

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
APRIL 8, 2010**

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

PRESENT: Jeffrey Cohen, Chair; Herbert Aumann, Vice Chair; Brian Gildea, Clerk;
Jeffrey Dearing

ABSENT: Robert Barton

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

Mr. Cohen explained to the petitioners that there is a four-member Board for this meeting, which means that any positive vote must be unanimous. He said that in this situation the Board always allows the applicants the option of continuing to another night when a five-member quorum would be present, at which time one dissenting vote would be allowed out of the five.

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

PETITION #029-10 – Habitat for Humanity, at 130 North Road, seeks an amendment to Comprehensive Permit #034-07 to subdivide lot into seven individual lots, per plans filed.

Dana Owens, the Executive Director of Habitat for Humanity of Greater Lowell, Inc., greeted the Board and said he was there with James Comeau, the general contractor for the project. He explained that the original approved plans for the site at 130 North Road called for a condo association setup with all homes being owned by the association. He said that after conversations with the Selectmen and other Habitat representatives, it has been decided that it would be better for each homeowner at the site to own his or her own lot. He said this is similar to an amendment to the Winterberry Way Comprehensive Permit.

Mr. Aumann asked what the specific advantage of dividing these lots is. Mr. Owens replied that there are two advantages: the first is that Habitat feels it is important for these residents to own their own property, and the second is that if a resident at the site fell into any kind of tax delinquency, it would not affect the rest of the owners because they would all be independent owners and not part of a larger association. Mr. Aumann said he thought the lots are still common. There was discussion about the property ownership and how a tax delinquency or a lien would affect the owners.

The Board talked further with the applicants about the legal issues regarding this change.

Mr. Dearing said that his main question is how this will affect any changes for owners coming before the Board in the future. He asked what would happen if one of the property owners at the site wanted to add, for example, a shed or fence. Mr. Owens replied that any change must still be approved first by the homeowner's association and will still be an amendment to the Comprehensive Permit, so the Board would treat it no differently than it normally would. He added that garden sheds and fences are not allowed under the original Comprehensive Permit anyway, but any other changes would still be modifications to the Comprehensive Permit, the way the Board would handle changes with any other Chapter 40B project in town.

Mr. Gildea said he was curious how zoning enforcement would work for owners at this site. Mr. Owens said there would actually be two means of enforcement: the Town and the Homeowner's Association.

Mr. Aumann said that it seems as though no one will actually notice much of a difference with this lot, as nothing will be physically changing. Mr. Owens said that is correct; he said there is no difference at all, except that the residents will own their own lots instead of the homeowner's association owning the lots.

Mr. Cohen opened the hearing to public.

The Board members talked about the exceptions from the Zoning By-Law as listed in the application. The members went through each item on the exceptions list and ultimately agreed that they were amenable to these exceptions. Mr. Aumann noted that the sections of the By-Law referenced in the application are from the old By-Law, so those sections are no longer relevant. Mr. Owens stated that he was not aware that the By-Law sections had changed; he asked for the opportunity to change those sections now and get the correct numbers.

Mr. Cohen granted the applicants a ten-minute recess to go out into the corridor and find the correct sections of the By-Law to include in the application so the Board can make appropriate motions.

After approximately ten minutes, Mr. Owens informed the Board that he and Mr. Comeau would need more time to come up with the correct sections of the By-Law. He suggested that the Board take its other petitions to give them more time. Mr. Cohen said that would be fine.

MOTION:

Mr. Aumann moved to continue this hearing until after the Bedford Plaza Hotel meeting.

Mr. Gildea seconded the motion.

Voting in favor: Cohen, Aumann, Gildea, and Dearing
Voting against: None
Abstained: None

The motion carried unanimously, 4-0-0.

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

PETITION #028-10 – 7:30 P.M. – William Waite, Jr., for Right at Home, 60 Great Road, seeks a Special Permit per Article 40.5 Section 2(A) of the Sign By-Law to illuminate wall sign.

Mr. Cohen read a letter submitted by Mr. Waite explaining that he would like to continue this application to the April 22 meeting (see attached).

MOTION:

Mr. Aumann moved to continue William Waite, Jr., for Right at Home, 60 Great Road, seeking a Special Permit per Article 40.5 Section 2(A) of the Sign By-Law to illuminate wall sign to April 22 at 7:30 PM.

Mr. Gildea seconded the motion.

Voting in favor: Cohen, Aumann, Gildea, and Dearing
Voting against: None
Abstained: None

The motion carried unanimously, 4-0-0.

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

PETITION #030-10 – 7:30 P.M. – Shailesh Patel, for Bedford Plaza Hotel, at 340 Great Road, seeks to modify Special Permit #022-04 to split and illuminate wall signs; seeks relief per Article 40.4 Section 2(B) of the Sign By-Law for oversized freestanding sign; and per Article 40.5 Section 2 to illuminate freestanding sign.

Mr. Patel introduced himself and explained that he has contracted Sacco Signs to design signs for the Bedford Plaza Hotel. He said the contractor from the sign company was supposed to be here tonight but couldn't make it, but the proposed signs are shown in the Board's packet. He stated that many patrons are driving right by the hotel because they can't see the signs, as the building is so massive that it overwhelms the signs. He noted that the sign next to McDonald's is hidden by a tree. He said they would like to lower that sign to the bottom section of the building and have another wall sign on the other side of the building; in addition, they would like to install a freestanding sign at the triangle of land in front of the building, at the intersection.

Mr. Cohen said he cannot possibly see the Board approving the temporary promotional sign. The other Board members agreed.

Mr. Aumann asked what would happen to the tarp and sign at the top of the building. Mr. Patel said that would go away and only the new sign on the lower section would remain.

Mr. Cohen asked whether the applicant had any cut sheets of the signs and what they are made of. Mr. Patel said he didn't have anything with him, adding that the sign manufacturer was supposed to bring that material with him tonight but couldn't make it. He said that the sign is not made of wood or plastic but will be some sort of acrylic or MDO material.

Mr. Cohen said his first thought upon looking at this application is that the Board will need more information before it can make any kind of informed decision about the signs. He suggested that the applicant get some more information from the sign manufacturer about the sign and lighting.

Mr. Cohen said that the sign in the island doesn't meet the criteria for the width of a sign, and actually doesn't even meet the square footage requirement. Mr. Patel explained that the Sign By-Law allows for 20 square feet for a sign, and he is asking for an extra four feet, bringing the sign to 24 square feet in total. Mr. Gildea explained that the Board doesn't have the same kind of leeway in granting permits under the Sign By-Law as it does with permits under the Zoning By-Law, so it cannot necessarily just grant an increase in size. Mr. Cohen said that the width of the sign is too high, as it is not supposed to be more than six feet wide under the Sign By-Law. He said it would also be helpful to have a plot plan for the property, as the By-Law requires all freestanding signs to be five feet from the property line, and he would like to have some reassurance that this sign is as well.

Mr. Cohen stated that the remaining two wall signs are consistent with what is on the building now, so he feels they are appropriate and wouldn't have a problem approving them, but the Board simply needs more documentation.

Mr. Cohen said that the next meeting date is April 22 and asked whether the applicant could be ready with more information by then. Mr. Patel said he could.

MOTION:

Mr. Aumann moved to continue Shailesh Patel, for Bedford Plaza Hotel, at 340 Great Road, seeking to modify Special Permit #022-04 to split and illuminate wall signs; seeking relief per Article 40.4 Section 2(B) of the Sign By-Law for oversized freestanding sign; and per Article 40.5 Section 2 to illuminate freestanding sign to April 22 at 7:30 PM.

Mr. Gildea seconded the motion.

Voting in favor: Cohen, Aumann, Gildea, and Dearing

Voting against: None

Abstained: None

The motion carried unanimously, 4-0-0.

James O'Neil, of 21 Clark Road, asked whether Mr. Cohen planned to open this hearing to the public. Mr. Cohen said he wasn't planning to tonight, as the hearing was being continued. Mr. O'Neil said he would like a chance to speak, since he came to the originally scheduled meeting for this hearing which was cancelled due to lack of quorum and he is here again tonight, and he doesn't want to have to come back a third time. Mr. Cohen said that was fine and the Board would listen to his comments tonight. Mr. O'Neil said that the Board made the right decision in regards to the temporary promotional sign, adding that it would be inappropriate on the building. He asked whether the wall signs would be new or refurbished. Mr. Patel said they would be brand new. Mr. O'Neil concluded by noting that it is a shame when applicants come before the Board without having read the Sign By-Law. Mr. Cohen thanked Mr. O'Neil for his comments.

Mr. Cohen said he would see Mr. Patel on April 22 and wished him luck getting together the necessary paperwork.

With the other hearings finished, Mr. Cohen asked Mr. Owens how they had fared in trying to find the correct By-Law sections. Mr. Owens stated that he and Mr. Comeau were unable to find all the applicable sections of the By-Law to use for the exceptions list, but he hoped it would be possible for the Board to make its motions by simply stating "the section of the By-Law requiring..." for each section. The Board members agreed that they would be amenable to that.

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

DELIBERATIONS:

Mr. Aumann said that this change doesn't actually constitute a large change and will not affect the look of the property. He said that the Board has talked about the legal aspects of the change and he is comfortable that the rules of the Comprehensive Permit will still be readily enforceable. He stated that he has no problems with granting this change. Mr. Cohen agreed and noted that he feels the Board should vote on the overall request and then each individual exception to the Zoning By-Law.

MOTION:

Mr. Gildea moved to grant to Habitat for Humanity, at 130 North Road, an amendment to Comprehensive Permit #034-07 to subdivide lot into seven individual lots, per plans

filed, as per Exhibit A.

Mr. Aumann seconded the motion.

Voting in favor: Cohen, Aumann, Gildea, and Dearing

Voting against: None

Abstained: None

The motion carried unanimously, 4-0-0.

MOTION:

Mr. Gildea moved to grant to Habitat for Humanity, at 130 North Road, an amendment to Comprehensive Permit #034-07 in accordance with Exhibit B, subsection 1, for exception to Section 6 Table II Dimensional Regulations for a Residence A District, as shown on Exhibit B.

Mr. Aumann seconded the motion.

Voting in favor: Cohen, Aumann, Gildea, and Dearing

Voting against: None

Abstained: None

The motion carried unanimously, 4-0-0.

MOTION:

Mr. Gildea moved to grant to Habitat for Humanity, at 130 North Road, an amendment to Comprehensive Permit #034-07 in accordance with Exhibit B, subsection 2, for minimum lot width, as shown on Exhibit B.

Mr. Aumann seconded the motion.

Voting in favor: Cohen, Aumann, Gildea, and Dearing

Voting against: None

Abstained: None

The motion carried unanimously, 4-0-0.

MOTION:

Mr. Gildea moved to grant to Habitat for Humanity, at 130 North Road, an amendment to Comprehensive Permit #034-07 in accordance with Exhibit B, subsection 3, for exception from applicable section of the Zoning By-Law whereby an additional Public Hearing may be required for approval of a Definitive Subdivision plan, as shown on Exhibit B.

Mr. Aumann seconded the motion.

Voting in favor: Cohen, Aumann, Gildea, and Dearing

Voting against: None

Abstained: None

The motion carried unanimously, 4-0-0.

MOTION:

Mr. Gildea moved to grant to Habitat for Humanity, at 130 North Road, an amendment to Comprehensive Permit #034-07 in accordance with Exhibit B, subsection 4, for an exception from the section of the Zoning By-Law requiring a staking of 50 foot intervals along the centerline of the proposed roadway, as shown on Exhibit B.

Mr. Aumann seconded the motion.

Voting in favor: Cohen, Aumann, Gildea, and Dearing

Voting against: None

Abstained: None

The motion carried unanimously, 4-0-0.

MOTION:

Mr. Gildea moved to grant to Habitat for Humanity, at 130 North Road, an amendment to Comprehensive Permit #034-07 in accordance with Exhibit B, subsection 5, for an exception from the section of the Zoning By-Law requiring a total fee of \$650 plus \$200 x 8 lots, or \$8,650 for a Definitive Subdivision, as shown on Exhibit B.

Mr. Aumann seconded the motion.

Voting in favor: Cohen, Aumann, Gildea, and Dearing

Voting against: None

Abstained: None

The motion carried unanimously, 4-0-0.

MOTION:

Mr. Gildea moved to grant to Habitat for Humanity, at 130 North Road, an amendment to Comprehensive Permit #034-07 in accordance with Exhibit B, subsection 6, for an exception from the section of the Zoning By-Law stating the Covenant (Form D) recorded as a Performance Guarantee will allow a building permit to be issued and a lot to be built upon prior to the installation of ways and services, but which lot may not be conveyed to a buyer until such ways and services are completed, as shown on Exhibit B.

Mr. Aumann seconded the motion.

Voting in favor: Cohen, Aumann, Gildea, and Dearing

Voting against: None

Abstained: None

The motion carried unanimously, 4-0-0.

MOTION:

Mr. Gildea moved to grant to Habitat for Humanity, at 130 North Road, an amendment to Comprehensive Permit #034-07 in accordance with Exhibit B, subsection 7, for an exception from the section of the Zoning By-Law requiring projection of ways or access to adjoining property which is not yet subdivided “if deemed necessary by the Planning Board,” as shown on Exhibit B.

Mr. Aumann seconded the motion.

Voting in favor: Cohen, Aumann, Gildea, and Dearing

Voting against: None

Abstained: None

The motion carried unanimously, 4-0-0.

MOTION:

Mr. Gildea moved to grant to Habitat for Humanity, at 130 North Road, an amendment to Comprehensive Permit #034-07 in accordance with Exhibit B, subsection 8, for an exception from the section of the Zoning By-Law requiring the plan to show a park, as shown on Exhibit B.

Mr. Aumann seconded the motion.

Voting in favor: Cohen, Aumann, Gildea, and Dearing

Voting against: None

Abstained: None

The motion carried unanimously, 4-0-0.

MOTION:

Mr. Gildea moved to grant to Habitat for Humanity, at 130 North Road, an amendment to Comprehensive Permit #034-07 in accordance with Exhibit B, subsection 9, for an exception from the section of the Zoning By-Law requiring the applicant to place monument at curvature of ways, but the applicant will be required to install monuments

at front property corners, as shown on Exhibit B.

Mr. Aumann seconded the motion.

Mr. Aumann asked about the installation of monuments at the corners. He said he would actually like to see markers placed at all four property corners, not just at the front two. After further discussion about this, the Board members and Habitat agreed that marking all four corners would be best.

AMENDED MOTION:

Mr. Gildea moved to grant to Habitat for Humanity, at 130 North Road, an amendment to Comprehensive Permit #034-07 in accordance with Exhibit B, subsection 9, for an exception from the section of the Zoning By-Law requiring the applicant to place monument at curvature of ways, but the applicant will be required to install markers at all property corners and points of change, as shown on Exhibit B.

Mr. Dearing seconded the motion.

Vote on first motion:

Voting in favor: None

Voting against: Cohen, Aumann, Gildea, and Dearing

Abstained: None

The first motion did not carry, 0-4-0.

Vote on second motion.

Voting in favor: Cohen, Aumann, Gildea, and Dearing

Voting against: None

Abstained: None

The second motion carried unanimously, 4-0-0.

Mr. Cohen wished the applicants luck with the rest of the Habitat project. Mr. Owens thanked the Board members for their time.

Mr. Aumann moved to adjourn the meeting.

Mr. Dearing seconded the motion.

Voting in favor: Cohen, Aumann, Gildea, and Dearing

Voting against: None

Abstained: None

The meeting adjourned at 9:20 PM.

Respectfully submitted,

Scott Gould
Zoning Board Assistant