

TOWN OF BEDFORD
January 25, 2021
PLANNING BOARD
MINUTES

A remote Zoom platform meeting of the Bedford Planning Board was held on Monday, January 25, 2021. Members who were present remotely: Jon Levenstein (Chairman), Kelleigh Murphy (Vice Chairman), Hal Newberry (Secretary), Bill Duschatko (Town Council), Rick Sawyer (Town Manager), Charlie Fairman (Alternate), Matt Sullivan (Alternate), John Quintal (Alternate), and Becky Hebert (Planning Director)

Due to the Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Planning Board is using the Zoom platform to conduct this meeting electronically. Please note that there is no physical location for this meeting and the BCTV building is closed to the public.

The Town of Bedford is providing public access to the meeting live on BCTV, streaming at www.Bedfordnh.org/393/BCTV, and by calling into the meeting. Please email planning@bedfordnh.org or call 603-472-5243 to receive the Zoom call-in information.

Planning staff will also be accepting questions and comments by email at planning@bedfordnh.org. Please notify staff by email if there are technological issues during the meeting.

I. Call to Order and Roll Call:

Chairman Levenstein called the remote meeting to order at 7:00 p.m. Vice President Kelleigh Murphy, regular members Steve Clough, Mac McMahon and Priscilla Malcolm, and Public Works Director Jeff Foote were absent. Mr. Sullivan was appointed to vote in place of Mr. Foote and Mr. Fairman was appointed to vote in place of Ms. Malcolm.

II. Old Business & Continued Hearings: None

III. New Business:

1. **BFB Real Estate Holdings, LLC (Applicant), Bedford RLG Properties, LLC (Owner)** – Request for approval of a 100,000 square-foot manufacturing facility with a 25,000 square-foot future addition and associated site improvements for Wire Belt Company of America at 308 South River Road, Lot 24-98-19, Zoned PZ
2. The Planning Board will conduct the second public hearing on proposed zoning amendments submitted by the Planning Board and citizens' petition. The full text of the

amendments is available in the Town Clerk & Planning offices during normal business hours and on the Town website at www.bedfordnh.org.

Ms. Hebert stated Staff recommendation is to accept the agenda. The BFB Real Estate Holdings application will be officially accepted and the public hearing opened at the February 8, 2021 Planning Board meeting.

MOTION Mr. Fairman by to accept the agenda as read. Mr. Newberry duly seconded the motion. On a unanimous roll call vote, the motion carried.

- 1. BFB Real Estate Holdings, LLC (Applicant), Bedford RLG Properties, LLC (Owner) – Request for approval of a 100,000 square-foot manufacturing facility with a 25,000 square-foot future addition and associated site improvements for Wire Belt Company of America at 308 South River Road, Lot 24-98-19, Zoned PZ.**

Ms. Hebert stated this application has been postponed at the request of the applicant to the February 8, 2021 Planning Board meeting. Chairman Levenstein stated this announcement will serve as notice to the public, and the abutters will not be re-notified by mail.

- 2. The Planning Board will conduct the second public hearing on proposed zoning amendments submitted by the Planning Board and citizens' petition. The full text of the amendments is available in the Town Clerk & Planning offices during normal business hours and on the Town website at www.bedfordnh.org**

Ms. Hebert stated this is the second public hearing for proposed zoning amendments that would be placed on the 2021 Town Ballot for consideration by voters on March 9, 2021. There are two zoning amendments proposed by the Planning Board.

ZONING AMENDMENTS PROPOSED BY THE PLANNING BOARD:

Amendment No. 1

Are you in favor of the adoption of Amendment No. 1 as proposed by the Planning Board for the Bedford Zoning Ordinance to amend Article VIII, Section 275-62 A(1) and Table 3, Table of Dimensional Standards, as follows: Deleting "80" in the Maximum Building Height column for properties located on U.S. Route 3 with municipal water and sewer and replacing it with "60" and by deleting "80" in the Maximum Building Height column for properties located on local roads or U.S. Route 3 when private shared access drives are used and replacing it with "60." [This amendment reduces the maximum height for buildings located in the Performance Zone, on properties with access to water and sewer utilities, from 80 feet to 60 feet.]

Ms. Hebert stated proposed Zoning Amendment No. 1 is intended to lower the maximum building height for structures located in the Performance Zone for properties with access to public water and sewer utilities, and the Zoning Amendment would lower the maximum building height from

80 feet to 60 feet. Sixty feet is roughly the height of a 5-story building, and by lowering the height, the Town will be ensuring that the building height is consistent with other existing and proposed buildings along the South River Road corridor. For comparison, the new Chandler apartment building at the Wayfarer redevelopment site is the tallest building in the Performance Zone and it is 56 feet tall. The zoning change would not make any existing building non-conforming with regard to height. The Planning Board has discussed this zoning amendment at their workshop and at past meetings and has also noted that the Planning Board would be able to grant a waiver to allow a taller building in the Performance Zone if it finds that their request meets the purpose statement of the Performance Zone and is reasonable.

Amendment No. 2

Are you in favor of the adoption of Amendment No. 2 as proposed by the Planning Board for the Bedford Zoning Ordinance to amend Article XV, River Corridor Smart Growth District, by deleting the Article XV in its entirety and to amend Article II, Section 275-7, Establishment of Districts and Section 275-8, Location of Districts, to remove the River Corridor Smart Growth District. [This amendment is intended to repeal Article XV, River Corridor Smart Growth District (RCSGD) from Bedford's Zoning Ordinance because it was never fully enacted by the Planning Board. The RCSGD is an overlay district that was intended to be an optional zoning tool to permit mixed-use development subject to certain design standards. The overlay district includes the entire Performance Zone in Bedford. At this point, the Planning Board would recommend repealing the zoning and reviewing other regulatory tools to guide development in the Performance Zone.]

Ms. Hebert stated Amendment No. 2 is intended to repeal Article 15, the River Corridor Smart Growth District because it was never fully enacted by the Planning Board, but the zoning is codified in the ordinance. Repealing the ordinance will help to alleviate confusion moving forward by taking this section of the ordinance off the books.

ZONING AMENDMENTS PROPOSED BY CITIZEN PETITION:

Amendment No. 3

Are you in favor of the adoption of Amendment No. 3 as proposed by Citizens' Petition, to amend, Town of Bedford Zoning Ordinance, Article II, Section 275-7 Establishment of Districts, District Names, by deleting the words shown in the strikethrough and adding the words in bold as follows: 2 Performance Zone PZ To provide areas for a variety of uses including mixed use, retail, workforce housing, office, medical office, research and development and industrial uses serving both regional and local needs. The PZ provides for flexibility in land use development in exchange for meeting certain site, layout, landscaping, parking and environmental design standards specified in Article VIII, Performance District Zoning. Residential uses are not permitted except by approval of a waiver by the Planning Board as noted in Article III, Section 275-21, Table 2, Table of Uses and Article VIII, Section 275-61, Permitted Uses. This is an innovation land use control ordinance where the Planning Board serves as the land development review board for all zoning and planning matters with the exception of encroachments into the wetland setback. To amend Article VIII, Performance Zoning District, Section 275-56, Statutory Authority, by adding

the words in bold as follows: § 275-56. Statutory authority. This Article VIII is enacted by the Town of Bedford pursuant to RSA 674:21, II. This innovative land use control ordinance shall provide for all approvals associated with Article VIII, “Performance District Zoning”, including the granting of conditional or special use permits, by the Planning Board, except for Section 275-61 “Use Regulations”. Any decision made by the Planning Board under this innovative land use control ordinance may be appealed directly to Superior Court in the same manner provided by statute for appeals from the Planning Board, as set forth in RSA 676:5, III, and RSA 677:15. A waiver process from particular requirements set forth in Article VIII may be employed by the Planning Board where the applicant demonstrates substantial compliance with the standards set forth in Article VIII, Chapter 275-58, Purpose, Subsections A through E. The Zoning Board of Adjustment shall have the power to authorize upon appeal, a variance from the terms associated with Article III, Section 275-21, “Use Regulations” and Article VIII, Section 275-61 “Permitted Uses” in accordance with RSA 674:33. Any decision made by the Zoning Board of Adjustment under this innovative land use control ordinance may seek a rehearing and appeal the decision to Superior Court as set forth in RSA 677. [This amendment is intended to remove the power to grant waivers of the permitted land uses in the Performance Zone (PZ) from the Planning Board and provide this authority to the Zoning Board of Adjustment.] [THE PLANNING BOARD DOES/DOES NOT SUPPORT PASSAGE OF THIS AMENDMENT. The Board will discuss the amendment at the public hearings on January 11th and 25th and will vote to support or not support the zoning amendment.]

Ms. Hebert stated Amendment No. 3 is proposed by Citizens’ Petition and is intended to remove the Planning Board’s power to grant waivers from permitted land uses in the Performance Zone. The Planning Board would continue to have the power to waive all other aspects of the performance zoning, but the proposed amendment would transfer the authority to grant relief to uses that aren’t permitted by right in the zoning district to the Zoning Board of Adjustment and development proposals would need to seek variances for uses that are not otherwise permitted by right in the Performance Zone.

Ms. Hebert stated for a little background; the intent of the Performance Zone was to provide for flexibility in land use development in exchange for meeting more rigorous design standards for site development, including landscaping, lighting, building setbacks, access, and signage, so the zoning has a lot of design standards imbedded in it, and over the years the Planning Board has had the authority to waive certain aspects of the performance zoning and they have had authority over the Performance Zone, an innovative land use statute. This has worked well in Bedford over the years; the Performance Zone has supported the majority of Bedford’s economic development, and in talking with the development community, its success is often attributed to the efficiency and flexibility of the development review process. This Zoning Amendment would shift the review of permitted uses from the Planning Board to the Zoning Board, creating an additional step for development proposals that may be seeking use related waivers.

Ms. Hebert stated the Board has discussed this at the January 11, 2021 public hearing, and it is really the opinion of staff that we not recommend supporting the amendment because it is altering one of those fundamental principles of the Performance Zone, which was to streamline the development review process and provide flexibility by consolidating the process with the Planning Board.

Ms. Hebert stated the Town Attorney has reviewed the Citizens' Petition and Zoning Amendments No. 1 and 2, which are proposed by the Board, and has determined that they are legal and enforceable and can be passed onto the voters in March.

Ms. Hebert stated at the end of your public hearing tonight the Board will need to vote on whether or not it would like to move Amendment No. 1 and Amendment No. 2 to the Town Ballot, and the Board will also need to vote on whether or not it chooses to support or not support Amendment No. 3, which is proposed by Citizens' Petition. The amendments proposed by Citizens' Petition are placed on the Town Ballot regardless of the Planning Board's recommendation for support or not support, but a note is placed on the ballot next to the Zoning Amendment indicating what the Board's recommendation is. On the ballot it will be annotated that the Board supports or does not support the Zoning Amendment.

Chairman Levenstein requested comments or questions from the Board.

Mr. Fairman asked at some point I have seen or heard statistics relative to Performance Zones, specifically the percent of the land in town and the percent of our assessed value or the taxes. Do you have those figures? Ms. Hebert replied I don't have those at my fingertips right now, but I am happy to look them up for you. Mr. Fairman stated as I recall, it is significant for a fairly small percent of our land, it is a fairly high percent of our assessment, and I think those numbers would be good to know. I am sorry we can't get them out in the public hearing now. Ms. Hebert stated what I can do is pull the zoning map up and display the area that makes up the Performance Zone, and you will see it is the largest area of commercially zoned land in the community and it really has been the economic engine for Bedford. Mr. Fairman responded it very definitely is, and I think the numbers are significant so it would be good to get those numbers out there. When we look at the map, you can see it is not a big area relative to the Town, it is the biggest commercial area, but as a percent of the Town's land, I don't want to quote a number as I'm not sure, but it is a small percent of the Town's land surface, and as you said, a big economic engine and we want to keep it that way and keep development going to see if we can keep taxes down.

Mr. Sullivan stated I have no questions or comments, other than to restate comments from the previous meeting that with Amendment No. 3 I feel that it unnecessarily takes away the ability of the Planning Board to assess applications and make determinations that should be in the best interest of the Town.

Mr. Newberry stated I support the two amendments proposed by the Planning Board, and I am opposed to the Citizens' Petition. I have yet to hear anyone speak publicly as to the rationale for that particular petition, and I think that it unnecessarily creates a disadvantage for the Town in making the best use of the limited commercial space that is available and subsequently has a potential negative impact on the Town's ability to maintain a good economic engine and tax base.

Chairman Levenstein stated I think that we probably should point out that the standards for getting a variance before the Zoning Board are very different than the standards for getting a waiver before the Planning Board. It is much more stringent a standard that the Zoning Board looks at and basically you have to show that there is some sort of hardship that prevents the property from being

used for any other use, whereas the purpose of the waiver process is to allow for working with developers to try and get the best and most financially sound uses in the Performance Zone that one can get. Even if there isn't necessarily a hardship to the land, you still may be the highest value use, which the Planning Board can use to grant a waiver.

MOTION by Vice Chairman Murphy to open the public hearing. Mr. Sullivan duly seconded the motion. On a unanimous roll call vote, the motion carried.

Chairman Levenstein asked are there any members from the public online or on the phone that would like to speak? Ms. Hebert stated I have received no emails from the public. If you have joined by phone and you would like to speak on the Zoning Amendments, please unmute your telephone connection and speak up now.

Kathy Shartzter, 7 Roblin Road, stated I would just like to comment. I have nothing to do with this petition, I was not part of it, I don't have any communications with anyone who is part of it. For clarification; I think some of the sort of idea behind it, and, again, I don't want to speak for anyone but me, and I am not associated with it, is a concern about putting a lot of residential units in the Performance Zone. I think it was developed as a commercial engine, just like you folks have all talked about, and I think when residential areas have been allowed in, that has been some cause for concern. Again, I don't speak in favor of this, but I would like it to be that to allow a change of use, if that is the right word, that should sort of be a really high bar, even just for you folks. Specifically, I think if I have it named correctly, the Circle Drive Associates, the apartments, are they condos now, I think those were in the Performance Zone, and you can correct me if I am wrong. I was not at the last meeting, which was at 10/12, and I forget why, whether I just missed it because I forgot about it or I had another obligation, and I did go back and sort of read the transcript, and it did seem like people didn't think that there was any kind of concern. But I was at all of the preliminary meetings, the ones back in the summer, and my concerns were not that they started out as apartments, I did notice in the last meeting that they did put in a play area, and that was one of my concerns so I thank you for that, but there are other people speaking at those meetings and I just want the Board to be aware that sometimes the general public can't make every meeting and this was a long development. I think I went to two or three meetings during the summer, and it had been tabled from the end of August to October. Just recognize that sometimes the public can't make every meeting and they do have concerns about it. Again, I am not speaking in favor of this, I would just like the Board to recognize that if you grant a waiver for change of use, that should be a little bit of a higher bar versus setbacks or other design, which you guys need the flexibility and I have no problem with that at all. Thank you for listening.

Chairman Levenstein asked are there any further messages or phone requests? Ms. Hebert responded no.

MOTION by Mr. Newberry to close the public hearing. Mr. Sullivan duly seconded the motion. On a unanimous roll call vote, the motion carried.

MOTION by Mr. Fairman that the Planning Board move proposed Zoning Amendments No. 1 and 2 to the Town Ballot for the March 9, 2021 election. Councilor

Duschatko duly seconded the motion. On a unanimous roll call vote, the motion carried.

MOTION by Mr. Sullivan that the Planning Board not support proposed Zoning Amendments No. 3 that is proposed by Citizens' Petition to the Town Ballot for the March 9, 2021 election. Councilor Duschatko duly seconded the motion. On a unanimous roll call vote, the motion carried.

IV. Approval of Minutes of Previous Meetings: None

V. Communications to the Board:

Ms. Hebert stated you did receive a communication from Attorney John Cronin regarding the Bank of New Hampshire site plan clarifying an abutter's position, Mr. Albert Bellemore's position, concerning future access across his property located on Hull Road and Colby Court. He wants to be clear that his position on the access across his property that he has not agreed to the cross connection and he wants to be clear that he takes any exception that the Town may force him to provide a future cross connection for the benefit of the abutting property owners.

I will place a copy of this letter in the project file, so at such a time when Mr. Bellemore comes forward with a development proposal this letter will be in the project file for the Bank of New Hampshire site plan. I wanted you to be aware of his communication and his position on the project.

Mr. Fairman stated I wonder if it would be appropriate for the Planning Board to put in writing with some sort of letter or commendation to Mark Connors, thanking him for his efforts and time spent on the Planning Staff and helping the Planning Board. He was a great help to all of us. Vice Chairman Murphy stated I think that is a great idea. Thank you for proposing it. Chairman Levenstein and Ms. Hebert stated we will work together putting something together to get to him.

VI. Reports of Committees: None

VIII. Adjournment:

MOTION by Mr. Newberry to adjourn at 7:30 p.m. Mr. Sullivan duly seconded the motion. On a unanimous roll call vote, the motion carried.