

Town of Bedford
Zoning Board of Adjustment Minutes
February 15, 2022

A regular meeting of the Bedford Zoning Board was held on Tuesday, February 15, 2022, at the Town Meeting Room at BCTV, at 10 Meetinghouse Road.

Present: Dave Gilbert (regular member), Neal Casale (Vice Chair), John Morin (Chair), Elizabeth Jude (regular member), Kathleen Ports (Associate Planner), Becky Hebert (Planning Director).

Absent: Sue Thomas (alternate member), Len Green (regular member), Bob MacPherson (alternate member).

Call to Order and Roll Call:

Chairman Morin called the meeting to order at 7pm and introduced members of the Board.

Rules of Procedure Chair Morin said this evening will be presentations by an applicant or a letter (as in this evening). All applicants will be heard in order of notice. We will go into non-public session for voting on the applications. You can wait until tomorrow or call the Planning Department after 8:30am for the decision. I'm not going to worry about cell phones this evening. I don't think we'll have that issue. I'm not going to go into variance criteria because we don't have a variance application this evening. So, I'll skip right to approval of minutes for last month, January 18th. Do we have any changes? [no changes]

Approval of Minutes: January 18, 2021

MOTION was made by Mr. Gilbert to approve the minutes of the prior meeting on January 18, 2021. Ms. Jude duly seconded the motion. Roll call vote was taken - ALL IN FAVOR – unanimous. MOTION carries.

Old Business & Continued Hearings: None

Discussion-

Request for Rehearing for New Hope Christian Fellowship for an Administrative Appeal of the October 15, 2021 Cease and Desist Order by the Building Code Official for hosting gatherings prior to the issuance of a Certificate of Occupancy, in violation of the Town of Bedford Building Construction Ordinance Section 92-10 and the International Building Code Section 111.1, at 445 Rte 101, Lot 31-44-1, Zoned R&A.

Mr. Gilbert requests to be recused. Chair Morin recuses him as requested. Chair Morin stated there are three of us that are going to be going over this application this evening. This is an application to request a rehearing. We did receive a letter from the attorney of the applicant stating their issues with the

Board from that meeting. So, what I'm going to do is just go over those items and we can talk about each of the items that they brought up. And then move on to the next one. So, their first item brought up is that:

1. **The ZBA erred in holding that the property does not have a valid occupancy permit.** That was talked about pretty extensively during that meeting. Due to the change of use, there was no valid occupancy permit. Again, it was mentioned many times during the hearing, during our deliberations. That's what I have. Neil? Mr. Casale said I don't right this second unless Elizabeth does. I do want to check one other thing. I'm in agreement with what you said. How about that for right now? Chair Morin said we'll come back to it if you find something. Let's go to number 2.
2. **The ZBA erred in holding it had no authority to determine what church means for the purpose of the Zoning Ordinance.** Chair Morin said I'll jump in with my comments first. Number 1, we did not define church. I was very specific during conversation with the attorney that if I mentioned church, I was talking about property owner—who owned the property. I specifically questioned them on who owned the property. They stated it was the church. So, again, the decision wasn't based on the owner. It was based on the use of the property without an occupancy permit.--very straightforward. Mr. Casale said, and I agree. End of discussion. This is a red herring as far as I'm concerned that it's even brought up. The issue is was there a cease and desist order? And did they follow it? And was there anything that the code enforcement official did that was improper, not according to the code, etc. And that's the bottom line. Whether it's a church or a pig farm—it doesn't matter as far as I'm concerned. Chair Morin said okay. Let's go to number 3.
3. **The ZBA erred in holding it had no authority to rule on constitutional issues.** Chair Morin continued, my comment on that is we weren't dealing with constitutional issues. Again, we were dealing with a very specific issue which was an occupancy permit. And that's what we acted on. Our issue was that we're not dealing with constitutional issues and that the issue we were dealing with was black and white. Ms. Jude agreed, yes. And we discussed it at length. Chair Morin said right. Mr. Casale said agree. See answer above. Chair Morin continued.
4. **The ZBA erred in adopting Mr. Lavoie's erroneous opinion that under the building code, having two people pray converts a use to a commercial use.** Chair Morin said again, I'm going to go back to the same thing we've talked about. It had nothing to do with folks praying. The use as a church—the application went to, you know, getting very specific. The application went to the Planning Board. The Planning Board and, you know, during the Planning Board, it was talked about they were looking for a change of use. That was their testimony at the Planning Board. The Planning Board approved the plan as a change of use and was very clear throughout the whole process. So, again, I don't know why that's brought up in this way but, it's crystal clear we're dealing with black and white issues of an occupancy permit—not because of religious purposes or a place for religious purposes. Ms. Jude said agree. I have nothing to add. Mr. Casale said agree. See answer above. Chair Morning said alright, number 5.
5. **The ZBA erred in considering written statements and testimony from Mr. Lavoie that were not included in the October 15, 2021, Cease and Desist Order.** Chair Morin said I have down that the cease and desist order was very clear and concise. It was to the point. It explained what the issue was. How to fix the issue—which was basically getting an occupancy permit. Mr. Lavoie

was here to explain what he had done, and he was very clear in his testimony in front of us. So, I didn't see any issues with what he gave us for information. Mr. Casale said I know for one, I asked him at least one question, if not a couple, that were clarifying for me in my ability to make a sound decision. And so, they may not have been exactly related to what they're referring to here. But it was, of course, the ZBA can take testimony and ask clarifying questions, which, I know, at least on one occasion I did. Chair Morin said yes. Anything from you? [referring to Ms. Jude] Ms. Jude said no.

Chair Morin said okay. Those were their points. Overall, I think this comes down to the basics. Number one the property changed its use. The property was used without the proper occupancy permit. And the Cease and Desist Order was issued when found out it was used. So, it was pretty cut and dry and clear exactly what the issues were. Mr. Casale said to add to that, there was testimony that there was construction equipment onsite, and that there was an added danger because they were having, apparently, people coming in. Whether it was one or 10 or 40 people coming in, and there was active construction that was ongoing at the time. Chair Morin added and that's part of the occupancy permit—to make sure things are completed and they're safe. Alright. So, with that, do I have a motion?

MOTION: Mr. Casale moves that the Zoning Board deny the request for a rehearing of an Appeal from Administrative Decision by the Bedford Building Code Officials Cease and Desist Order issued on October 15, 2021 for hosting gatherings prior to the issuance of a Certificate of Occupancy, in violation of the Town of Bedford Building Construction Ordinance Section 92-10 and the International Building Code Section 111.1 as per our deliberations. Ms. Jude duly seconded the motion. Roll call vote taken – all in favor. Motion carried 3-0. The request is DENIED.

New Business: None

Adjournment:

MOTION: Ms. Jude moved to adjourn the meeting. Mr. Casale duly seconded the motion. Roll call vote was taken – ALL IN FAVOR. Motion carried 3-0.

Meeting adjourned at 7:12 pm.

The next meeting will take place on March 15, 2022.

Respectfully submitted,

Sue Forcier