

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
AUGUST 9, 2012**

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

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

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

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 #006-13 – Pamela Brown, Esq., for 20 Masardis Street, seeks a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to construct roof overhang over front entrance, within front yard setback.

Pamela Brown, Esq., greeted the Board and introduced Jack Bellan, of Harvard Green, the construction company that built the new house at 20 Masardis Street. She explained that the house was built on a non-conforming lot (15,000 square feet) on which an older house had been demolished. She said that a Building Permit was received and the house was built to plan, with the front of the house being constructed to the front yard setback line of 35 feet. She stated that the developers found an interested home buyer who wanted a portico/roof overhang built over the existing front steps, and before they stopped to think about what they were doing or how it would affect the Building Permit or the setbacks, they built the overhang.

Mr. Bellan stated that he should have slowed down to think about what was being done, but things unfolded quickly and the project admittedly got away from him. He stated that he called their framer, who usually takes several weeks before he can work on a project, and asked whether he would be willing to construct the portico; the framer showed up the very next day, Saturday, and constructed the overhang before anyone even knew about it. He said that it had not been their intention to do anything so quickly, and he apologized for any problems or difficulties that this had caused.

Mr. Gildea said that his understanding of the plot plan was that the new house was built to the setback, so with this four foot overhang, the setback is still 31 feet. Ms. Brown said that was correct.

Mr. Cohen said that if this had come before the Board before the portico had been built, he would have still believed it was too much for such a large house and he would have

asked the applicants whether they had a “Plan B” – some option that could have achieved the same objective in a different way, such as adding a covered area over an area not within the setbacks.

Mr. Colasante stated that he felt these kinds of roof overhangs were necessary, especially in New England where the weather can change from rain to snow to ice. He said he didn’t even feel that roof overhangs should be brought before the Zoning Board; they should be allowed by right.

Mr. Cohen said he lives in this neighborhood and drives by this house every day, and this house – along with the other new house next door – dwarfs all the other homes in the area. He said that these two houses were knowingly built right up to the setbacks, so he considered a roof overhang on these houses differently than he would consider a roof overhang on an older, smaller home.

Mr. Bellan said that he would completely understand if the Board wanted to punish him as the developer for making this mistake, but the problem is that the homeowner signed the Purchase & Sales agreement based on the portico being built, and the Board would be punishing the homeowner more than the developer if they were to deny this Special Permit.

Mr. Colasante said that it seemed to him that this was an honest mistake, and while granting this Special Permit could be conceived as the Board allowing a builder to “get away with something,” this was ultimately a very miniscule project and only consisted of a small roof over steps. He noted that, although some might say that this created a bad precedent, the Board always took everything on a case by case basis, so he didn’t worry that this was sending a negative message to contractors.

There was discussion about the accuracy of the dimensions on the plot plan. Mr. Gildea noted that he would be comfortable with writing “All dimensions +/- six inches” on the plot plan. Ms. Brown said she would appreciate that. Mr. Gildea made the notation on the plan and Ms. Brown initialed the change.

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 Mr. Cohen brought up some very good points, but he felt that a portico like this was necessary, and had it been presented differently the Board most likely would not have had a problem with it. He said this project required a Special Permit, for which the two conditions were that the application was in keeping with the intent and purpose of the By-Law and was not detrimental or injurious to the neighborhood. He said that, regardless of whether the portico was built before or after the Board’s review, he felt this project met those requirements.

Mr. Gildea said that if this had come before the Board originally, he would not have had a problem with it. He noted that although the house was conforming, it was still a non-conforming lot. He said he didn't have any problems with the application.

Mr. Cohen said that these two homes are noticeably larger than all other homes in the neighborhood. He said that the applicant had every right to build a house right up to the setbacks, but moving beyond that, he doesn't feel he would have approved this Special Permit originally because it came so close to the setbacks.

Mr. Crowley asked whether any further changes or additions in the future would require a Variance or a Special Permit. Mr. Colasante replied that it would always require a Special Permit because the lot was non-conforming.

Mr. Colasante said it would be nice for the Board to see any new houses built on non-conforming lots, as he would rather deal with these kinds of issues up front at a hearing before the house was built. Mr. Cohen explained that the Board did once review Special Permit applications for new houses on non-conforming lots, but after several were granted without any issues, and in effect "rubber stamped," the Board made a motion for the Code Enforcement Director not to send the applications to the ZBA anymore. He added that the Board is almost entirely different now, however, and if the Board members decided that they wanted to see these applications, they had every right to make that request.

Mr. Henning said that the house was built right up to the setbacks, so he agreed with Mr. Cohen that the consideration of a roof overhang on this house was different than the consideration of an overhang on a smaller house; however, the fact that it was just a roof overhang and not living space did help alleviate his concerns slightly.

Mr. Colasante noted that it should be taken into account that many of the homes in this neighborhood – probably more than half – encroach into the setbacks, so this four foot encroachment wasn't a big concern for him.

Mr. Colasante said the Board usually conditions Special Permits for projects such as this one to not allow the structure to be enclosed. He asked whether the applicants would have a problem with a condition of the Special Permit stating that the portico would never be enclosed. Ms. Brown said they would have no problem with that at all.

MOTION:

Mr. Gildea moved to grant Pamela Brown, Esq., for Harvard Green, at 20 Masardis Street, a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to construct roof overhang over front entrance, within front yard setback, substantially as shown on Exhibits A and B, and subject to the condition that it never be enclosed.

Mr. Cohen seconded the motion.

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

The motion carried, 4-1-0.

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:

July 12 Minutes

Mr. Colasante called for a motion to approve the minutes of the July 12 meeting.

MOTION:

Mr. Gildea moved to approve the minutes of the July 12, 2012 Zoning Board of Appeals meeting.

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.

July 26 Minutes

Mr. Colasante called for a motion to approve the minutes of the July 26 meeting.

MOTION:

Mr. Gildea moved to approve the minutes of the July 26, 2012 Zoning Board of Appeals meeting.

Mr. Henning seconded the motion.

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

The motion carried, 4-0-1.

MOTION:

Mr. Henning moved to adjourn the meeting.

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.

The meeting adjourned at 8:45 PM.

Angelo Colasante, Chair

Date

Respectfully Submitted,

Scott Gould
ZBA Assistant