

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
MAY 10, 2012**

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

PRESENT: Angelo Colasante, Chair; Kenneth Gordon, Vice Chair; Jeffrey Cohen; Jeffrey Dearing; Carol Amick; Stephen Henning; Todd Crowley

ABSENT: Brian Gildea, Clerk

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

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

PETITION #026-12 – David Patterson, 122 Page Road, seeks a Special Permit per Section 5.1.4 of the Zoning By-Law to park oversized commercial vehicle.

Pamela Brown, Esq., greeted the Board and stated that the applicant, David Patterson, was seeking a Special Permit to allow him to park an oversized tow truck on his property. She said that Patterson's Auto and Towing was established by the applicant's father in 1959, and operated out of Billerica; Mr. Patterson has since taken over the business and tows in several nearby towns. She said that Mr. Patterson is contracted by the Bedford Police Department to be on call every third week of the month; when this happens, he is on call from 8:00 PM to 8:00 AM for the entire week, and must respond in under 20 minutes to any emergencies in Bedford. She handed out a memorandum from the Police Department confirming this statement, and stressed that the business is not one where the applicant comes and goes all night long, but is rather reduced only one or two calls a month.

Ms. Brown said that she and Mr. Patterson understand that neighbors don't like having a loud diesel pickup truck in their neighborhood, but she hopes that the Board can understand that this is a man's business and livelihood at stake and can come up with a Special Permit that has conditions which will make the parking of this vehicle amenable to the neighbors.

Mr. Cohen noted that the Zoning By-Law requires a Special Permit for the parking of any vehicle that is over 10,000 pounds in gross vehicle weight and a 135 inch wheel base. He asked what the gross vehicle weight and wheel base are of the vehicle in question. Mr. Patterson replied that the truck weighs 19,800 pounds and the wheel base is 148 inches.

Mr. Cohen asked whether the applicant has any other vehicles. Mr. Patterson said he owns another tow truck, which falls under the 10,000 pound/135 inch wheel base requirement. Mr. Cohen pointed out to the neighbors in attendance that Mr. Patterson was allowed to park his smaller tow truck on his lot as of right, and this Special Permit application tonight was strictly because the other truck is larger than allowed by the Zoning By-Law.

Mr. Henning asked how long it normally takes to respond to a tow call. Mr. Patterson said that it depended on the part of Bedford to which he was driving; it could be approximately 11 minutes or up to 18 minutes.

Mr. Cohen asked what conditions the applicants have considered to help alleviate the neighbors' concerns. Ms. Brown replied that Mr. Patterson has not been parking in the front yard of his house, and they had discussed completing the fence in the back yard and having the truck parked on the back yard-side of it.

Ms. Amick asked how many of Mr. Patterson's calls related to Route 3. Mr. Patterson replied that none of his calls relate to Route 3, as that highway is handled by the State and patrolmen are not allowed to handle calls on Route 3 at night.

Ms. Amick noted that the Police Department memo states that Mr. Patterson is only on call every third week. Mr. Patterson said that was correct. Ms. Amick asked whether he ever brings the truck home on nights when he is not on call. Mr. Patterson said he does not, as he would never have occasion to do so.

There was discussion about the timeline of events that led to this hearing. Mr. Patterson noted that a letter from Christopher Laskey, the Code Enforcement Director, originally came to him on December 19, 2011, informing him that his truck was in violation of the Zoning By-Law. Mr. Patterson explained that he then chose to appeal Mr. Laskey's ruling to the Zoning Board.

Mr. Gordon asked the applicant whether he had priced out what it might cost to park his vehicle anywhere else in town. Mr. Patterson said he had called two or three locations and the price hovered around \$400 or \$500 a month, which he could not afford.

Mr. Colasante opened the hearing to the public.

Louisa French, of 129 Page Road, asked for clarification about exactly what the applicant is requesting. Ms. Brown replied that it is to park one "oversized" vehicle. Ms. French said she worried that Mr. Patterson would not park the truck behind the fence, even if a condition were made that he must.

Martha Keller, of 10 Dunster Road, said that the fence means very little to her because, even when the fence gets finished, it won't do a great deal to block her view of the truck. She said she does not want to look at an oversized tow truck in her neighborhood.

Mike Hughes, of 120 Page Road, said he likes the fact that the applicants are thinking of a plan to make the situation more amenable to the neighbors; however, even if Mr. Patterson had an eight-foot fence, the truck would still stick out over it because it is so large. He said he respects Mr. Patterson wanting to have a truck for night tow jobs, but perhaps he could work out a deal with the Town that he can park at the DPW building or the fire station. Mr. Colasante asked the applicant whether he had looked into those options. Mr. Patterson said he has talked with department heads in the Town, especially the DPW, and they have informed him that a policy is in place that prohibits non-Town trucks to be parked at Town facilities.

There was discussion about the unfinished fence at the applicant's property. Mr. Patterson explained the holes have been dug for the fence, but since he has not had time to install the rest of the fence, he filled the holes with water jugs to prevent anyone from falling into them.

Mr. Colasante asked how tall the fence was. Mr. Patterson said it was six feet. Ms. Brown noted that the fence was allowed to be eight feet tall, and Mr. Patterson said he would make it eight feet tall if it helped make the neighbors happy.

Robert Fitzgerald, of 11 Dunster Road, said he has lived in this neighborhood since the late 1970s and has known the Patterson family for a long time. He said that the neighbors and the Board are ultimately arguing over an eight-foot difference in length between the smaller truck the applicant owns and the one he is proposing. He commented that the sound of the two trucks are very similar and the argument is, in the end, moot, because Mr. Patterson could park a similar truck as of right without any approvals and it may be just as bothersome to the neighbors.

Debbie Hughes, of 7 Dunster Road, said she lived across from the open area where Mr. Patterson's fence ends, and it is unpleasant to look at a half-finished fence and holes filled with water jugs every day. She said that she understood that he had a business to run but it makes the neighborhood very unattractive.

Charles Freeman, of 3 Dunster Road, said he has lived directly across from Mr. Patterson for many years, and Mr. Patterson has a long history of taking commercial vehicles to his house and disturbing the neighbors. He said that he understood that a smaller tow truck would be allowable on the lot, but didn't understand why the Board would want to allow a larger one, when it is not allowed under the Zoning By-Law. Mr. Colasante pointed out that the Zoning By-Law states that any oversized commercial vehicle is allowed by a Special Permit, so it is not strictly forbidden and the Board does have the ability to allow it.

Mr. Fitzgerald said that he would hate to see another business gone for the sake of eight extra feet of truck.

Mr. Colasante asked where Mr. Patterson takes the cars that he tows in the middle of the night. Mr. Patterson replied that he takes them to his business in Billerica, although he has on occasion brought them back to his house while he takes a shower and gets ready for the workday. Ms. Brown noted that they would be happy to have one condition of the Special Permit be that Mr. Patterson is not allowed to bring cars back to his house on the truck at any time.

Mr. Cohen asked where the applicant parks the truck on “off-weeks” now. Mr. Patterson replied that he parks it behind 200 Great Road, as the landlord of that building has been very generous and understanding to his situation.

There was conversation about the potential of Mr. Patterson paving his driveway in the back yard in the future as a condition of the Special Permit.

Robert Luongo, of 32 Genetti Circle, said that he does not live in the neighborhood, but he is a Bedford resident and business owner. He said he supported the applicant being allowed to take the truck home for one week per month, and thought it was important that the Town encouraged small business owners.

Mr. Colasante asked whether the applicant would be amenable to a condition that the truck is only allowed to be brought home one week per month.

Steve Burke, of 23 Dunster, said he has had issues in the past with flooding on his property, and he believes that having Mr. Patterson’s dirt driveway being packed down from tow trucks does not help drainage in the neighborhood. He said he worried that if the driveway were ever paved it might cause additional problems.

Jodie Wollner, of 15 Dunster Road, said she moved to Bedford about four years ago, and she enjoys the neighbors and the neighborhood, but one of the reasons she came to the area was because it was quiet and rural. She said that she hears the truck coming and going in the middle of the night, and it often wakes her 8-year-old child, so the truck has greatly impacted her in a way that she did not expect when she moved to Bedford.

Mr. Colasante asked whether the smaller pickup truck and the larger one have the same engine. Mr. Patterson responded that they do both have the same engine, an 8-cylinder.

Andy Murray, of 10 Dunster Road, said he has been trying to think of a solution that could work best for everyone. He said he liked the notion of erecting a fence, although he wasn’t convinced that a fence would alleviate all concerns.

Mr. Colasante asked whether the applicants wanted to consider meeting with the neighbors to discuss the situation and work out conditions that may be amenable to everyone. Mr. Patterson said he would be willing to do that, although it may not make much difference if everyone already has their minds made up.

Diane Hughes, of 120 Page Road, said that she completely understands that Mr. Patterson

is trying to make a living to support his family, and she also understands that in today's economy, one must do everything one can to get by. She said that she isn't so much disappointed about the parking of the truck so much as the fact that Mr. Patterson has never talked to his neighbors about it. She noted that the first time she heard about the Zoning Board hearing was from the notice mailed to her, not from Mr. Patterson himself. She said that she would be very amenable to having all the neighbors get together to talk about the situation.

Ms. Amick said that there were some people in attendance who hadn't spoken, and since they took the time to come to the meeting tonight, she would like to hear what they had to say.

Chris Nolan, of 14 Dunster Road, said he got the legal notice in the mail and came to find out what was going on in his neighborhood. He said he didn't see much problem with Mr. Patterson bringing a truck home on occasion, so long as he didn't stack cars on it when he brought it home.

Susan Hollis, of 22 Alaska Avenue, said she received the notice and came to the meeting just to find out the details, because it sounded to her that parking an oversized commercial vehicle on a lot was a violation of the definition of "residential" neighborhood.

Mr. Gordon agreed with Mr. Colasante that perhaps the best way to deal with the situation was to continue the hearing and allow the neighbors and applicants to work out conditions together, because he wouldn't want to allow conditions to which either party was not amenable.

Joan Freeman, of 3 Dunster Road, said she and her husband have lived in Bedford for 43 years, and have tried to be good neighbors, but Mr. Patterson has not been a good neighbor in return. She said that issues involving his tow trucks have been going on since 1997, including past zoning violations and court hearings. She asked whether the Board is going to ignore the past history when it came to this case. Mr. Colasante replied that all that was before the Board tonight was the application for one oversized commercial vehicle, so it is unfair and impossible to look back to any other issues, as they were ultimately moot.

Ms. Brown stated that she would like to request a continuation to the May 24 meeting, to give them time to work out a plan with the neighbors.

MOTION:

Mr. Gordon moved to continue David Patterson, 122 Page Road, seeking a Special Permit per Section 5.1.4 of the Zoning By-Law to park oversized commercial vehicle, to May 24, 2012 at 7:30 PM.

Mr. Dearing seconded the motion.

Voting in favor: Colasante, Gordon, Cohen, Dearing, and Amick
Voting against: None
Abstained: None

The motion carried unanimously, 5-0-0.

Ms. Brown thanked the Board members for their time and said she would see them in two weeks.

At this time, Mr. Gordon left the meeting.

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

PETITION #027-12 – Kate and David Trigg, 23 Crescent Avenue, seek a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to construct deck within rear yard setback.

Ms. Amick explained that she lives across the street from the Triggs and feels that ruling on this application would be a conflict of interest, so she recused herself from voting.

The applicants greeted the Board and explained that they had received a Special Permit last year for a kitchen addition on the front half of the property and were now applying for a deck on the rear half. Ms. Trigg stated that they had an extremely small lot and they didn't have much back yard, so they were trying to maximize their space. She pointed out that the abutting neighbor closest to this deck has no problems with it, and he in fact has a pool house that is extremely close to the lot line as well, so this neighborhood has a precedent of structures being built close together.

Mr. Cohen asked whether the property line is well defined. Ms. Trigg replied that the line runs directly in front of the tree line between the properties. Mr. Cohen asked whether the ditch is in the Trigg's yard. Mr. Trigg said that it is.

The Board talked with the Triggs about the close proximity of the deck to the property line and the potential inaccuracy of such an old plot plan. Mr. Crowley said he was surprised that the Building Department didn't require a new plot plan for this proposed deck, especially since it was so close to the lot line. Mr. Cohen said they may eventually require a new as-built plan, but he felt the Board would be content with specifying a distance from the property line that the applicants must follow.

There was extensive discussion about the plot plan and the dimensions of the house and of the proposed deck.

Mr. Colasante opened the hearing to the public. With no one from the public in attendance, Mr. Colasante closed the public hearing.

DELIBERATIONS:

Mr. Colasante said that the neighborhood in question is extremely tight, with many structures very close to each other. He said that this is clearly a non-conforming lot, which means that this project requires a Special Permit. He stated that the two requirements of a Special Permit were that the project is not detrimental or injurious to the neighborhood and is in keeping with the intent and purpose of the By-Law. Mr. Cohen said that he doesn't feel this project is any more injurious to the neighborhood than the myriad of other structures in the area that are close to – or on – their property lines, although he wondered whether the project were in keeping with the intent of the By-Law.

Mr. Dearing said that he would feel more comfortable with a three foot setback than two feet, especially because if anyone ever put up a fence on the property line, three feet would allow more room to move between the fence and the deck. After more discussion, the other Board members agreed. The Triggs also agreed to a three-foot setback.

Mr. Cohen noted that the Board has often dealt with the issue of “incrementalism,” where a deck gets built, and later a roof is put over it, and eventually it is screened in to become a porch. He said he would not want to see that happen here. Ms. Trigg said they would never want to enclose the deck, as they liked the notion of open space. Mr. Cohen asked whether they would have a problem with a condition of the Special Permit stating that no roof will ever be erected over the deck. Ms. Trigg said they would have no problem with that at all.

Mr. Colasante called for a motion.

MOTION:

Mr. Cohen moved to grant Kate and David Trigg, 23 Crescent Avenue, a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to construct deck within rear yard setback, substantially as shown on Exhibit A, plot plan, and Exhibit B, architectural drawings, sheets 1 through 3 inclusive, and subject to the condition that the deck shall be no closer than three feet to the rear property line and no roof structure shall be erected over the deck.

Mr. Dearing seconded the motion.

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

Voting against: None

Abstained: None

Recused: Amick

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.

BUSINESS MEETING:

Mr. Colasante called for a motion to approve the minutes of the last meeting.

MOTION:

Mr. Cohen moved to accept the minutes of the April 26, 2012 Zoning Board of Appeals meeting, as amended.

Mr. Dearing seconded the motion.

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

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

MOTION:

Ms. Amick moved to adjourn the meeting.

Mr. Henning seconded the motion.

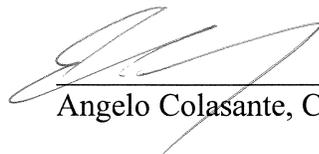
Voting in favor: Colasante, Cohen, Amick, Henning, and Crowley

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

The meeting adjourned at 9:55 PM.



Angelo Colasante, Chair

6-14-12

Date

Respectfully Submitted,

Scott Gould
ZBA Assistant