against: None
Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Colasante explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision recorded at the Registry of Deeds. Once the decision is recorded, the applicant may apply for a Building Permit at the Code Enforcement Department.

PRESENTATION: Mr. Gildea read the notice of the hearing.

PETITION #025-12 – Vicky Parks, for Café Darling, 119 Great Road, seeks a Special Use Permit per Section 4.5.7 and per Table I: Use Regulations to operate a café with seating.

Vicky Parks introduced herself and explained that the idea for this café was inspired by a café in Italy of the same name. She said she was interested in putting together a cupcakery and boutique where she would serve breakfast and lunch. She added that she also would like to have a connection to the local arts, such as readings from local writers or showings for local artists – some of which might occur at night. She said that the Plumbing Code triggers multiple restrooms for 20 or more seats so she proposes keeping the seating to 19 seats, including 10 seats on the patio. Ms. Parks stated that the parking lot holds 36 parking spaces, and Christopher Laskey, the Code Enforcement Director, informed her that the Zoning By-Law allows one parking space for every four seats, so she would be required to have 5 parking spaces for customers.

Mr. Colasante asked about the way a ZBA Special Use Permit for a restaurant has worked in the past. Mr. Cohen stated that this was a Use Permit that allows the restaurant to operate, but the Planning Board will also have to give its review. He said that the ZBA has, in the past, typically been concerned with anything that has an impact on the neighborhood, such as working hours, cooking odors, trash pickup, and deliveries. He stated that the Board has almost always, in his recollection, issued a one-year Special Permit with conditions, and after one year of the date of the restaurant opening, the applicant returns to the Board for a review. He said that this gives the Board an opportunity to make sure the conditions are being followed and the restaurant has been a good neighbor. Ms. Parks said she would be happy to have a one-year Special Permit.

Mr. Cohen asked how many employees she intended to have. Ms. Parks said that answer would depend on the amount of business she gets, but she imagined it would be two employees plus herself, so three in total.

Mr. Cohen asked what the applicant anticipated the hours of operation to be. Ms. Parks replied that she would be happy to get any input from the Board on hours of operation, but her initial was 7:00 AM to 5:00 PM, with perhaps one or two nights a week open for a local artist to speak or present.

Mr. Cohen asked whether the applicant had any knowledge of the deliveries and trash pickup times. Ms. Parks said that the trash pickup already occurs at the site; a dumpster is emptied once every week. She said that it seems that many restaurants in town have their food deliveries between 5:30 and 6:30 each morning, and she would not want to have deliveries any earlier than that. She added that she would not need deliveries as often as some other businesses, since a lot of the outside surplus would be baked goods that she brought in herself.

Mr. Colasante opened the hearing to the public.

Mr. Cohen asked whether the building is handicapped accessible. Ms. Parks said that it is not.

Mr. Cohen asked how many days a week Ms. Parks intended the business to be open. Ms. Parks said she hoped to be open six days a week, with the business open all weekend and closed during one weekday.

Mr. Henning asked what was currently in the space where the restaurant will go. Ms. Parks stated that it is now just an empty space; Kevin Baer, the chiropractor, was there but he recently moved to the back of the building.

Mr. Cohen asked whether Ms. Parks would be cooking on site. Ms. Parks replied that she would have a very rudimentary cooking facility, such as a regular oven and panini presses. She said that she did not expect to have any specialized oven, exhaust hoods, or the like. She added that the biggest anticipated expense will be adding sinks.

Pamela Brown, of 12 Sorens Way, said that the neighborhood where the proposed restaurant will be located is in dire need of a business like this, and she is grateful that Ms. Parks is trying to make it happen. She said she fully supports the application.

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

DELIBERATIONS:

Mr. Cohen said that a business like this is needed in this neighborhood, and it is a business that Bedford would surely welcome. He said he would like to see some conditions on the Special Permit, particularly that it be a one-year permit so that the Board can review it after one year of operation.

There was discussion about the seating. For clarification purposes, Mr. Crowley asked about the square footage of the space. Nathaniel Brown, the landlord of the building, said that the total space for both the upstairs and downstairs was between 1,200 and 1,500 square feet, so the total for the downstairs where this restaurant will be located was well under 1,000 square feet.

The Board members talked about what conditions may or may not be necessary for such a permit and ultimately agreed on conditions limiting the operation hours, the delivery hours, and seating. They talked about the most appropriate hours to allow deliveries and operation. Mr. Colasante said that it may become cumbersome or restrictive to condition the Special Permit on the restaurant only being open past 5:00 PM on certain nights, so he suggested allowing the hours of operation to be between 7:00 AM 9:00 PM. The other members agreed to such a condition. The applicant was asked if these hours were acceptable and the applicant agreed.

When the ZBA members had worked through the conditions that they wanted to include with the Special Use Permit, Mr. Colasante called for a motion.

MOTION:

Mr. Gildea moved to grant Vicky Parks, for Café Darling, 119 Great Road, a Special Use Permit per Section 4.5.7 and per Table I: Use Regulations to operate a café with seating, subject to the following conditions: 1) the Special Use Permit will be a conditional one-year permit, after which time the applicant will come back to the Board to seek a permanent Special Permit; 2) that there be no deliveries before 6:00 AM; 3) that hours of operation begin no earlier than 7:00 AM and end no later than 9:00 PM; 4) that the restaurant space will not exceed 19 total seats, nor will exceed three full-time (or full-time equivalent) employees.

Mr. Cohen seconded the motion.

Voting in favor: Colasante, Gildea, Cohen, Henning, and Crowley

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Colasante explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision recorded at the Registry of Deeds. Once the decision is recorded, the applicant may apply for the necessary permits at the Code Enforcement Department.

PRESENTATION: Mr. Gildea read the notice of the hearing.

PETITION #025-12 – Pamela Brown, Esq., for the Bedford Historical Society, seeks a Variance per Section 14.7 of the Zoning By-Law to reconfigure two non-conforming lots at 461A and 463 North Road.

Ms. Brown greeted the Board and stated that she was there on behalf of the Bedford Historical Society (BHS). She said this application was a Variance request to change the placement of a lot line to make two parcels more conforming. She talked about the history of the two houses – 463 North Road, known as the “Candy House,” and 461A North Road, known as the “Caleb Farley House.” She explained that was owned by Lawrence and Wilhelmina Kimball and was now held in a trust in their name, which is deeded for the benefit of the Bedford Historical Society; the Kimballs’ two sons would like to buy the two houses, and the money from the purchase would go directly to the BHS.

Ms. Brown referenced the cover letter of her application packet in detail (see attachment) and pointed out that the two lots currently have several structural non-conformities, but

granting this Variance will eliminate several of those non-conformities to make the lot and the houses much more conforming. She said that absolutely nothing about the two structures or the property will change other than the location of the property line. She stated that she feels the movement of the lot line passes all of the requirements of the Variance test, which she had laid out in the application cover letter.

Mr. Colasante asked whether the two structures are connected. Ms. Brown said they are not, although the steps from the Candy House are very close to the Farley House.

There was extensive conversation about the plot plan and the dimensions of the homes on the lot.

Mr. Colasante asked when the property was subdivided. Ms. Brown replied that there is no record of it ever being subdivided but the assumption is that it was done in the 1940s, long before the subdivision control laws.

Mr. Colasante opened the hearing to the public.

Patti Anne Collins, of 473 North Road, asked why the dividing lot line can't simply be removed to create one large, fully conforming lot. Don Corey, a resident of 2 Page Road and a member of the Bedford Historical Society, said that the lot was subdivided many decades ago, probably in the 1940s. He said that when BHS acquired them, it had two objectives: get both houses, on two separate lots, on the National Register of Historic Places – which has been done – and have a permanent deed restriction put on the Farley House, since it was built in the 1700s. He said that the way the deed restriction and the National Register listing worked was that any changes must not only go through the Town Selectmen but be approved by the Massachusetts Historical Commission, and stressed that the State wants the houses to remain exactly as is on two lots. He said that this has been a long process and the Town is very close to achieving its goal, which is to uphold the Kimballs' desire to ensure the integrity of the buildings and maintain their visual appearance.

There was extensive discussion about the history of the property, the deed restrictions, and the listing in the National Register.

Ms. Collins asked whether a new driveway would be installed to service the 463 North Road lot. Ms. Brown said that she knew of no immediate plans to put a driveway in but she couldn't say that a driveway would never be installed at 463 North Road.

Mr. Colasante closed the public hearing.

DELIBERATIONS:

Mr. Cohen went through the pieces of the Variance "puzzle":

A particular use must be sought. Mr. Colasante said there would be no change to the use.

The use must be for one not requiring a Special Permit. Mr. Cohen said that was clearly the case here.

It must be a particular parcel or existing building. Mr. Colasante said that was also obvious here.

There are conditions affecting the parcel or building but not the whole district. Mr. Gildea stated that the application involved the configuration of two particular lots and no other parts of the district.

The project is without detriment to the public good. Mr. Cohen said that he couldn't find any detriment to the public with this application. Mr. Gildea agreed, noting that the only change was to the lot line and the public would perceive nothing different.

There is a substantial hardship, financial or otherwise. Mr. Cohen said that he could support this piece as well, because it would be a great hardship to physically move the structures – not only a financial hardship but a hardship to the integrity of the structures themselves. Mr. Gildea said that the attempt to retain the historical value of these homes is a special hardship in itself.

There is no derogation from the intent or purpose of the By-Law. Mr. Gildea said that Ms. Brown has done a good job showing how much more conforming this property and these homes will be if a Variance is granted. He said that it was impossible to lose all of the non-conformities, but several will be eliminated, so in that regard this Variance will make the lots more in keeping with the intent of the By-Law than they are currently.

Mr. Colasante said that it was clear to him that this project passes the Variance test, and he felt that the Board was ready to entertain a motion.

MOTION:

Mr. Gildea moved to grant Pamela Brown, Esq., for the Bedford Historical Society, a Variance per Section 14.7 of the Zoning By-Law to reconfigure two non-conforming lots at 461A and 463 North Road, substantially as shown on Exhibits A and B.

Mr. Cohen seconded the motion.

Voting in favor: Colasante, Gildea, Cohen, Henning, and Crowley

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Colasante explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision recorded at the Registry of Deeds.

JOHN F. BROWN - (1891-1959)

NATHANIEL K. BROWN *
MARK S. RAFFA
JAMES M. DONOVAN
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November 2, 2011

Mr. Jeffrey Cohen, Chair
Bedford Zoning Board of Appeals
10 Mudge Way
Bedford, MA 01730

**RE: 463 and 461A North Road
Non-conforming lot variance**

Dear Mr. Cohen:

On behalf of Red Feather Real Estate Trust¹, owner of property located at 461A and 463 North Road, we respectfully request a variance to accommodate the reconfiguration of two lots with non-conformities into lots with only structural setback non-conformities. The lots, both containing existing historic structures, are located at 461A and 463 North Road. The land is in the Residence A zone requiring 40,000 sf lot area and 150 feet of frontage for a conforming lot. 461A North Road contains the Caleb Farley House, which will be subject to a historic preservation restriction. It is the desire of the applicant to remove the encroachment of this home onto the abutting lot, so that it is contained entirely within its own lot. The reconfiguration of the property lines of the two properties will satisfy this goal and create a less non-conforming situation for both lots.

Lot 1 (463 North Road) presently has non-conforming lot area, frontage and side yard setback. Currently 463 North Road comprises a 31,700 sf lot with 123 feet of frontage on North Road. The existing home (known as the "Candy House") also encroaches on the southerly side yard. The reconfiguration of Lot 1 (as shown on the attached plan) via addition of a parcel of land from Lot 2 will eliminate the non-conformity in area, creating a 40,762 sf lot. In addition, reconfiguration of the property line will increase the frontage to conform with zoning. A variance is requested to "legalize" the resulting side yard non-conformity, which is necessary to eliminate the encroachment of the historic Caleb Farley House that is presently located partially on the property at 463 North Road.

Lot 2 (461A North Road) currently contains the existing Caleb Farley House (c. 1700) which encroaches onto the Lot 1 property. Except for the structural encroachment, the lot is fully

¹ Jan van Steenwijk, successor Trustee created by Declaration of Trust dated January 24, 2002 and recorded in Book 38587 at page 587 and also Nathan Kimball, as representative of the Estate of Lawrence and Wilhelmina Kimball

compliant. While the yard setback cannot be satisfied, with the addition of land from Lot 1, this encroachment is eliminated. We request a variance to permit a non-conforming side yard allowing the house to be contained entirely on its own lot.

The Table below summarizes the zoning requirement for Residential A, the current lot and setback dimensions and the proposed reconfigured lot dimensions. Both proposed lots comply entirely with the current zoning bylaw; the noncompliant lot area and frontage on Lot 1 being removed by the reconfiguration. The common side yard of the two homes continues to be non-compliant, but the “negative” yard area created by the encroaching home on Lot 2 is reduced to a 0 foot yard, and leaving a non-conforming side yard of 8.2 feet on Lot 1.

	Required	Existing 461A	Proposed 461A	Existing 463	Proposed 463
Lot Area	40,000sf	5.0 acres	4.944 acres	31,700 sf	40,762 sf
Frontage	150 feet	377.19 ft	350.58	123.39 ft	150.00 ft
Side Yard	15 feet	- 11.41 feet	0 feet	15.49 feet	8.2 feet

Buildings are 9.1 feet apart

Variance Test: The following outlines the specific elements of the “Variance Test” and describes how the particular situation at 461A and 463 North Road satisfies this test, giving the ZBA the authority to grant the requested relief. The bolded text that follows comes from MGL c. 40A §10 and Bedford Zoning Bylaw §14.7. As you are aware, the Board must find that each of the four prerequisites to the granting of a variance is satisfied.²

"OWING TO CIRCUMSTANCES RELATING TO THE SOIL CONDITIONS, SHAPE OR TOPOGRAPHY OF SUCH LAND OR STRUCTURES AND ESPECIALLY AFFECTING SUCH LAND OR STRUCTURES BUT NOT AFFECTING GENERALLY THE ZONING DISTRICT IN WHICH IT IS LOCATED..."

In this case, it is the particular circumstances relating to the shape of the land and structures which apply. Currently the structure at 461A straddles the property line. The two historic structures have been located in this manner (shape, configuration) on the lots for a hundred years or more, the only way to remove the encroachment and/or non-conforming side yard setback would be to move the buildings, creating a financial and likely physical hardship. Reconfiguration of the common property line eliminates the encroachment, but without degradation to the structure it is impossible to create conforming side yard setbacks.

"A LITERAL ENFORCEMENT OF THE PROVISIONS OF THE ORDINANCE WOULD INVOLVE SUBSTANTIAL HARDSHIP, FINANCIAL OR OTHERWISE, TO THE PETITIONER..."

The determination of hardship must be made by the Board based upon the facts of each case. The hardship must relate to the soil, shape or topography of the land (or structures). The hardship which results from the shape of the lots and the situation of the structures thereon, as previously described, create a non-conformity/current encroachment. Without destruction or

² Josephs v. Board of Appeals of Brookline, 362 Mass. 290 (1972).

relocation of one of the houses, it is infeasible to provide conforming lot setbacks. While the current non-conformity is acceptable for zoning purposes at the present time, future use is compromised by the encroachment across the property line. It is the intent of the applicant to remove as many non-conformities as possible and to allow each residential structure to be situated on its own lot.

"...DESIRABLE RELIEF MAY BE GRANTED WITHOUT SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD..."

To satisfy the requirement that the variances can be granted without substantial detriment to the public good, the Board must make an evaluation of the character of the particular area, the configuration of the surrounding lots and the potential impact on the neighborhood and then determine whether or not the proposal is in keeping with this character.

The applicant seeks merely to continue the current use of the two lots for residential use. The physical character of the property and homes will be unchanged, and therefore having a neutral effect on the neighborhood. The lot reconfiguration reduces existing non-conformities. As it relates to Lot 1, the frontage and lot area non-conformities are removed in exchange for a slightly smaller side yard setback, but with no change in building location.

It is our contention that the proposal and the grant of the requested variances cause no detriment to the public good. In fact, the revision of the property line creates no visible change to the neighborhood. Relief is sought directly as a result of the unique combination of physical characteristics and circumstances present on the property. Based upon the above the Petitioners believe therefore, that the requested variances may be granted without substantial detriment to the public good.

"...AND WITHOUT NULLIFYING OR SUBSTANTIALLY DEROGATING FROM THE INTENT OR PURPOSE OF SUCH ORDINANCE."

The grant of the requested variances will neither nullify nor substantially derogate from the intent or purpose of the Zoning Bylaw. Zoning yard setbacks provide a buffer to abutting properties and in this instance the distance between existing structures will not change. Only the legal lot boundary will be adjusted, allowing for an encroaching home to be located on its own lot. Therefore, the intent and purpose of the bylaw will not be nullified if the requested relief is granted.

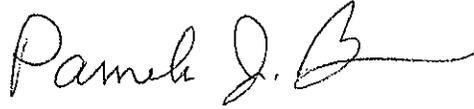
In assessing whether or not there will be a substantial derogation, case law acknowledges that some noncompliance with the setback requirements always exists in variance cases, but that the "deviation must be substantial, and...unless the use significantly detracts from the zoning plan for the district, the local discretionary grant of the variance...must be upheld".³ While a request for a zero foot (0') setback might appear substantial, the intent of the bylaw is upheld by offering removal of an 11.41 foot encroachment (a negative yard setback) and removing the non-conformity of the second lot regarding frontage and lot area.

³ Cavanaugh v. DiFlumera, 9 Mass. App. Ct. at 400, (1980)

Therefore, and for all of the foregoing reasons, the petitioner respectfully requests that a side yard variance be granted for both Lots 1 and 2. While a variance is clearly the preferred relief, and the petitioner believes such relief is supportable by the facts, as an alternative, we request consideration of a special permit to allow the alteration or modification of a non-conforming lot granting relief for the resulting non-conforming side yard setbacks.

As always, please feel free to contact me at your convenience with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Pamela J. Brown", with a long horizontal flourish extending to the right.

Pamela J. Brown