

TOWN OF BEDFORD
January 15, 2019
ZONING BOARD OF ADJUSTMENT
MINUTES

A regular meeting of the Bedford Zoning Board of Adjustment was held on Tuesday, January 15, 2019 at 7:00 p.m. in the Ross A. Lurgio Middle School – Cafeteria, 47 Nashua Road, Bedford, NH. Present were: John Morin (Chairman), Gigi Georges (Vice Chairman), Sharon Stirling, Kevin Duhaime, Neal Casale (Alternate), Dave Gilbert (Alternate), Karin Elmer (Planner 1), and Becky Hebert (Planning Director)

Chairman Morin called the meeting to order at 7:00 p.m. and introduced members of the Board. Regular member Melissa Stevens and Alternate Len Green were absent. Those voting tonight will be Chairman Morin, Ms. Georges, Ms. Stirling, Mr. Duhaime, and Mr. Casale.

Approval of Minutes:

MOTION by Mr. Duhaime to approve the minutes of the December 18, 2018 meeting of the Bedford Zoning Board of Adjustment as written. Ms. Georges duly seconded the motion. Vote taken - all in favor. Motion carried.

Chairman Morin reviewed the rules of procedure and swore in members of the public.

Applications:

- 1. David and Joann Fagan (Owners) – Request for a variance from Article III, Section 275-22 and Table 1, in order to permit the construction of a second story on an existing non-conforming house which is 30.6 feet from the front property line where 35 feet is required, and 20.7 feet from the side property line where 25 feet is required, at 2 Wayside Drive, Lot 45-153, Zoned GR.**

Dennis Antle and Rick Paverada were present to address this variance request on behalf of the applicant.

Mr. Antle stated you obviously know the name of the applicant, David and Joann Fagan, and the situation at hand.

Mr. Antle and Mr. Paverada proceeded to review the criteria for this variance request.

- 1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality: (2)**

Whether granting the variance would threaten public health, safety and welfare:

We thought this improvement enhances the character and the curb appeal of both the neighborhood and the home itself, quite substantially, from where it currently stands. **2.**

The spirit of the ordinance is observed: The spirit of the ordinance is observed because the neighborhood has many homes of similar size, both single and 2-level, this home will be the retirement home of the owners and it fits perfectly with the spirit of this area. **3.**

Granting the variance would do substantial justice: This corner lot of Wayside and Seavey Street will enhance the beauty of this neighborhood. The new addition actually fits well within the neighborhood. Similar houses with this second level exist there. **4.**

The values of the surrounding properties will not be diminished for the following reasons: This increases the values of the house, being a newly renovated home. **5.**

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area: Being the corner lot with the view of both sides gives this home good visibility as we enter the neighborhood. **A.**

Denial of the variance would result in unnecessary hardship: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: The homeowners are looking to improve this home to retire within its walls, and they are enhancing the look of the home and the benefits will greatly improve the neighborhood. **ii.**

The proposed use is a reasonable one: We are not changing the footprint, we are basically going up one level and the end result is a home which is now beautified but not overdoing its look and it fits well. **B.**

If the criteria in subparagraph A are not established, explain why the property cannot be used in strict conformance with the ordinance and why the variance is therefore necessary to enable a reasonable use of it: The property's footprint and how it stands on the land is not changing from its position. The roof measurement is basically a couple of feet shy of the 35, however, the addition is up to a second level not changing the footprint from the road.

Use of it: The property's footprint and how it stands on the land is not changing from its position. The roof measurement is basically a couple of feet shy of the 35, however, the addition is up to a second level not changing the footprint from the road.

The property's footprint and how it stands on the land is not changing from its position. The roof measurement is basically a couple of feet shy of the 35, however, the addition is up to a second level not changing the footprint from the road.

Chairman Morin asked for any questions or comments from the Board.

Chairman Morin asked just to make sure it is on record, nothing is going to be done with the garage, the garage is staying exactly the way it is? Mr. Antle replied it is going to be sided to match the house. Chairman Morin stated but it is not moving, it is not being reconstructed or anything like that. Antle stated actually in the original plans that we submitted the entranceway was going to be the master closet for the second floor and that is no longer going to be built. We did just get the revised prints. Ms. Elmer asked is that this area indicated on the screen? Antle replied that's correct; that is no longer there.

Mr. Duhaime stated the staff report called out that the septic was for a 2-bedroom. Is that anything we have to rule on here? Ms. Elmer replied no, but the applicant has been made aware from the Building Department that they will either have to redesign the floor plan for a 2-bedroom or try to apply for a new septic system for a 3-bedroom. Mr. Antle responded they already decided that they are going to just build an office in there instead because they thought at first that the septic was going to be able to handle

the 3-bedroom and now they know that it is not. Mr. Paverada stated and it is a brand new septic system so they are not going to have to replace that.

Chairman Morin asked the public for those wishing to speak in favor, in opposition, or for those having comments neither for nor against this application. There were none.

Chairman Morin asked the applicant if they chose to do a summation. There was none.

MOTION by Ms. Stirling to move into deliberations on this variance application. Mr. Casale duly seconded the motion. Vote taken – all in favor. Motion carried.

1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality: Ms. Stirling stated I don't think it would do that. Chairman Morin stated it appears that it would still fit in as a 1-story or 2-story looking at the neighborhood. **(2) Whether granting the variance would threaten public health, safety and welfare:** Ms. Georges stated it would not do that. Chairman Morin stated we haven't heard anything against this. **2. The spirit of the ordinance is observed:** Ms. Stirling stated I think it is. It seems reasonable to add a second story, the footprint is remaining the same, this neighborhood is comprised of very small lots so they are very limited, and on a corner lot to boot. Mr. Duhaime stated I agree; the footprint is staying the same. **3. Granting the variance would do substantial justice:** Chairman Morin stated it is giving them the opportunity to add to the house, not extending the footprint per say, even though the second floor will be approximately a foot over what the first was, and that is what the encroachment per say we are looking at. It is still not an issue that I can see when it comes to that area. **4. The values of the surrounding properties will not be diminished for the following reasons:** Ms. Georges stated there has been no testimony to say that it will or won't. **5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area: A. Denial of the variance would result in unnecessary hardship: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:** Chairman Morin stated where it is going, how it is being constructed, it is a fair issue to deal with as to putting an addition on a home, they are going up they are not going out per say, they are going out a little but it is from the second floor, not the first, so I think it meets the general purpose of the ordinance there. Ms. Stirling stated I would agree. **ii. The proposed use is a reasonable one:** Mr. Gilbert stated it is their home.

MOTION by Mr. Casale that the Zoning Board of Adjustment grant the variance requested by David and Joann Fagan (Owners) from Article III, Section 275-22 and Table 1, in order to permit the construction of a second story on an existing non-conforming house which is 30.6 feet from the front property line where 35 feet is required, and 20.7 feet from the side property line where 25 feet is required, at 2 Wayside Drive, Lot 45-153, Zoned GR per

the Zoning Board’s deliberations, including the fact that it was determined the footprint would remain the same and that granting the variance would not alter the essential character of the locality nor it would it threaten public health, safety or welfare. Ms. Stirling duly seconded the motion. Vote taken - all in favor. Motion carried.

MOTION by Mr. Casale to move out of deliberations on this variance application. Ms. Stirling duly seconded the motion. Vote taken – all in favor. Motion carried.

Chairman Morin stated the next three items are the same applicant. I am going to read them all and decide how we are going to handle these once the applicant is at the table.

Attorney John Cronin, Bob Duval of TF Moran, and owner Dick Anagnost were present to address the following two variance applications and the appeal from an administrative decision.

Attorney Cronin stated this project has been in the works for several months and thanks to the Mr. Duval, who is seated on my left, and Mr. Anagnost there have been a number of reiterations and discussions since design review.

Attorney Cronin stated my preference would be to take them a little bit out of order from the agenda and start with the wetlands request because I think that is probably the most straightforward and the easiest. And then proceed to the variance for the number of units, and as I often do, when I file both for a variance and an appeal of the administrative decision, if the Board looked favorably on the variance, we would deem that the administrative decision would probably be moot and we would withdraw it. It might save some time in doing it in that regard and it may not. We will have to see how it plays out.

Chairman Morin asked how does the Board feel about changing the order of the items on the agenda to go in order from Item 4 to Item 3 to Item 2? The Board agreed.

4. 206 Route 101, LLC and Bow Lane Bedford, LLC (Owners) – Request for a variance from Article IV, Section 275-24 thru 29 in order to fill 5,990 sf of wetland for the construction of proposed apartment buildings off Chestnut Drive, Lots 20-99-1,2,3& 4. Zoned CO.

Attorney Cronin stated just to give you an overview of this site. It is an assemblage of parcels that are proposed to be consolidated into a 9+ acre parcel. Situated on the site currently is the Shorty’s restaurant, which many of you may be familiar with, that fronts down on Route 101. The subject parcel that is proposed for the apartments is up behind the commercial buildings in between the high school, and it is also bordered by several large tracts of land owned by the Dumas family. The access to Route 101 is off

from Chestnut Drive, which currently ends at a cul-de-sac and the road, of course, would come off from that cul-de-sac and then come down through the development. You will see there are four proposed buildings on the site. There has been a lot of discussion with the various parties with respect to this project, which is a workforce housing project, which is allowed in the zone, it is a commercial zone, which allows commercial uses and the ordinance provides for workforce housing uses in that zone. Initially there was a discussion with respect to the roadway and that roadway alignment has changed. We acknowledge that there is an easement going back to I think the late 1960's and through the 1970's when it appeared on a Bedford business park subdivision plan that was recorded at the Registry, and it is a right-of-way that is in favor of the Dumas family, a typical easement that gives them the right to pass and repass. Initially when the plan came forward, that roadway that you see on the plan was altered a little bit and moved over to soften the curve.

Attorney Cronin stated the Supreme Court in September came out with a decision that kind of settled the issue with respect to easements. Historically there had been some thought that the servient estate could relocate the easement as long as it did not diminish the utility of the grants, but the Supreme Court said that you couldn't do that without the permission of the Dumas'. The road that you see there now is consistent with what I call the mididal plan, which was the proposal that was approved by the Planning Board and recorded at the Registry of Deeds. You see the road as it starts to come across the parcel, there are four pockets of wetlands that are approximately the 6,800 square feet that are proposed to be filled in. When I initially looked at the ordinance and the relative sections, my initial impression was that a variance would not be required and it would be a matter for the Planning Board under the terms of the ordinance to make a determination on because the proposed use of this site was for a roadway, and because of the requirements to the Dumas connection and Chestnut Drive, it was a not a reasonable alternative.

Attorney Cronin stated Mr. Duval, the project engineer, has done some work with respect to the wetlands and evaluated them. My understanding is that historically way back in time the railroad followed a course through this parcel and actually in the easement document there makes a reference to the centerline of the railway, which was raised, and the natural slope of that has provided some collection areas where these wetlands are and the proposal is to fill them to accommodate the construction of this road. I will turn it over to Mr. Duval for a moment and he can give you a little bit more detail on the wetlands.

Mr. Duval stated as Attorney Cronin pointed out the roadway follows this easement. The easement you can see is defined by the two gently curving black lines that basically go to either side of the proposed roadway that connects Chestnut Drive to the Dumas north property line. I also have a sketch that shows a little more clearly what we are talking about here and we can refer to the sketch later if necessary. The old railroad corridor is 100 feet wide and defined by these two thin red lines, and then there is an easement for a 50-foot-wide path in the center of that railroad easement, and then in 1979 a plan was set forth by Middleton reflecting this Bow Lane layout that you see here

highlighted in green. That is the layout that is shown here on this plan in front of you. At these yellow wetlands here are essentially the remnants of the drainage ditches that ran on either side of the rail bed. The rail, as most railroads are, ran very flat through that land, which required, this is sort of a hill top, a ledge cut to connect the lower Dumas land to the south with the lower land to the north. So this rail bed was blasted through this section here and when they did the drainage ditches that were left on either side of the rail bed, really didn't flow very vigorously but they gently flow southward, and over time they have accumulated leaf litter and so forth and they have really just become small wet pockets, isolated wetlands. with very little function and value that were created by human activity that flanked the old rail bed. To the extent that there is any water buildup on the land, it gently drains to the south so that there really is no opportunity for those wetlands to accumulate any permanent pools, other than very shallow depth. That is the genesis of the wetlands.

Mr. Duval stated the language of the easement requires that this roadway be situated in this former rail bed for the most part up to about this point, and then as you recall from the other plan, this Middleton 1979 road veers off to connect to Chestnut Drive. So the road has to be built in this location and the location of these wetlands, not just for the purposes of this project but for any project, because of the easement running through it in favor of the lot to the south. So there is no road alternative through this land other than through this easement.

Mr. Duval stated let me get into the quality next. We have submitted a wetland application to the NHDES as well as gone before the Conservation Commission here in town a few times, including a site walk in October. Let me just read from the notes of our wetland scientist regarding the value of the wetland using the standard New Hampshire report form. "Groundwater recharge and discharge: There is a little bit of function there but because they are limited in extent, they are really not providing much volume of groundwater recharge, the soils are permeable in this area but because this is a ledge cut, the bedrock underneath, immediately underneath the wetlands limits any real value as infiltration and that is why if there is any depth buildup there, it flows off to the south because there is just no way it can get, even despite the permeable soils in the general neighborhood, do any significant groundwater recharge. There is no flood flow value to these wetlands, again, with trivial, negligible even, recharge capacity or surface capacity. There is no possibility of fish and shellfish habitat, as I have already pointed out, the water is ephemeral, will be there for a while after a heavy rain, but then radically dissipates in for large parts of the year, including the spring of the year, it is dry. In fact, when this wetland was observed during the spring wet season, it was found to be dry. There is no sediment or toxic retention value of this wetland because there is and will be no sediment or toxic inloading even now or in the future from this site once it is built and with the proper stormwater controls. There is no nutra removal value for the same, there is a limited organic soil depth of sometimes just a few inches, and maybe as much as a foot and a half, but no organic soils above the bedrock. There is sparse vegetation and little production of wildlife food sources. It is not subject to wind and wave action, so there is no stabilization affect, there is nothing to stabilize, there is, like any small wooded area would have, a minor wildlife habitat value but there is no

exemplary species there, there is no rare or endangered species, and given the small extent of the wetland and the proximity to other developments surrounding it on at least two of the sides, it would not be expected to have any wildlife habitat value for other than common urban species that you would see in this area. There is no recreational value, of course, there is no significant habitat for educational or scientific value, there is nothing unique or historical about the wetlands other than I suppose the fact that they were constructed in connection with the railroad, but it certainly doesn't provide any wetland value, there is no visual quality or aesthetic value, and finally, as I already pointed out, there is no endangered species habitat listed in this vicinity. So when you add all of that up, this is frankly one of the lowest scoring wetlands that I have seen in many years, and there is no value to preservation, there is no ability to avoid and minimization is essentially not an option because this is no little wetland to begin with.

Mr. Duval continued we also did, because questions have been raised about its value as a vernal pool, we did a vernal pool evaluation and I am going to go through the criteria for that. This would be if it were a vernal pool there would be an upland isolated type, however, again, it is due to human activity and the vernal pool does not hold water consistently. It is ephemeral and really the buildup of water is from separate events and may last a week or two after a storm even but through repeated observation of the wetland in and between storm events, it quickly drains down to insufficient depth of just a few inches or so and cannot support vernal pool species. Maximum observed water depth was 6 inches in November of 2018, which was a particularly rainy period. In fact, I should point out that these observations were taken during 2018, which was an unusually high year for rainfall in New Hampshire, in particular August was a period where there was almost twice the typical rainfall, and, again, there was no buildup or accumulation of water in the subject site. There is an outlet which flows to the south, generally speaking, due to a slight grading in the railroad bed. It is mostly shaded by trees, there is extensive debris and a thin organic layer in the pool, and perhaps most significantly there were no vernal pool indicators present for sampling as well as insufficient water depth that would make it unlikely that any vernal pool species would be present or would survive even if they were present in this particular wetland.

Mr. Duval stated I would like to read in summary a letter from our wetland scientist to the Town that I will read in part, "The wetlands were investigated for potential vernal pool indicators focusing primarily on two depressional areas at the north end. The remaining wetland does not retain surface waters for longer than a week or so due to the slight gradient that has been discussed. Water depths in the two depressions fluctuate significantly in response to storm events as well. In order to be a vernal pool there must be adequate ponding for a sufficient duration greater than four months to support the habitat, grading development emergence of amphibians, etc. No primary indicators such as fairy shrimp, salamanders or wooded frogs were observed at any time during the investigation and are unlikely to be there. Secondary indicators were searched for and the only secondary indicator of mosquito larvae, which is omnipresent. It was observed in the water column but there must be at least three secondary indicators present and there were not. There were, however, green frogs observed during each site visit which is not an indicator of vernal pools and, in fact, is

predatory to vernal pool species.” So with all of these factors taken together, it is our opinion that this wetland is transitional wetland with changing hydrology and is inadequate to support the breeding habitat necessary for vernal pool dependent species. We think that summarizes the wetland value to be low to human-caused wetland with no significant functional values as a wetland much less a vernal pool.

Attorney Cronin stated I just want to address this; there is something that I stated in my opening remarks where I said this is a workforce housing project and it was allowed by the ordinance, and I failed to say not only is it allowed, it is required by the ordinance.

Attorney Cronin stated the backdrop for all of these three cases, and I think some context comes from the zoning enabling statute, Chapter 672, and I am going to read for a moment from Subsection 3(e), which states “All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary, and affordable to low and moderate income persons and families is in the best interest of each community and the State of New Hampshire that serves a vital public need. Opportunity for development of such housing shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers.” I note that the Town of Bedford did take that enabling legislation to heart when they did adopt the workforce housing provisions of the ordinance. Again, to look at the intent, which I know is something that you will take a look at when you weigh this variance, in 275-4-24 it sets forth the purposes of the wetlands conservation article, which is Article IV. It says “It is intended that this article shall prevent the development of structures and land uses on wetlands in areas adjacent to wetlands, which will contribute to pollution of surface and groundwater by sewerage, toxic substances and sedimentation, prevent the destruction of or significant changes to wetland areas adjacent to the wetlands which provide flood protection, recharge to the groundwater supply, augment stream flow during dry periods, and filter water flowing into ponds and streams, protect unique and unusual natural areas and rare and endangered species, protect fish and wildlife habitat, maintain ecological balance and enhanced ecological value such as those cited in 484-A, protect the quality of existing drinking supplies and potential future public water supplies but prevent unnecessary and excessive expense to the town for the purpose of providing it or maintaining essential services and utilities, which might be required as a result of misuse or abuse of wetlands, to preserve and enhance the aesthetic value associated with wetlands in the Town of Bedford provided all new subdivisions approved subsequent to adoption of this article, sufficient lot size to place a house and approved septic system without locating them in wetlands, and recognize the unequal and unique burden of wetland property owners, and minimize restrictions which may be placed on their properties.” I also mentioned earlier the section and I will look at 275-27(d) which is permitted uses in the wetlands. It says “Construction of a roadway or other accessway, utility right-of-way, communications line, power lines, and pipelines across a wetland may be permitted by the Planning Board if after receiving comments from the Conservation Commission the Planning Board determines that the proposed construction is essential to the productive use of land or water outside the wetland and

no reasonable alternative to the proposed construction exists, which does not cross or alter the wetland which has less detrimental impact on a wetland.”

Attorney Cronin stated I will address the criteria of the variance. **1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality: (2) Whether granting the variance would threaten public health, safety and welfare: 2. The spirit of the ordinance is observed:** Looking at the spirit and public interest prongs; I refer to *Farrar v. Keene* which takes them together. The test there and one of the ways to satisfy those prongs is to demonstrate that if the variance is granted, it will not alter the essential character of the neighborhood. When we are looking at the size, which is relatively small in scale, and low function of the wetlands, we don't believe it will alter the essential character of the neighborhood. I looked at some of the prior decisions from the Town relative to wetlands. I looked at the Macy's project and the food mart where the old pond used to be where the geese collected at the Wayfarer, I also looked at the Mini Cooper site and the one beside it, which I know a substantial wetland was moved or filled to accommodate development, and in looking at some of the other histories in this town, this is a relatively de minimis request. **3. Granting the variance would do substantial justice:** Looking at the substantial justice prong, which is subjective in nature and a balancing test. What would the harm be to the applicant if the variance were denied versus the harm to the public. The harm in filling of this, again, small wetland to the public really shouldn't be any harm whatsoever. If this wetland can't be filled, not only will it harm the developer, the applicant in this case, it will provide harm to the abutter, which had bargained for the easement because it won't allow that roadway to be built in the area that it was depicted and that in and of itself satisfies the balancing test. Mr. Anagnost will speak in a moment to the value prong as will Mr. Rohrer who I believe is here in the audience, who was a licensed real estate professional here in New Hampshire.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area: With respect to the hardship, when you look at the unique nature of this, certainly having a railroad track through the middle of your property that creates a depression is unique and not typical for properties in this area. Similarly, its location and its situation next to the high school and commercial and its proximity to Chestnut Drive gives it special conditions that would make it appropriate for a variance. **A. Denial of the variance would result in unnecessary hardship: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:** Is there any fair and substantial relationship between the ordinance and application to this property. As I stated earlier, it appears that the ordinance contemplates that these types of wetlands could be filled to accommodate road development and that that is something the Planning Board would take up in a site plan review. It is my understanding as a matter of policy that this is something that the Zoning Board of Adjustment has looked at as well and that is why we made the application in this particular case. When you look at what the intent of the ordinance is,

the wetlands conservation ordinance and history of the wetland and the work that was done by Mr. Duval, these wetlands and if they are filled, will not violate any of these expressed intents in the ordinance and its relevant sections. **ii. The proposed use is a reasonable one:** We would submit that workforce housing, again, is valuable and vital not only to Bedford but to the state and to allow this project to go forward and that road to be built, it would be necessary and reasonable.

Attorney Cronin stated I would like to take a moment to ask Mr. Anagnost to comment on the value issue and the impact to properties if the wetlands are filled. **4. The values of the surrounding properties will not be diminished for the following reasons:** Mr. Anagnost stated I am the lead developer on the project. I would like to provide some information regarding the fact that we do not believe the project itself or the filling of the wetlands will diminish the value of surrounding properties. By way of Locus, the Route 101 corridor is directly to the north of the property, it is fully developed and has commercial properties, you have Modern Bride, you have CMC, you have TDBank, you have the Bedford Village Shops, and then coming to the right, if you come easterly, you will see that there is commercial on the cul-de-sac as well as Bedford high school, where we happen to be sitting now, to our south is the Dumas property, the portion of the Dumas property that directly abuts us is also zoned commercial, and it then changes over to residential zoning. The Dumas property would actually be enhanced by the filling of the wetlands because it would allow us to build the access through the right-of-way that has been prescribed in the banking 1979 plan and the access of the roadway, as well as the utilities we will be bringing there, will actually enhance the value of the Dumas property. Finally, to our west and southwest we have Shorty's and to the west of Shorty's is the French Atwood Marketplace, across the Route 101 corridor from Shorty's is the Harvest Market, and then finally to the southwest is the Priscilla Curry property, Curry family property, and that property is also zoned commercial, I believe. So you have a commercial use within a commercial zone not surrounded by residential and commercial and recreational and educational uses surrounding the property and the vacant land that surrounds the property also has a commercial aspect to it, both on the Dumas side and on the Curry side.

Attorney Cronin stated I would like Mr. Rohrer to come up if he would and just offer his opinion. Bob Rohrer stated I am a managing partner for Colliers International. We have been in the Bedford/Manchester for over 25 years. I can't say much more than Mr. Anagnost said about the surrounding area. I agree that the values of the properties in the area will not be diminished, in fact, I think they will benefit from workforce housing, not only for more people that will be able to be shopping in the areas, also potential employees for local retail shops as well as businesses. So from my perspective this will absolutely enhance the value of that market. I would also like to say that having additional workforce housing in our area will help small businesses like myself and other businesses in the area. Overall I think it would be a big benefit for this corridor as well as Bedford. Chairman Morin asked what are your credentials? Mr. Rohrer responded I have been a commercial real estate advisor for over 25 years, I am Managing Director of Colliers International, a company that is headquartered in Manchester but has been in Bedford for the same amount of time. Chairman Morin stated thank you.

Chairman Morin asked the Board for any questions regarding the value prong of the criteria.

Attorney Cronin stated Mr. Chairman, that will conclude our presentation. We are happy to entertain any questions or if you would like to go to the public on this one first or do the next one or would you like me to move forward. Chairman Morin stated let's get our questions first and then go from there.

Chairman Morin asked for questions from the Board with regard to this variance application.

Ms. Stirling stated we were advised by our Conservation Commission, and I would like to just read a part of the letter and you can comment on it. "The Commission has overall concern about the long-term impact to the impaired water body of Riddle Brook adjacent to the project and overdevelopment of the site. Long term protection of Riddle Brook is of the utmost concern to the Commission." They recommended denying the permit to dredge. Would you comment on that? Attorney Cronin stated initially I had occasion to watch the video of that particular meeting and I believe I submitted a letter in that regard. I'm not sure, I was concerned that the Conservation Commission made some comments about using their power as leverage to diminish the number of units. I thought in my 35 or so years of experience that is not something that I had seen done in the past, and it was clear to me that some of the folks on that board seemed to have some feelings about the application in their comments. With respect to the fill and as far as the consistency, looking back at the minutes and the history of what the Conservation Commission has approved, I think the comments in this particular minutes is inconsistent with their actions in the past. I will turn it over to Mr. Duval so he can talk in more detail.

Mr. Duval stated in regard to the element that they raised about concern over Riddle Brook. I do want to point out that this project is subject to alteration of terrain permit, which has very strict control as to how stormwater runoff is managed, and in this particular case all of the stormwater coming from all of the roofs, all of the driveways and all of the parking areas is being routed through an infiltration treatment system, which is probably the most efficacious treatment system of all of the alternatives that are available through the NHDES AoT program, and all of that is being treated for in excess of the 2-year storm, which is the required treatment volume that is required before you can even get an AoT permit. There will be no runoff, no pollutant load directed towards the Riddle Brook itself as a result of this project. Treatment happens onsite through infiltration and all of the required stormwater controls will be in place if this project were to go ahead. Chairman Morin stated I just want to reiterate what you just said; you said no runoff at all, that is what you just said. Mr. Duval replied no; no pollutant loaded runoff. The infiltration obviously has a capacity and higher storms above the 2-year storm of course there would be overflow. Chairman Morin stated the only reason I am asking is because that is specifically what you said so the easiest part for us and probably the audience is to speak more regular instead of scientific because when you

made the comment of there will be no runoff going to anywhere, I take it literal. So if there is, please explain it to us. Mr. Duval responded thank you for pointing that out because I do want to be clear. In any treatment practice what is called the first flush, which means the initial rainfall, is what picks up the pollutant load and that is what the DES program, and for that matter the EPA program, on which the AoT state program is modeled, is meant to treat that first flush, which is essentially somewhere between the 1-year and the 2-year storm that falls on any given location. And in this particular case, 100 percent of that first flush volume must be treated in order to get an AoT permit, is going into the ground is not going into Riddle Brook. Obviously in a 100-year storm and a 500-year storm, there is always a storm event no matter how large you make a stormwater treatment system that will overtop it. I am glad you pointed that out and gave me the opportunity to clarify. The excess runoff of the treatment, the required treatment volume, will be heading toward Riddle Brook, as it does now, but it will not contain any of the pollutants that are treated through the AoT program treatment practices. Chairman Morin stated I know during your explanation the answer answered mine, so it made it easier that way, but as I say on some of the expert testimony, please as down to earth and less scientific as possible because that is only going to help us and help the public.

Mr. Duhaime stated looking through the motion of the Conservation Commission there is a recommendation that the DES visit the site. Did that occur? Mr. Duval replied actually it did occur. They went out on their own schedule. They told us afterwards that they did visit the site. Carl Benedict who is handling this project at DES did go to the site and spoke to our wetland scientist.

Chairman Morin asked the Board if there are there any other questions concerning this piece.

Ms. Georges stated I just want to clarify. I know that the Commission had asked that an independent wetland scientist take a look at this, and I just want to make sure that I understand that the wetland scientist that you are talking about would be considered an independent wetland scientist or is that a scientist that you hired that is distinct from the independent one that was requested by the Conservation Commission. Mr. Duval relied Chris Danforth is the certified wetland scientist in question here. He is an employee of TF Moran and he was engaged by us to go out and make these evaluations, which they are made, but he is a professional certified wetland scientist with over 25 years of experience in that field. Ms. Elmer stated there was no independent. Ms. Georges stated that is my understanding. Ms. Hebert stated that is something this Board could ask for or the Planning Board could ask for. It is the Conservation Commission in an advisory capacity cannot require a third party review for their review of an application. Ms. Georges asked so who would actually hire the independent scientist then if there were to be one? Ms. Hebert replied the Town would and the applicant would pay for the cost. Ms. Georges responded thank you. Mr. Duval stated I would like to answer Ms. Georges' concern. I think hiring an independent wetland scientist may be a moot issue in this case because, of course, there is a wetlands permit associated with this, so you have a whole staff of NHDES that is going to review our wetlands permit application and

this permit will not be granted if there is a substantial discrepancy between our wetlands report and the facts on the ground. I think the wetlands permit will speak for itself in terms of the value, and there will be a public hearing scheduled, the date not yet arranged, that the DES is going to conduct similar to this hearing, to take all testimony for and against relating to this wetland. But at the end of the day, it is the wetland permit, even if the Board were to grant the variance, if the wetland permit is not granted, there will be no filling that wetland. Mr. Casale asked is that accurate? What he is stating about the State? Ms. Elmer replied as far as them holding a public hearing, that I can't verify, but as far as if you grant the variance and DES does not grant the dredge and fill, they cannot fill it, even if you grant the variance. Mr. Casale asked and it is that thorough as he is explaining? Ms. Elmer replied to the best of my knowledge, yes. Ms. Georges stated you said that the DES did come out to the site. Is it routine for the DES to issue some sort of written report on that, is it for checking off the box or how does that work? Ms. Elmer replied this is the first I have heard that they went out, so we were not informed. Ms. Georges stated okay, I've got it. I am just curious sort of what that is fulfilling. They went but do we know what the result of that was, do we have a statement. Ms. Elmer replied I do not. Mr. Duval stated I would just say that the wetlands permitting process is extremely thorough, far more thorough than any Conservation Commission hearing or Zoning Board of Adjustment or Planning Board investigation into a wetlands that I have ever seen, and the permits take months, even in a simple case, would take months to be reviewed. Generally, there is at least one and more often, two or three rounds of question and answer between the department and the applicant. When they do hold a public hearing, we have been notified in writing by the DES that there will be public hearing, date to be arranged. I think the Town has been copied on that correspondence. There will be an opportunity for the public to comment, for the Town to comment, but more to the point, it is really not about public interest, it is about this client and the DES is very thorough when it comes to reviewing the signs.

Chairman Morin asked what point are you at in that process? Mr. Duval replied we filed the permit, they did request one round of additional information, which we are on the cusp of submitting, and then following that receipt of this additional information, they will schedule a public hearing, and then the public hearing will be heard by the DES after which additional comments will be accepted by the DES, both from the public and from the applicant, then at that point they will evaluate the permit, which generally takes 60+ days, I think they have 75 days to do that, and then they will issue a finding, and more often than not, they are looking for more information, so we are many months away from concluding that process. The process is underway and will take its course. Chairman Morin stated thank you.

Chairman Morin stated I am going to open it up to the public. We have a pretty busy agenda and I am going to ask, this is only one item out of three, and we have a good amount of people tonight, so I am going to ask you to stay on point. We are dealing with facts, we are dealing with RSA's and those types of things. When it comes to anything other than that, we need the facts please. The other thing is I would like to

limit it to about 3 minutes per person maximum because, again, we still have two more pieces of this to go through tonight and we are only on piece one.

Chairman Morin asked the public for those wishing to speak in favor of this application.

Beth Evarts, 78 Brick Mill Road, stated I am the Town of Bedford Conservation Commission Chair. I just wanted to clarify a couple of things that I heard, and I am standing in the back so I can't see who made them. With regard to the history of the Conservation Commission and how we have made recommendations in the past, I have been a member and a chair for about four or five years, so I can't go back any further than that, but in those four to five years this is one of the largest most public projects in addition to the Route 101 widening, so if there is any history to compare it to, it is very slim, if you will, and prior to that I don't know what occurred.

Ms. Evarts continued regarding the comment about us focusing on the number of units. It is possible that we had a discussion back in the spring of 2018 when the project came to us as a proposal just looking for clarification on what type of a project it was that was going to be built there, but subsequent to that in all of our other meetings going forward, I personally, and Commission members as well, we were very clear about our role, which is an advisory role as you heard Ms. Hebert say, and we were there to make recommendations based on the environmental impacts of this project and it had nothing to do with housing, the type of housing, the traffic or anything like that. I wanted to clarify that point and you can look back through the video tapes and you will hear us state that over and over again, meeting after meeting after meeting, but we allowed the public to share their concerns and their comments. So if there were comments by anybody, it would have probably been by anybody from a public perspective. Again, I just wanted to say we as a commission are a recommending body, we are advisory, we take into account anything that we know. As volunteers from the town, we are not elected, we are volunteers and not all of us have environmental backgrounds, so we rely on the people that come before us to present the project, we rely on some of our Town resources and then we rely on, as you heard tonight, if we can get independent consultants to help us understand better. The last point is we did have a member who is committed to this from a personal perspective, we are all community members by the way as volunteers, but we had a member that did recuse himself because of their connection or their feelings on this particular project. I wanted to make sure that I clarified that point as well. Thank you. Chairman Morin responded thank you.

Attorney John Sokul from Hinkley Allen stated my personal address is 997 Ocean Boulevard, Hampton, New Hampshire. I am here tonight on behalf of the Dumas family. They own about 43 acres that directly abuts to the south of this site. In the mid 1970's in fact they sold the land to the high school that we are here today and they used to own that land. Since about the mid 1970's it has always been expected that there would be a road, hopefully a public road, from County Road, through their land, through is project's land, out to Chestnut Drive, and then to Route 101. The Dumas family is concerned with this project, we do have some questions and comments about the project, but as far as wetland fill goes, we have no objection to the wetland fill as

proposed. We believe that is generally consistent with the intent of how this property would be built out with respect to the roadway going back to the mid 1970's and I think there is a lot of Town plans, documents and reports that show that roadway going through here since then forward.

Attorney Sokul stated I did want to ask for one point of clarification. When Mr. Anagnost was speaking as to the value enhancement of the project to the Dumas family property, he mentioned utilities being brought to the property, and I would like him to clarify for the record if he is willing to put utilities in that roadway to the Dumas family property line and if that is the value enhancing feature. Thank you.

Chairman Morin asked is there anybody else that agrees with the application before us.

Joe Graham, 30 Lancaster Lane, stated I am currently with my wife looking to downsize. If anybody else has tried that in this room, you go to Realtor.com and find out there are three condos for sale in Bedford if I wanted to stay in Bedford. There are five additional apartment units that I might be able to rent if I could find something suitable in a 3-bedroom ranch. I would hope an establishment like this maybe myself, or going further down the road, maybe my kids could live there coming back to town. There is very little in the way of housing for workforce as well. I am the President of Iheart Media; we have upwards of 500 clients a year on our radio station just in Manchester. Half of them will tell you that their biggest need is help. You look at health care and right now in the greater Manchester area there are close to 600 health care positions open. Hospitals, the BASC, the people that have to pay them already have to pay them a higher salary to stay competitive. It might be a little bit different if they didn't have to pay for housing. I have a sister-in-law living with me who is a visiting nurse and they travel. She gets \$100 a day stipend that is paid by the hospital as well as what I consider her overpayment per hour. If we can get rid of some of barriers of entry, we might be able to hire new health care professionals if they have a place to live. It is a big deal; it is a big deal in retail. You go to Harvest Market, how many people do they have there. We need more folks with starting managerial incomes and health care, restaurants, and quite frankly personally, once I would like to be able to go to a restaurant and get a seat when I walk in there versus waiting three hours. If that helps us open Shorty's and gives us more seats for that, that would be awesome as well. Thank you. Chairman Morin responded thank you.

Chairman Morin asked for any other comments from the audience of those that wish to speak in support of this project.

Henry Veilleux, 20 Greeley Hill Road, stated I have been a resident of Bedford since 1997 and I support the proposal. I believe Bedford needs this kind of housing. We don't have a lot of different options for this kind of housing here in Bedford and there are only so many places that you can put this kind of housing. I think this is the right spot for it; it has very minimal impact on the surrounding properties. If you were to put this kind of housing in many other places in Bedford, it probably would have much more of an impact on the surrounding properties. Basically we need this kind of housing here in

Bedford, there are only so many places to put it and this really has, I think the minimal impact on the surrounding properties. Thank you. Chairman Morin responded thank you.

Chairman Morin stated I did fail to be a little more specific also in what you are stating. We are dealing with a fill permit. I am sorry but if we can limit the comments to the fill permit, that would be very helpful.

Bill Jean, 105 Ministerial Road, stated I came up just to offer perspective. I may speak further later, but on the wetlands permitting. I have 30+ years of experience in either planning, developing and construction and I just wanted to offer perspective that absolutely wetland permitting is probably one of the most onerous permits to attain in any development opportunity. So from my professional experience, I agree with the testimony that you heard here tonight from the professionals. It is a very difficult permit to obtain and it will be scrutinized very heavily before it is issued. Thank you. Chairman Morin responded thank you.

Chairman Morin asked for any other comments from the audience of those that wish to speak in support of this project. There were no further comments in support.

Chairman Morin asked the public for those wishing to speak in opposition to this application.

Steve Clough, 5 Hunters Road, stated I am an environmental toxicologist by profession, board certified toxicologist with a specialty in wetlands, non-point pollution in wetlands. I reviewed the initial wetlands delineation and I found it to be inadequate, so I wrote a letter to NHDES, I told them that they did not follow the New Hampshire method, they did not do a vernal pool evaluation, they did that after the fact, by the way, and they did it in November, which is not when you do a vernal evaluation. So DES came back with a letter saying that they needed to do this right. Now I am not sure what transpired since then, it sounds like they have come up with additional work and additional communications to the Town, but I do know that they still need an independent wetlands scientist to come in and do this right. So that is my comment on it and I am up here because I am concerned about the impacts to Riddle Brook. And as far as stormwater goes, I have been in the business 30 years and stormwater treatment systems work if they are maintained. I have never really seen one maintained correctly in my long career. Thank you. Chairman Morin responded thank you.

Kevin Gagne, 51 Federation Road, stated I want to apologize in advance for speed-talking because given three minutes, I have to fly. I have a lot of important things to say. I am here as a resident of Bedford, not on behalf of my employer. I am a licensed professional civil engineer. I have applied for and obtained dozens of these permits. I want to make a clarification to you that, I want to make a distinction that, having also obtained dozens of permits of this nature in my career I know that NHDES reviews applications extremely thoroughly but they perform nowhere near the level of assessment of the wetland delineation in reviewing their permit. They start with the

application and they take the wetlands delineation for granted. An independent wetland scientist would do a much more thorough job in reviewing the wetland delineation than NHDES would.

Mr. Gagne continued I served on the Conservation Commission for three years in this Town with some of today's members. I just want to say I attended all three Conservation Commission meetings on this project and the site walk. These are hardworking, honest and objective public servants. I resent the assertions that the Board members somehow made this personal. At the site walk both Mr. Clough and I attended, we both made observations that called into question the accuracy of the wetland boundaries, more of that in a second, and after thorough and thoughtful consideration, the Conservation Commission voted to recommend denial of this variance. They are the stewards of our Town's natural resources and I am imploring you to defer to their expertise, respect their work, take their recommendation, and deny this variance request. If some other reason motivates you to follow a different path, I ask you to request the services of a wetland scientist to examine the delineation as allowed for under Section 275-29(f) of the zoning code when the boundaries are suspect. The wetland delineation on the plan, and I verified this in the field, it should on the record at least in the memory of the attendees, with the applicant's wetland scientist, the wetland delineation suggests that the Bow Lane wetlands stop at the southern Dumas abutter's property line. What a coincidence that would be. I would like you to look at the photos that I handed out before I came tonight that show that property line, you see a dash line I drew there right at the fence of the property line. The wetlands delineation would have you believe that on one side of that fence, where you see that water on the ground, is wetland, and the other side is not likely wetlands. If they believe that the wetlands continued off from the property, they would have left an open boundary rather than close the boundary along the property line fence. You don't have to be a wetland scientist to question this delineation, yet we have one, a PhD as a matter of fact, Mr. Clough, who does question this and other components of the delineation in that memo. We are basing all of these wetland discussions, including the very square footage of impact that they seek approval for on the delineation of that wetlands. If the wetlands aren't delineated right, there could be more square footage of impact.

Mr. Gagne continued one more point; in the field, and, again, this evening, the applicants describe the direction of flow through the wetlands as north to south from the Bow Lane to the abutter Dumas property. Destruction of the Bow Lane wetlands would certainly destroy the abutter wetlands, an unintended effect, but if you stop flow of water from that wetlands, you impact now something that exists on somebody else's property. I will conclude by saying by doing the right thing by the community, defer to the Conservation Commission on this variance request and deny it.

Jason Vallee, 75 Campbell Road, stated I just wanted to point out a couple of things that I know Chairman Morin had picked up on it. I don't agree that you could ever guarantee that there would be no contaminants leached from the treatment system, and they are talking treatment, they are not talking retention. So obviously that water is just

moving on downstream, which we all know is an issue. They also continually pointed to history, but we can't always. We should learn from history and move forward from it; we can't just keep doing the same things and making the same mistakes over and over, so we should try to do a little bit better this time. Also, I wanted to point out in case anybody else was unaware, a 2-year storm means the biggest storm within the last two years, and I think we can all agree that we are seeing bigger and bigger storms year after year and a 2-year storm will be ancient history by the time this is even complete. Thank you. Chairman Morin responded thank you.

Elaine Tefft, 7 Meeting House Road, stated this variance asks for permission to fill in 5,990 square feet of wetlands for construction of a future apartment building. There is no legitimate reason to fill in these wetlands. This portion of the code is intended to prevent development on wetlands and adjacent areas. This is a deliberate attempt to defer what the regulation intends. There is no greater good that will occlude the general public in destroying another wetland area. These variances are not meant to benefit Bedford or its taxpayers. Stating that there is nothing ecologically important so let's just fill it in is not an acceptable way to decide how to handle our wetlands. The developers have clear solutions that doesn't require any variances at all. They can tear down Shorty's giving them the ability to build 115 units without obtaining any variances, a fair and reasonable resolution is in their own hands. I urge that the variance to fill in wetlands be denied. Thank you very much. Chairman Morin responded thank you.

Ralph Grogan, 46 Powder Hill Road, stated just a couple of quick comments. First, I would like to hear a little bit more from the applicants about their intended use of chemicals on the land and the ability of the systems to handle it a/k/a will they be fertilizing, will they be using salt on the roads, and how will drain-off be handled. I haven't heard that. Secondly, I am just a little concerned with the tone that we hear here that says there is no reasonable alternative to this because there are. Right? Don't build it, that is one. Number 2, present a reasonable alternative. Right? You could go around the wetlands, you could put up different building structures, there are probably alternatives here that could be considered, and I have seen none presented in five to six months. So I think that we really ought to be thinking about why not. Thank you. Chairman Morin responded thank you.

John Schneller, 86 Brick Mill Road, stated I do want to just point out that the only independent scientific study that has been done of the wetlands in the area has been bought and paid for by the developers, so I would be highly skeptical if I were sitting in your chairs as to the voracity and results of that study as reported. And I think just to protect the community as a whole, it would be very wise for the Board to hire or have the Town hire an independent scientist to conduct a thorough investigation of the wetlands, return that document to both the Board, the Town, and to make it public so that we as a community can be satisfied that important wetlands, particularly if it is a vernal pool, is not destroyed. As the woman earlier said, we have a de minimis amount of wetlands in our town and we want to be sure that we are protecting them, and if an independent voice can verify that with appropriate qualifications, I think we should do it. We have 1,000 signatures to a petition that I think you have all seen, I think Ms. Hebert

has seen, and the Town has seen, that has grown from zero to 1,000 in less than three months and it continues to, or more than 1,000 in three months, and it continues to grow. So you would be serving the wants of those people. Thank you. Chairman Morin responded thank you.

Becky Soule, 327 New Boston Road, stated I am against the project, however, tonight my concern is for the wetlands and the variance that is before the Board. I have listened to the developers present their side of the story and also have heard from a Conservation Commission member who has said that they recommended that the variance not be granted to fill the wetlands, so I feel that maybe there are too many open questions still with the Board having mentioned that they do want a wetlands scientist to come in and look at the site and weigh in on what filling that wetlands, what affect it would have. I think that maybe it might be a little bit too soon, that there are more questions and more answers that can come forth before the variance is granted or denied. Thank you. Chairman Morin responded thank you.

Kim Brown, 21 Wiggin Road, stated I did not come intending to speak tonight but there were some things that really bothered me so I just wanted to get up and say something. First of all, I feel like they diminished the importance of wetlands in general just by saying it started as a drainage ditch. It may have started that way but now it is a wetland, and when he spoke of it as a vernal pool, that it didn't have water in it all year-round, that is the definition of a vernal pool, it is a seasonal pool and it is home to distinctive plants and animals. I was also insulted by their insinuating that the Conservation Commission was slanted in their writing of their recommendation. The job of the Commission is to protect Bedford's environment and I would trust them more to do their job and make the right recommendation more than I would trust people hired by the developers. As far as the permit goes, I am wondering if this is the same DES that is going to give the permit or not give the permit that led Bedford citizens and Merrimack citizens to drink water full of PFOA, because I am still buying my water. Chairman Morin responded thank you.

Erin Montgomery, 43 Woburn Abbey Drive, stated I have been to a few of these meetings before and I would like to make this fast and I wrote things down to get right to the point. I just wanted to say I was really happy to see Mr. Sokul come in today and him to speak because I have a lot of questions regarding the Dumas' intents. Obviously we can't go and ask them things so all information we receive about what they think or they feel or what they want to do has been coming from the developer's perspective and we haven't had really chance to know exactly what they are thinking or they are wanting, so it was nice to kind of get an idea of what is going on with that and know what things are being said might be doable or not doable or just being thrown out there as incentive that doesn't exist. As far as the concerns to the Conservation Commission, I felt that that was just a really poor thing to say. You said they are volunteers, they are doing it because they care about the wetlands, they have no personal gain from not approving something or approving something, I know that, no offense to the developers, but I know you had many chances to provide a lot of information that they asked for and you went again and again before them and didn't have the information, so it wasn't like

they wrote you off. You had a lot of chances and you didn't come forth with information maybe because the information you had wasn't something that you wanted to share because it wasn't favorable to what you are hoping to do. As far as I know the Conservation Commission can't force you to pay for an independent scientist and that is fine. Like I said, I have been here enough times where I think I recognize the name Chris Danforth because I think I have spoken to him before. I know you said he is the person that was the scientist, and correct me if I am wrong, that went over the vernal pools. As far as I know he has been your scientist since the very beginning, I have actually spoken to him before any of this. I might be wrong, I am not great with names, but I am really certain that is the case and that is a long-standing employee and he has been involved in this project from the start. I would just ask that there is more transparency for this process. A lot of the times information we are getting, and I don't mean to impugn the character of any of the developers, I apologize it is not what I am trying to do, but I am saying a lot of the information that we get is from them and we don't have alternative sources and we don't have complete transparency and think that that is a major issue and something that really should be explored for everybody making big decisions like this, things are irrevocable, we should know all of the facts of what is going on and just take things on faith by people who have an interest in what they are doing. Again, the issue with transparency, I don't know why the New Hampshire environmental people would come and go to the wetlands and not inform anybody but the people involved in the project, that seems kind of weird, or as far as know they didn't provide any information for you guys, which I also find strange, and I know one of the points made was that down the road the requirements for the wetlands will be much more stringent so we don't have to worry about it now because it gets past this, there will be harder barriers to jump over. Well, if that is case, then you guys don't have to pay for the consultants, the Town pays for the consultants, like you said they are not even as rigorous, it doesn't cost you anything, if they say no. You know that you should probably stop right now because if they can't pass their little standards, then it is not going to make it through the more rigorous ones, so I don't see there being any downside to having that be done if the Town is willing to pay for it, and I for one as a taxpayer would be happy to contribute money to that. That is all I have to say. Chairman Morin responded thank you.

Linda Camarota, 16 Weymouth Drive, stated a lot of the things that I wanted to say have already been said. The only two things I want to add is, first I think Mr. Moran mentioned that DES had asked for one more something for them to give them straight, something to the DES with regard to the wetlands. So I am totally unclear as to what that is and can we share that. I also reflect what she just said in terms of transparency. There has been a history of trust issues with this with certain individuals and to build up our trust I think the more transparent that we can be in terms of the developers providing documentation to you and then us being able to access it would be advisable for variances. I also request an independent wetlands scientist. I think that is a very good idea. Thank you. Chairman Morin responded thank you.

Bill Foote, 14 Pheasant Run, stated I have not really a statement but more of a question. Who is responsible for the sheet flow of salt and things that come off from

cars that goes into Riddle Brook coming down Route 101? Is that their responsibility or does the State own that or does anybody? So Riddle Brook is already being infiltrated by salt and other things coming off the cars anyway, so who is responsible for that portion of the infiltration? I don't know if I ask you guys or DES? Chairman Morin replied probably DES or Department of Transportation, one or the other. Mr. Foote asked so there is actually no measure of actual volume hitting Riddle Brook from a 2-year storm or a 100-year storm? Ms. Hebert responded the Route 101 widening and redesign included a comprehensive stormwater treatment plan. Mr. Foote asked down towards where the swampy area is? Ms. Hebert replied yes. Mr. Foote asked but nothing from the hillside coming down from Route 101? Ms. Hebert replied no, the entire length of the project. Mr. Foote asked but they have measured that and they know what the impact is from the traffic that is already there? Ms. Hebert replied yes. Mr. Foote replied 40,000 cars per day or some huge number? Ms. Hebert replied well, we are talking about stormwater treatment so the widening includes stormwater improvements and treatment for runoff. Mr. Foote asked but that includes from river side, from the street side? Ms. Hebert replied from the vehicles, yes. From the paved areas. Mr. Foote asked and that report is posted where? The Route 101 study commission? Ms. Hebert replied yes, you can get a copy of that plan from the DOT. Mr. Foote stated thank you.

Gary Doody, 48 Ministerial Road, stated just two points of clarification that I wanted to get some clarification on. One is that obviously Riddle Brook is the lowest point in all of this land, and I am also concerned about fertilizer runoff down into Riddle Brook. And then the Conservation Commission had said that they were worried about the long-term effects of this development. So if fertilizer drains down to Riddle Brook and Riddle Brook fills up with weeds and reeds, that can cause an impact and then hurt the drainage that we have in place now. Then number two, I think the gentleman from TF Moran had said he had testified that there was only one way to get access to the Dumas property, and I am certain at a previous one of these Planning Board meetings that I saw a right-of-way access just to the south of their southernmost proposed structure, so I think there is. I don't think that was correct that there is only one way to get to the Dumas property. I believe that there is another right-of-way that is already on the property lines. Thank you.

Attorney Cronin stated responding to that last one first. He is correct. He saw an alternative location but that would require agreement from the Dumas family to move it, which has not been forthcoming as of yet. So what you see is where the Middleton Road is where it is required to be. Secondly, to address Mr. Sokul's concern. There have been lots of discussions about utilities and where they are going to go and how far they are going to extend. We are going to continue those discussions, but regardless of how far they go down that road, it would enhance the Dumas property because it would be a shortened run for them to connect no matter what. It is undetermined and we continue hopes to be able to resolve all of the Dumas' concerns.

Mr. Duval stated I also would like to address a few points of clarification for issues that were raised by a number of the speakers. In the communication to you from Mr. Gagne

where he is saying that the wetland was incorrectly delineated. First, let me just point out that Mr. Danforth is a certified wetland scientist, he does this all the time, has 25 years of experience, he is certainly one of the most capable and validated of the wetland scientists that I have had occasion to know. In a number of cases where there have been disputatious wetland delineations, it is remarkable how accurate his delineation is. There is a science to it, it is not just a puddle equals a wetland, and in fact in this particular case, it takes three factors, in all cases it takes three factors. Those are soils, vegetation and hydrology. In this particular case there is no significant hydrology here and the water runs off quickly enough that water cannot stay in these wetlands for very long, and after a rain it will move to the south but then dry up. In these areas that are only occasionally wet do not become a wetland if they don't meet the criteria of a wetland. So a picture of a puddle, although it is a common misconception, that that makes an area a wetland, it does not make an area a wetland. In fact, to do a good wetland delineation requires you to get down on your hands and knees, look at the soil, take some soil samples and in this particular case Mr. Danforth found that the wetland in fact pinched off just north of the property line between Dumas and this project. There is no special significance to that, it could have continued, it could have stopped much further north, it just happened to pinch off there at that connection point and then picked up again and continued just as you notice there is a little gap here between this wetland and that wetland, but with these ephemeral isolated pocket wetlands it is very common for them to stop and start and it takes a wetland scientist to know where that property delineation is. And Mr. Danforth is such a wetland scientist.

Mr. Duval continued then another speaker needed some clarification about a vernal pool, and yes vernal pools are not necessarily continuous, but they do need four months of continuous water presence, which this site does not have, and in fact, in May at the height of vernal pool season, and they are called vernal pools for a reason because they have to be wet in the springtime, there was no standing water on the site, which means that any vernal pool species at that point probably would not have survived that year and this was not an unusual condition. This is what we find is likely to be a common condition that these areas dry out and thus cannot be vernal pool habitat.

Mr. Duval stated other speakers questioned how stormwater is handled. As we talked earlier, there is a DES program, a very robust program, that requires treatment of runoff from all disturbed sites and the treatment that is prescribed for this project will meet all NHDES stormwater runoff standards without question. The impairment of Riddle Brook, which a number of times has been pointed out as being impaired, is not due to roadway pollutants or salt impairment. It is an oxygen demand impairment, which means that there are a lot of nitrates that are being introduced into the brook upstream of this site. This site will be on sewer and that is a significant benefit to the watershed. It is going to provide housing for 120 units' worth of population is going to sewer and not going to septic systems either on this watershed or other watersheds and that is what protects watersheds from biological oxygen demand impairment such as Riddle Brook. Another speaker pointed out that fertilizer is another source and that probably is a cause also of the oxygen impairment of Riddle Brook, and I think this an opportunity here to provide

housing with much less lawn than a typical 1- or 2-acre single family home would provide, much less fertilizer used and this developer can commit to using environmentally friendly low runoff fertilizer, which will further reduce that threat to Riddle Brook.

Mr. Duval stated there were two questions about first multiple visits to the Conservation Commission and also about the Riddle pool evaluation. The multiple visits to the Conservation Commission were an outreach effort on the part of this project team to be transparent. We went to the Conservation Commission on an informational basis before the wetlands permit was filed specifically so that the Conservation Commission could give us some comments, some feedback, and so they could be aware of what was being proposed there. It was a voluntary approach to the Conservation Commission on our own behalf, and we went to two follow-up meetings during which the design was evolving strictly to keep them advised of changes of the plan and there have been a number of changes in part due to the complexities with the negotiations with the abutting Dumas property to the south that have changed the alignment and the layout, but all in an attempt to provide that transparency that the speakers have said is so important. Lastly, the vernal pool evaluation was done by Chris Danforth, as I said in May. There was fairly conclusive evidence that it is not likely to be a vernal pool and that is why there was no sampling taken, there was nothing to sample. Later in the year, it turned out to be a very wet year, on a number of opportunities he went back to actually sample for indicators, as I mentioned in my initial remarks, and all of these indicators were negative for the exception of mosquito larvae, which is not in itself sufficient, and we stand by our conclusions of our report. They are well documented, they were done in accordance with New Hampshire procedures, including all of the currently accepted procedures by NHDES and the Army Corp of Engineers, and, again, we stand by our report.

Mr. Duval stated there was a request from one of the last speakers what was the DES looking for. What they did was, when the wetland application was received, they requested more information. Such a request is called an RFMI, meaning request for more information, and this was received by the design team a month or two ago, and there has been a number of issues that have prevented us from proposing an answer in large part because of negotiations over the rights to use that easement with the Dumas family. But now that we are at the end of that process, we are ready to provide that answer. All of these are public documents, the initial application itself, the RFMI #1 is a public document, and the response to the RFMI will be a public document, as well as is the whole process, all this information will be available by contacting DES directly or by going to the public hearing, which is soon to be scheduled. Chairman Morin stated just so people know also, if we are talking about the same RFMI, it looks like we have a copy in our file that was dated October 31st. Does that sound about right? Mr. Duval replied yes. Chairman Morin stated by right this should be online in the file. Ms. Elmer stated that is correct. Chairman Morin stated so that letter from the DES is online, it can be read right on file, just to give you that heads up, but we do have a copy of it.

Chairman Morin asked if there were any questions from the Board.

Mr. Casale stated I address this to Dr. Clough, I think it is, and Chairwoman Evarts. I would just like to know on the totality of all of the testimony from the applicant here, if there is any change of heart in anything that you have said either in writing or orally. Particularly Dr. Clough your letter dated October 22nd to NHDES, if there is anything in that that would point you into being more in favor of this variance. Mr. Clough replied no. Could I make one comment. Just validating Mr. Gagne's testimony; the wetland flag was hung on the barbed wire that separated the property, so what he is saying about Mr. Danforth knowing what he is doing, I didn't see any stakes in the ground at all and normally you will see stakes. And then on the vernal pool, I reviewed the report; the initial report had nothing to do with a vernal pool, and when I went out and walked the site with the Town, he didn't start mentioning vernal pools until he saw me with my waders on and somebody who knew what they were doing. And I asked him did you sample for invertebrates and he said well I went down in there and I kicked around a little and that was his answer. Then I write a letter to the DES and they come out with a letter, and these guys apparently scrambled in November to get some type of metrics, and I haven't seen anything. I would like to see the letter. I am going to call BS on that. Mr. Casale responded thank you.

Ms. Evarts stated in response to your question. I, as Chair, cannot speak on behalf of the entire commission as to has anything changed. I will say that per Ms. Elmer we also have not been aware yet, we have a meeting next week, I think it is, that DES did a site visit, this is the first I have heard of it, and I am sure other commission members, and we haven't received any documentation based on their results from that site visit. That is all I can really comment on. Mr. Casale responded thank you.

Chairman Morin asked for any further questions from the Board, and any further information from the applicant. Attorney Cronin replied I think that is it.

Chairman Morin stated why don't we go into deliberation at least and talk about the issues and see what we come up with.

MOTION by Mr. Casale to move into deliberations on this variance application. Ms. Stirling duly seconded the motion. Vote taken – all in favor. Motion carried.

Chairman Morin stated my first question before we go over the criteria is, does the Board have any interest in looking at getting an independent survey of this done. Ms. Georges replied yes, I think we should talk about that; we should discuss it. Mr. Gilbert stated I agree. Chairman Morin stated it looks unanimous that the Board is looking to get an independent survey of that done to see exactly the locations and the vernal pool issues. With that, a quick question to Ms. Elmer. At this point we would have to table to get the further information. Is that correct? Ms. Elmer replied yes. Chairman Morin asked is there any guesstimate on when that could be done? Is it an unknown table? Ms. Hebert replied I think 30 days would be aggressive to get somebody onboard. We don't have a wetland scientist on call and available to us, so we would need to go

through the process of finding a third party wetland scientist and sending them the documentation. Thirty to 60 days, 60 days would give everybody a little bit more time. Chairman Morin asked is there any other discussion about that from the Board members? Would somebody like to make a motion to table on this application?

MOTION by Mr. Duhaime that the Zoning Board table this variance application, Item #4 on the agenda, requested by 206 Route 101, LLC and Bow Lane Bedford, LLC (Owners) from Article IV, Section 275-24 thru 29 in order to fill 5,990 square feet of wetland for the construction of proposed apartment buildings off Chestnut Drive, Lots 20-99-1, 2, 3 & 4. Zoned CO, for the purpose of requesting an independent review of the wetland documentation, tabled to the March 19, 2019 Zoning Board of Adjustment meeting, and this motion shall serve as public notice. Ms. Stirling duly seconded the motion. Vote taken - all in favor. Motion carried.

MOTION by Mr. Casale to move out of deliberations on this application. Ms. Stirling duly seconded the motion. Vote taken – all in favor. Motion carried.

- 3. 206 Route 101, LLC and Bow Lane Bedford, LLC (Owners)– Request for a variance from Article III, Section 275-21.B.4(c)[1] in order to allow 120 dwelling units within the proposed apartments off Chestnut Drive, Lots 20-99-1,2,3& 4 and 20-22-14. Zoned CO.**

Chairman Morin stated I just want to put this out there because I forgot to put it out there. As brought up earlier by a few different people, we are a volunteer board and we all work tomorrow. One of our standard procedures is when we get into something, come 10:00pm we stop all new input and where we stop will decide what is going to happen. If we are to the point of going into deliberation, then we normally do. If we are not, we will be looking to table to the next month. I am just giving you that heads up now. 10:00pm will be the guideline for public input.

Attorney Cronin stated just for the record I will incorporate by reference my general foundation comments. I think the Board knows what the project is all about and some of the history. This particular variance request is to allow for the development of 120 units with the workforce housing component on this consolidated site. The number of 120 came about after an initial review of the ordinance, which I know we will talk about the administrative appeal later, this zone calls and allows a mixed development, they allow more than one principal use on a lot, and they do have a density limitation based on acreage for apartment workforce housing type units. Looking at it, first it seems the restriction of the density is controlled by factors other than a specific recitation. For instance, setback, lot coverage area, height of buildings, and that sort of thing would generally control the density. So there were some discussions of both with the gas utility and the high school about the proviso for bringing gas to this particular site. The minimum number that the gas company set forth to bring gas to the site and make that

capital investment was 114. When you look at developing these buildings, it is generally done in even numbers and 120 will give you uniform buildings of the same dimension and same size and style. That was how the project initially laid out. When that was presented, it was determined by Ms. Hebert, the Zoning Administrator, that that number was not appropriate because of a deduction for the existing restaurant. I think it is conceded that in the analysis there is not any specific language that requires a deduction, but notwithstanding that, I think the conclusion was that 94 or thereabouts would be allowed without the benefit of a variance. To take into consideration the economics of the workforce housing and the subsidy and the diminished rent, 120 was the optimum number both to get gas to do this development within reason and provide the workforce housing units at a reduced rate.

Attorney Cronin continued looking at the criteria for this particular project, looking at the 120, we would start with the benchmark being the 90 to 95 units, whatever Ms. Hebert would conclude would be appropriate, and say that should be the starting point to look at the essential criteria of the variance. Before going to the five criteria, I want to have Mr. Duval address generally the layout, the number of units, how he came up with it and more importantly the traffic.

Mr. Duval stated as you can see here in this overall picture, we have Shorty's restaurant on the left, which would be to the west, and the four 30-unit apartment buildings to the right. Thirty-unit apartment buildings that have parking under and the parking under is supplemented by parking in front of each unit and the total parking onsite is slightly in excess of the 2-per unit required by the ordinance. The land area of approximately 7 acres, as Attorney Cronin pointed out, when added to the land area of Shorty's, these two lots have a common boundary on Riddle Brook when they consolidated, at 12 units per acre, you get a number that varies between about 94, taking account of land area that is actually physically occupied by Shorty's, to 150 and there was no deduction for Shorty's.

Mr. Duval stated the 120 units will generate, from a traffic point of view, approximately 40 or so, I believe the exact number is 43, in AM peak hour and 53 trips in the PM peak hour. These peak hours that I am talking about are the highest hour of traffic between 7:00am to 9:00am, that is the typical AM weekday roadway peak hours, and, again, the highest hour of traffic between 4:00pm to 6:00pm and that is the weekday PM peak. When this analysis was conducted in accordance with generally accepted planning tools, there is an ITE calculation that specifies what the average rate is for multi-family, mid-rise housing of 120 units, that is where these numbers come from, and I should also point out that this traffic study was submitted to the Planning Board, has been reviewed by the Town's independent consultant, VHB, who agreed with this trip generation number, and it was also validated by a third professional traffic engineer, Steve Pernaw, who was unfortunately unable to make it this evening, but he also concurred that the methodology and the numbers are accurate and appropriate for 120 units of multi-family housing. This traffic has been coming in and out through Bow Lane on the site and then down Chestnut Drive to the existing intersection of Chestnut Drive and New Hampshire Route 101. At the foot of Chestnut Drive, as everybody in this

room I am sure is well aware, New Hampshire Route 101 is in the process of being widened by the DOT and will soon have a 5-lane section, that is two travel lanes in each direction and a central lane that is either separated by a median or in the case of Chestnut Drive and several other key driveways along the project, they will be constructing left-turn pockets for traffic to use to get out of the traffic stream to make left turns in.

Ms. Hebert stated I'd like to interrupt you for just a minute. This plan posted is not actually the plan that we are looking at. Is that correct? We are looking at a plan that doesn't... Mr. Duval responded this is an earlier version of the plan. The reason I was using it is because it shows the region a little better. Ms. Hebert stated okay; I just think it is important to note that this isn't the proposed plan because this plan would relocate the Bow Lane right-of-way. Mr. Duval responded correct; you are correct and you are very observant. This now posted is the correct plan shown. You can see the buildings are in the same general orientation but the road follows the Bow Lane easement. This plan, which I prepared some time ago, I am really just using to reference the geometry of how traffic from this development gets out to Route 101. Ms. Hebert responded okay, that is great. I just wanted the Board to be clear as the plan shifts and changes which one they are looking at.

Mr. Duval continued to make a long story short, this additional burden of traffic on Chestnut Drive was compared to existing conditions and projected out 10 years to 2029, and we found that with the developer committing to make certain improvements at the intersection of Route 101 with Chestnut Drive, namely widening that approach to accommodate a separate left-turn lane and right-turn lane for a couple of hundred feet back up Chestnut Drive, that with that mitigation in place, not only does this project mitigate this small increase on Chestnut Drive, but it actually creates better conditions than the no-build case, as it would be left by DOT if this project were not go ahead. That is to say in the no-build condition, overall condition during the AM peak for Chestnut Drive traffic is at a D level of service and then 2029 no-build condition with 32 seconds of delay and a queue length in the AM of approximately two cars, and in the build condition by the separation of the lanes, which allows right turns to spin off independently and not have to wait for left turning traffic, the corresponding numbers are 32 seconds, virtually unchanged, D level of service, and slightly reduced queues in the AM peak. In the PM peak we have a similar case where there is a 27.3 second D and in the build condition for the PM peak it actually reduces to 23 seconds delay, about a 9 second improvement, D level of service, and the queues are slightly reduced. So in both AM and PM conditions, this mitigation with the increase of traffic from this development will actually lead to approximately equal, and if anything, slightly better traffic conditions at the Chestnut Drive intersection, so we believe it is effectively and fully mitigated and will create a problem. In fact, it will be a slight benefit to the public.

Attorney Cronin stated Mr. Duval, could you talk a moment about other uses in the Commercial Zone, office use, for example, that was talked about at design review, the difference between apartment traffic and office traffic. Mr. Duval responded of course. This is commercially zoned, although the workforce housing is a permitted use, another

alternative use would be commercial development. We did look at, just for comparison purposes, what a commercial office use would generate on this site, and a commercial office of 30,000 square feet or more could easily be fit on this site and would comply with zoning and setback and impervious cover and all of the requisite zoning dimensional regulations, and would have a much more significant impact on traffic, so the residential use that is being proposed here is a very benign use from a traffic point view. A commercial development would be much more intense, could easily generate five times the traffic that we are talking about here, so that this use from a traffic point of view has very low impact on the neighborhood. And maybe stepping back a little bit, this is a good view to make this point, even though this particular development is not a mixed use development, this is certainly in a crucial element of a mixed use neighborhood, and the beauty of a mixed use development or a mixed use neighborhood is that many of the trip ends, meaning origins or destinations of a trip, home to work, home to shopping, shopping to home and grocery store, professional offices, all within walking distance and in this particular case a very large school, also within walking distance of this development, recreational facilities here in the northwest. So what this does is by inserting a residential element here, it actually has a significant reduction in vehicle miles travelled. Traffic engineers frequently talk about congestion and Level A, Level B, Level C, Level D, Level F, etc., delays, queues, those are important, but the larger picture is vehicle miles travelled. In other words, what is the total number of miles that is being travelled in a community for people who are getting from their origins to their destinations, and the beauty of a mixed use development like this one comes in this neighborhood, is that total vehicle miles travelled are reduced because of the opportunities for pedestrian, or at least short trips, that can be taken. So it is actually very beneficial to the neighborhood to introduce the disparate land uses, and in this particular case, the missing piece is residential to the existing educational, recreational, retail, and commercial neighborhood here. I think it is an excellent fit and has a solitary effect on traffic not just at the intersection from a limited perspective, but it is taking demand off from the other roadways because of the concentration and the ability for other modes, bicycle, pedestrian trips.

Attorney Cronin proceeded to review the criteria for this variance application. **1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality: (2) Whether granting the variance would threaten public health, safety and welfare: 2. The spirit of the ordinance is observed:** Attorney Cronin stated just looking at the spirit and intent prong and fair prong, looking at them together, the intent of the ordinance. The ordinance calls out 12 units per acre on this particular site and with the 9.6 I think it comes out to 115 before you make the deduction for the existing Shorty's. There was some debate as to whether you simply deduct the footprint of the Shorty's restaurant or do you deduct the restaurant and the parking area. I would note in this zone they do have provision for shared parking onsite and it is something I believe that is encouraged. When you look at the intent of the ordinance to provide workforce housing opportunities to get these things built so that there can be affordable units that are provided to the workforce, we meet that criteria. When you look at the essential character of the neighborhood, whether there is 94 here or 120, the change would be de

minimis to the public and traffic seems to work. It has been looked at by three separate consultants. The property, when you look it in terms of mass and scale and compare it to the footprint of the high school, it really is small by comparison. The other thing that is evident from this overhead is the predominant commercial development that surrounds this particular property and the path or the corridor to Route 101 as through a commercially developed section. **3. Granting the variance would do substantial justice:** Attorney Cronin stated looking at the component of the substantial justice prong, when you take a look at the harm to the developer, it certainly changes the dynamics of this as 94 because you are not going to have the opportunity for gas and the cost of building it will be incrementally more, so it makes it more difficult to provide the 25 percent workforce criteria. I believe Mr. Fougere has submitted a report, the economic study, that goes along with the workforce housing component. We also have here today with us another expert that can talk about the demography of the school, a demographics expert. Please come up and introduce yourself and tell us about your criteria and background and what you did.

Peter Francese stated I have been practicing demography for probably very close to 50 years, and in three weeks I will actually be 78 years old. If I had any sense, I would have retired a long time ago, however, I keep getting calls from people who ask me to look at the demography of towns. Ten years ago, because I love the state of New Hampshire and am thrilled to be living here, I was asked to write a book to go along with a documentary called *Communities and Consequences* about the rapidly ageing population of the state of New Hampshire. At that time New Hampshire was the sixth oldest state in the nation. Right now myself and my colleagues are working on a sequel to that book and documentary called *Communities and Consequences 2* on rebalancing the human ecology of New Hampshire because we have gone from being the sixth oldest state in the nation to being the second oldest state in the nation. The population of 65 and older in New Hampshire, people like me, is skyrocketing. It is up over 30 percent just in the last eight years, whereas the number of children have declined by 10 percent. So we are going in the wrong direction, and the workforce needs of this state and of this region, of this particular area, are immense. One of the other speakers touched on it briefly; I have gone to at least 10 meetings over the last six months where people were basically saying I am leaving the state if I cannot find employment, if I cannot find workers to do what I need done. I am not talking about high-skilled workers, just any workers, and we will train them, and because young people are not coming to our state in any large numbers simply because they can't find a place to live. There is an immense housing shortage and the reason there is a housing shortage is that town after town after town it takes a developer, such as Mr. Anagnost, and creates a situation where they either go away because they can't get a wetlands permit or whatever, or they make the housing so expensive because they spend so much time meeting the requirements that it is simply not affordable for working people. With this particular project 25 percent of the units are mandated to be affordable and they are sorely needed, not just in Bedford, but in the surrounding towns as well. Bedford is unique in many, many ways. It is an outstanding town, it has a fabulous school district, but the school population of Bedford is not growing. I looked at the data from the State of New Hampshire Education Department and over the past eight years since 2010, the total

number of enrolled students in the Bedford School District increased by 93, less than 100 increase in eight years, to a total of 4,521 pupils. The elementary enrollment is actually declining, has been declining about 5 percent. The middle school enrollment has declined 3.3 percent; only the Bedford high school enrollment has increased and it has increased 20 percent since 2010. This building has a lot of high school students, but they are going to graduate sometime in the next four or five years and the younger people are coming along underneath them, the middle school students and the elementary school students are fewer in number. This is the story all across the state of New Hampshire. In this regard Bedford is not unique. It has a very low birthrate; the number of births in Bedford has declined 20 percent since 2010 and probably will decline further. Births are declining all across the state and all across the country, so in that sense you are not unique. So the idea that this development would somehow create crowding in your schools is extraordinarily unlikely to happen because the number of students is declining in the elementary and middle schools and whenever this development is finished, it might take three or four years, more students will graduate and they will simply fill in behind them. There has been a fair amount of development in Bedford over the past eight years, a numbers of employers have gone up, not enough, but some, and it has not increased the school population at all. So the probability that this will cause any stress on your school system is simply not likely, it is not even possible. I looked at other school districts around the state in our research for the new book and documentary and it is the same situation in many, many other towns. What is also happening in other towns is the denial of building permits, and whether those permits are given, and in a few instances where they are, they are mandated to be age-restricted for people 55-and-older. Sixty percent of all of the dwelling units built in the town where I live over the last eight years, a majority have been age-restricted. That only makes the situation worse, and the belief is if we age-restrict it, they won't put any kids in the schools. They won't but they also will make huge demands on our health care system and we don't have the workers to staff those health care systems. So I urge, as one of the towns that we will be looking at over the next year that we film and write about New Hampshire, please let this building go forward and have some housing for the workers that are going to work in Bedford and perhaps in the surrounding areas in all capacities, but particularly in the health care industry because we desperately need those workers and this is one way to allow them to live here and live close by where they work and not have to commute an hour or two to find a place to live. Do you have any questions for me? There were none.

Attorney Cronin stated Mr. Chairman, before I proceed to public interest and the spirit of the ordinance, one of the things I failed to mention that should be considered is the provision of gas to the School District. It is my understanding that that is a six-figure savings on an annual basis to the school and something that they have expressed an interest in doing. So if the gas is brought to this site, it could be extended over to the school. There were also some comments about the requirements for workforce housing with respect to utilities, and certainly the project can go forward without gas, it is not a requirement, and meeting those criteria, which I know the Planning Board looks at very carefully, but it is proposed to have sewer and water, just so that is a clarification. I know there was an objection to that.

4. The values of the surrounding properties will not be diminished for the following reasons: Attorney Cronin stated looking at the valuation prong; again, I believe Mr. Rohrer and Mr. Anagnost will talk to that, but, again, the benchmark would be a question of 94 versus 120, what is the impact to the value of surrounding properties. As stated previously in the wetlands version of the variance, that the merchants welcome people that spend money and patronize their stores. Also, we believe that they would certainly provide a benefit to the public by their existence. I would like to ask Mr. Anagnost to address the value issue. Mr. Anagnost stated Mr. Chairman, I would reiterate all of the points that I brought up earlier in the prior variance with respect to the commercial and surrounding area that there would be no diminution of value. If you would like, Mr. Chairman, in the interest of time, I will just waive those and put them in the record from the prior testimony or would you like me to repeat them all now. Chairman Morin replied no, we can take it from the last testimony. Mr. Anagnost responded thank. There will also be somewhat of an increase in value to the properties because if you extend the utilities and the gas, the other business owners have contacted us about hooking up to those utilities, they are that much closer in cost value, therefore if they hooked into them, there would actually be a potential increase to the abutters who did take advantage of those extension of utilities and gas. Thank you. Chairman Morin responded thank you. Attorney Cronin stated I would also like to call Mr. Rohrer to comment on the value issue. Mr. Rohrer stated I would ask that the comments that I made earlier relating to this be included. I think the project, whether it is the 95 units or increased to 120, will have an actual positive impact of the abutting properties and those in that general area, again, because of the increase number of shoppers for the retail side and potential employees for the retail side and some of the commercial operations in the Bedford area. I think overall the difference in units will have absolutely no impact from my perspective. Honestly, if I could have a different type of use being a realtor, I would rather see that, so for me to say that residential makes more sense than commercial, I have a little bit further to admit that, and I do believe that that is correct on this site. Thank you. Chairman Morin responded thank you.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area:

A. Denial of the variance would result in unnecessary hardship:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: Attorney Cronin stated in terms of the hardship requirement, is there a fair and substantial relationship to the ordinance and the application to this property, we believe that it fits. It is providing workforce housing. Just a hair above the 12, as called for by the drafters, in the ordinance prior to the deduction of the area for Shorty's and the parking lot.

ii. The proposed use is a reasonable one: Attorney Cronin stated one of the things I also need to talk about is the use is reasonable. 120 units on this particular site in its location we contend is a reasonable use of the land and it does provide the workforce housing that is contemplated by the enabling statute.

Attorney Cronin stated we have nothing further on this issue, Mr. Chairman.

Chairman Morin asked for questions from the Board.

Chairman Morin stated Ms. Hebert, just to check on the items they talked about when it came to the Town's consultant for the traffic plan. Did the Town's consultant agree with their numbers? Ms. Hebert replied yes; VHB, our engineering consultant, reviewed the traffic report and agreed with the conclusions of the report, and that was discussed thoroughly at the design review meeting with the Planning Board. Chairman Morin responded thank you.

Ms. Stirling stated I saw somewhere in the analysis that I went through a school evaluation for potential students 0.2, and I was wondering if someone could comment on that. How that was formulated? Attorney Cronin replied Mr. Fougere was the expert that submitted that report. That is something that he does on a regular basis and I believe he has done other reports in this community and how he arrived at it. Mr. Francese stated I was asked and requested; I am not being employed by the developer. I was asked to be here as part of our research for our sequel to *Communities and Consequences*. The 0.2 comes from a series of three studies that were done by the New Hampshire Housing Finance Authority, and if I had been better prepared, I could bring you the link so you could actually read those reports yourself. The 120 units they are talking about here is expected when the development is fully built, to put 0.2 children per unit into the local public school system. So if you take 120 and you multiply it by 0.2, what does that come out to. It is a handful of students, and over the past eight years when only 93 more students are in the school district today, 0.2 times 120 strikes me as an awfully small number of students. When I first looked at this, I thought to myself well depending, it might be 0.4 or 0.5 or something like that, but even at that rate, the number of additional students would create absolutely no burden whatsoever to the local public school systems, in large part because the number of enrollment is shrinking, and with the births declining in Bedford at the rate that it has been declining, there will just be fewer and fewer children in the schools, which isn't necessarily a bad thing, but the addition of another 20, 30, 40 or even 100 students, would have absolutely no impact whatsoever in a district with 4,500 students. Ms. Stirling responded thank you.

Ms. Stirling stated a follow-up to that; how many of these units are going to have two bedrooms or more. Will at least 50 percent have two bedrooms or more? Mr. Anagnost replied yes. I don't have the direct unit mix, but there are 1-, 2- and 3-bedroom and more than 50 percent will have two bedrooms or more. Ms. Stirling asked how many 3-bedrooms will there be? Mr. Anagnost replied I think there are 12 or 11 3-bedrooms, and then there are 20-something 1-bedrooms and then the rest are 2-bedrooms. Ms. Stirling asked so the majority are 2-bedrooms? Mr. Anagnost replied yes. Ms. Stirling responded thank you.

Mr. Casale stated this is for Attorney Cronin. Regarding, I think it is your letter, to the Planning Department and in specific your contention, you disagree with the Planning Director regarding the lack of connectivity between the restaurant and the apartments,

and you state that it will include a sidewalk, which the Planning Director stated that is a public sidewalk and that there was nothing in the plan that showed an interior sidewalk. Maybe you can comment on that, but more importantly you talk about this shared parking, and I guess I have a hypothetical for you. If I came to you as a potential restaurant owner to lease this property, would you really recommend that I sign the lease which states that vehicles from an adjoining apartment building can actually park in my future restaurant's parking lot? Attorney Cronin replied depending on certain ones, they certainly would and we see that a lot in Manchester, especially in the mill yard area where some of the residences, they are a layered use, they are coming home late and going out early. Restaurants are opening at 9:00am and 11:00am and it depends on capacity, what the use of that restaurant is, but it is a case-by-case analysis. Mr. Casale stated okay, so you would put that in the lease. You mention seasonal parking, and I am envisioning as a potential restaurant owner, again, these people are parking their campers there, things that have potential liability, they will take up parking spots in my future restaurant. It seems like it is kind of a stretch. It is not my wheelhouse, I don't want the headaches, but it would seem like it is a little bit farfetched that anyone would sign a lease with those kind of conditions. Attorney Cronin replied you might be surprised what people will sign for a lease, but, again, the market would control that. One of the things with connectivity that led to that, it is one parcel, it will be one parcel together. There was some discussion of making a bridge over Riddle Brook, a walking bridge, to increase that connectivity, that was something that was ruled out and then there was the sidewalk that goes around and there was some talk about some shared parking agreements. Mr. Casale responded okay, so right now it is just the public sidewalk. Attorney Cronin replied that is correct. Mr. Casale responded okay, thank you.

Mr. Duhaime stated I have a question for either Ms. Elmer or Ms. Hebert. What is the significance of it going from a private to a public road? Is there anything we need to consider now? Ms. Hebert replied that is something that the Planning Board would take into consideration when they review the design for the site. It doesn't really impact the number of units that would be proposed. The road right now is a private right-of-way; to be designed to be a public roadway there would be certain design considerations, construction standards that they would need to meet. If and when the road became public, is somewhat uncertain. It is not being proposed as part of the site plan to be a public roadway.

Chairman Morin asked is the posted plan the newer plan or the old plan? I don't see the date. Ms. Elmer stated that is the old plan. Ms. Hebert asked can you put up the plan we are viewing tonight? That would help. The newer plan was posted.

Ms. Elmer asked do you have any elevations of the buildings? I don't think you have shown those at all tonight. The elevations were posted.

Chairman Morin stated looking at the plan and the deeded right-of-way, where the deeded right-of-way shows and where you are looking to put the road, it appears that you are putting some sidewalks, those types of things in the deeded right-of-way, and it

looks to me the deeded right-of-way is going to go right up to that building. If that had to be opened up, how would that work with a road being right at the front door? Mr. Duval replied the right-of-way is one thing and the road is another, obviously. The road is 24 feet wide, most roads actually do have a sidewalk within the right-of-way and that is what is happening here in this whole piece. Chairman Morin stated so explain to me what the right-of-way easement is for then. Mr. Duval replied the right-of-way easement is the area within which a road can be constructed. In this particular case would conform to Town dimensional requirements of 24-foot-wide and the right-of-way is 50 feet wide but the right-of-way is area that is reserved for road use and outside of that, whether it would be a foot outside of that or 20 feet outside of that, is available to the developer for building. Chairman Morin asked just to make sure it is on record, again, has the Dumas family agreed to your road and the way it is set up within that right-of-way? Mr. Duval replied I don't know if they have agreed to this specific roadway, but the easement allows the Dumas' to pass and repass within this 50-foot corridor. It does not essentially give them control over this, over what is constructed there, as long as the right to pass and repass through this easement is preserved. The developer who, owns the underlying feet of the land, certainly has the right to construct a roadway to his own standards and the Dumas', by virtue of their easement, also have the right to construct or rebuild a better road if they so choose. But the developer is certainly within his rights to propose essentially a town standard-like roadway in the easement and allow the Dumas interest to cross that with vehicles to their pleasure. Attorney Cronin stated I don't know if you have the easement but it should be there. The language is pretty generic; it talks about conveying to the grantees the right to pass and repass over the premises of the grantor known as Lot 7, which is how it was characterized in that Bedford business park plan, in grantors of Bedford business park referred to above, from the Town road to the premises described above, said right-of-way to be 50 feet in width, the centerline of which shall be the centerline of the former Boston & Maine railroad right-of-way. In our discussions with the Dumas family the desired approach was on that plan that we have been putting up and down. It is further to the right and it softens the curve is one of the reasons why that was done. We didn't reach agreement on that so we are aware that we have to show the easement as it is in the grant, and we believe that what we have shown here is consistent with the rights that are granted by the easement document. Chairman Morin responded thank you.

Chairman Morin asked for further questions by the Board. There were no further comments from the Board.

Chairman Morin asked the public for those wishing to speak in favor of this variance application.

Max Latora, 34 North Adam Street, Manchester, NH, stated I am not a resident of Bedford but of Manchester, New Hampshire. You are wondering why I am here. I am here in my capacity as the Executive Director of the Center for Ethics and Business and Governance at St. Anselm College. I want to just offer a few remarks on the problem of workforce housing in respect to this proposed project. In doing so I am not going to speak about other details that are important. Chairman Morin stated I want to keep this

as defined as possible when it comes to this. Workforce housing is okay to put on this lot, so that piece is not what we are dealing with here. What we are dealing with is the number of apartments. As the applicant said from right now, per say, 90, 90-whatever to 120, so that is the piece we want information on. Mr. Latora asked the workforce housing portion? Chairman Morin replied no, the additional number of apartments. The only reason I am bringing that up is because of time and stuff but this variance is for the number of apartments. Either way it can be workforce, so if it is 90 apartments, 25 percent workforce, if it is 120, 25 percent would be workforce, so that piece is really not up, the workforce piece, because workforce can be done without a variance depending on the number that you are looking at. Mr. Latora asked a question for clarification. Is there a better time for me to speak or you would rather I not speak at all? Chairman Morin replied I am asking if you are going to speak, speak to the point of what the variance is for. Mr. Latora replied I will step back from the microphone. Thank you. Chairman Morin responded thank you.

Chairman Morin asked for further comments from the audience members who are in agreement of the project.

Dave Danielson, 9 Darby Lane, stated I have been a resident of Bedford for 48 years. Whether I support the project or not is to your question. Is this number the right number or the wrong number? What I would suggest to you is that is your determination whether or not you think the number is good. What I would suggest to you, though based on some of my experience, because I was on the Planning Board for 8 years and I was on the Town Council for 12, and I had some of the experience that you had. One of the things I think you could consider is maybe not doing it all at once but maybe parsing it out. The other thing you have to keep in mind is you have other projects that are coming online. So whether you look at workforce housing, which is really in demand, is what we are talking about, demand of young people and of grandparents who probably want to move into town, we have to look at things in a longer term, I think, than just one project. My suggestion would be as you look at this, determine what you feel would be the right thing to do and then maybe talk to the developer and say is this possible that we could parcel is out, maybe not do everything all at once. That also would relieve some of the pressure on Route 101. It would give you an idea of what you are going to doing with that. So that would be my suggestion. I know it is not a specific answer to your question, I apologize for that, but I hope that is helpful. Thank you. Chairman Morin responded thank you.

Joe Graham, 30 Lancaster Lane, stated let me apologize to the gentleman on the board for getting up at the wrong time. Certainly I am not a wetlands expert but probably there is quite an industry of those around here. Regarding the number; it does impact workforce. Two industries that I know need 1,200 positions filled, most of them by the way 3:00 to midnight and midnight to 7:00, so traffic is even less impacted with those jobs. The difference of 25 percent of 93 is obvious, versus 25 percent of 125. I am disappointed that it is not more from a business perspective because we really do need to bring talent into this state sooner than later.

Mr. Graham continued regarding the Board of Education or the comments on the high school. The Bedford School District in their annual report last year said themselves that they are forecasting 50 less students over the next five years. It is on their website so we can look at it. I know a lot of people were doubting the gentleman and his facts, but facts are only a good argument, I guess, I don't know, but it is disappointing to see. Most disappointing for me is as we go through and you listen to the facts and as a media person you get used to deciphering facts, and I don't envy you folks on the board, but there is really not a lot of business decisions not to do this, there is not. So you look at this and say why are all of these people here. That is a great question. My guess is some type of fear. It is not going to be entered into these meetings. But when we talk about Riddle Brook and wetlands and Route 101 is going to four lanes and we are worrying about salt from the apartments, what are we really doing here. I feel unfortunately you guys are taking this burden on and God bless you with that decision because it is kind of unfair to you. Really as residents we should be a little bit more proactive about what we are trying to do for the Town versus what we don't want to have happen because of what personal bias or whatever might be. Chairman Morin responded thank you.

John Russell, 19 Summit Road in Greenfield Farms, stated generally speaking I support this project and I urge you to go with the 120-unit number. I am particularly focused on children that we graduate and where do they go. My perception is that our students are all going out of state, and I urge you to consider what are we going to do to retain those students that we educate here in the Bedford high school and retain them here. I would argue that having apartments like this, the workforce the more the merrier, is going to work in our favor. Thank you. Chairman Morin responded thank you.

Bill Jean, 105 Ministerial Road, stated I appreciate what you guys do because, as you know, I sat there for a number of years myself. My comments are really only offering perspective. As you know I have been in the development/planning industry for a number of years, as I stated earlier, and I would just like to support. I sit on the Board of Directors for New Hampshire Commercial Investment Board of Realtors, I sit on the Board of Directors for Plan New Hampshire NH, I also am affiliated with the Association of American Institute of Architects, BIA, and Southern NH Planning Commission where I represent the Town of Bedford on that board as well. Without question every single one of those organizations has made a plea for diversity of housing. There is absolutely a shortage of housing diversity within this community, and I support, again, perspective comments only, I support that we need to do something about diversity housing to provide the necessary housing for all industries. We have heard testimony on professionals, medical professionals, hospitality has a challenge, whatever we can do to bring in affordable, diverse housing to add vibrancy to the community, I support that initiative. Thank you. Chairman Morin responded thank you.

Chairman Morin asked the public for those wishing to speak in opposition to this application.

Kevin Gagne, 51 Federation Road, stated I am speaking as a citizen, not on behalf of my employer. First, I want to give you a copy of the petition specifically against this project, which has recently reached 1,000 signatures. The petition was given the Board. Those are all verified Bedford residents.

Mr. Gagne continued I want to take a novel approach, so please indulge me, I hate to rush and go really fast, but I am actually going to speak to the five variance criteria. First of all, contrary to public interest. The Board must determine whether A-it alters the character of the location and B-affects public health, safety or welfare. There are no apartments in the locality, which is commercial, health and safety impacts are inevitable as a result of increased traffic and burden on the school system as well. 240 cars in a workforce housing project, and what, 30 to 40 of them go to work in the morning? Come on. I think 240 cars in a 2-car queue lane to a notoriously difficult intersection with Route 101 will result in better traffic? I don't care how many engineers tell me this, and I am one myself, I want to use what I call the smell test on this one because it rarely fails me. Traffic impact will be a disaster. Two, the spirit of the ordinance. The essence of the ordinance is to very closely regulate density and allow it only if the more than 20 other strict criteria are met. The applicant hasn't offered evidence of meeting these other 20 criteria and wants to completely disregard the density regulations by increasing them by a full 25 percent. Three, substantial justice. Simply weighing the benefits and detriments of the applicant versus the community. The applicant wants to profit from the Bedford school system at the expense of the community that will suffer tremendous increases in traffic and burdens to the overcapacity of the school system. The applicant suffers no detriment if denied. The properties were purchased by experienced Manchester apartment developers who knew exactly what the regulations required when they purchased the property. Four, property values. The only valuation material submitted for the Board's review that I am aware of was the realtor's testimony this evening. This is generally not impartial and not as credible as an appraiser's evaluation would be. The Zoning Board of Adjustment is thus entitled to draw its own conclusions as to whether or not 125 affordable housing units will affect the property values. It should be obvious to anyone. Five, does literal enforcement lead to unnecessary hardship. There has to be a special condition of the property that leads to hardship. This property is not special; it is a valuable piece of commercial property. The developers engineer just said that commercial development is doable, simply isn't large enough to allow the amount of profit the developer seeks at the expense of this community. Also, the proposed use must be reasonable. Here the workforce housing use is only reasonable under strict criteria and density requirements. The applicants want to disregard the density requirements in order to make more money. That is not reasonable. Thank you. Chairman Morin responded thank you.

Elaine Tefft, 7 Meeting House Road, stated the request for 120 units on an undersized lot will, in fact, permanently change the essential character of the area. The garages appear to be at ground level with three stories of living area on top of that, adding up to four 4-story buildings each with a required minimum of two bedrooms. This will likely add at least 240 more cars during rush hours on already crowded roads that will need upgrading. I don't care what the engineers say, anybody who tries to go anywhere in

Bedford starting at 6:45 in the morning to 9:30 in the morning, it is a sucker's game, as is between 3:00 and 7:00 at night. That is personal experience. More police will be needed, Fire Department costs will also rise with men and equipment needed. The number of units they want to build will have a substantial impact on our school system. Where will the schools put 200 to 300 new students? That is 10 to 15 new classrooms, and I am not counting the 50 extra ones they are expecting, with teachers, support staff and administrators. The burden on the taxpayers will be substantial and long term, and when I talk to you about how it is going to affect the schools, I am not going to give you a list of all the boards and commissions I have been on in schools in Bedford, New Hampshire. I have lived here for 50 years and I can guarantee you that the student population has gone up and down like a rollercoaster and nobody really knows what it is going to be. You can take an educated guess but it is never going to be a nice even line as a start. I would also like to point out that if it is only going to be 25 percent of workforce people, they are the young people who are going to be having kids. The old people who already live here aren't going to be having kids, so I don't think you can really in any way base it on what you think the school is going to be. I think you can bet your money on too much traffic and you can bet that it is going to cost you fire, police, the library. The library, thanks to one development, is sending in three huge, long vans every other day at the library so that there is no parking and the library is pretty crowded. Let's put in another 120 units and see how crowded we can get it so the people can't use it. I urge frankly, and you are probably not going to vote on it tonight, but the variance for extra density be denied. It is going to have a huge impact, it is going to change the character and I think Amazon.com, if you go there, will suggest to you strongly that there is not going to be a lot of walking around retail businesses generated to help Bedford. Chairman Morin responded thank you.

Jason Vallee, 75 Campbell Road, stated I am pro-workforce housing but I don't agree with the variance. They said it is a minimal change but really they are asking for 25 percent more units than what the density should be on that lot. I don't think anywhere in our bylaws or in any of the ordinances does it say that the Town is responsible for maximizing the developer's profit for the land. We don't have to be a burden but we are not in charge of maximizing their profit. At the end of the day, they are marketing our town, they are marketing what we have built as a community and all the money that is generated by this property basically leaves every month, basically out of town, right, so I am not sure that this development adds a great value other than workforce housing. But it is definitely not our responsibility to bend over backwards and do what the developer needs to make money out of this. Some of the comments were made earlier about the school population and I would point out that there is never a bad thing to leave room for when we have the next wave of students so that we don't have to build more schools. Also, they pointed out that in the wave of development recently, we have not seen an increase in school population and I would suggest that is because everything built in town recently has been half-a-million-dollars-plus. I am in a very small house, those are very unusual around here, so it is not easy to come into town. As soon as we open accessible housing, we will see a wave, and that is not necessarily a bad thing but it is something to keep in mind. Parking was brought up about the shared parking with Shorty's, and one of the things I would point out is, I know it looks

like there is parking under the buildings, but what nobody has addressed in all of these developments is when we have a snow emergency, everyone has to move their car all at once, which is going to be a burden on the high school when they start parking at the high school and every area business around them. So I am pretty sure they don't have a plan for that. Thank you very much. Chairman Morin responded thank you.

Attorney John Sokul stated I am here on behalf of the Dumas family. I am just going to make a couple of general comments and then I am going to touch upon the two variance standards. The Dumas family owns 43+ acres directly abutting to the south of this project site. A small portion of that is zoned commercial and the rest is zoned residential. So as we have been sorting out what this is going to mean and what the impacts are to their land, we are really focused on the residential. We don't object to the apartment use, we don't object to the workforce housing use, we think it is a little dense, we would prefer to have office, frankly, rather than residential. When the Dumas' are thinking about what they are going to do in the future, they are thinking about residential subdivision and these are going to be very tall structures that tower down over that. What we have asked the developer to do is to implement a couple of design features that will respect the Dumas' current rights and to date they have not agreed to that. They are clearcutting to the property line; we have asked that that not be done. Yes, the Dumas' have a private right-of-way, but if the Dumas' were the first developer here, they would have every right to have this road in connection with their land dedicated to the Town as a public right-of-way. We have asked the developer not to do anything that would impinge on that right; to date they have refused. Calling the white pathways on that plan a sidewalk that would be allowed in a right-of-way easement? Those are private walkways. A sidewalk would be along the edge of the roadway and people would be walking down it. So the developer has not been all that cooperative in dealing with us to date, so that is why we are here opposing going from 90 to 120. We do think that 120 stresses the property and that going down to 90 will make a big difference in how they can work with us and respect our rights. I respect Ms. Hebert, but I do think going from 90 to 120 stresses the property and gives them less flexibility in doing what they ought to be doing and working with us.

Attorney Sokul continued on the variance criteria itself; figuring out the value, the impact on surrounding properties for a wetland in this is completely different. Here going to 120 units is causing clearcutting and impinging on their rights in the right-of-way and we object to that. The clearcutting, the towering structures and the impeding in the right-of-way we believe negatively impacts the property value. As was noted earlier, there are no special conditions that would justify the granting of the variance. There are economic considerations and matters of convenience only and for those reasons we think the variance ought to be denied.

Attorney Sokul stated the last thing I wanted to say is I am just disappointed to have to be here tonight because we did think we were going to reach agreement on these points and we just have not been able to do it. Thank you. Chairman Morin stated thank you.

Bob MacPherson, 93 Wallace Road, stated first I would like to ask a question. We heard about the traffic studies and my question is, where they done by an independent government agency, non-biased, or a consultant paid by the developer? Chairman Morin replied actually, in testimony there have been three, if I am correct. Ms. Hebert responded yes. Chairman Morin stated there is one done by their consultant, one done by the Town's consultant. Ms. Hebert stated and a second done also by Steve Pernaw, a second traffic consultant hired by the applicant. Mr. MacPherson responded thank you. So that is two hired by the applicant. Ms. Hebert stated two hired by the applicant and one is our traffic consultant. Mr. MacPherson stated with all due respect to everyone, I am not here tonight to debate whether or not we need another apartment complex in Bedford. I am not sure we do as I see several popping up over town, but if that is the case, what I am opposed to is the location being discussed here this evening. I guess the issue is should we go to 120, I think even 90 is probably too much, and according to the Bedford Police Department we are dealing with this traffic issue every day. The number one quality of life issue in Bedford and the number one complaint by residents is traffic and traffic congestion. That being the case, we should not have a 120-unit apartment complex with 240 parking spaces in an area that will only add to the existing traffic congestion. All you have to do tomorrow morning is go take a look. When you add to that traffic congestion, you only increase the risk of traffic accidents. The only way for the traffic to exit the apartments would be down Chestnut Drive and onto an already crowded Route 101. This would add traffic to one of the busiest sections of the busiest roads at the busiest time of the day. The end of the workday commute many cars will be attempting to turn into Chestnut Drive to return to the apartment complex. The New Hampshire Department of Transportation will not install a traffic light at this intersection as it would cause major stacking and clogging of traffic. That should tell us something about the problem. What would an accident that involved that area do to the flow of traffic in that area? As our town grows in population, so do the towns around us that use Route 101 for their commute adding even more cars. For these reasons, I feel it would be detrimental to the citizens of Bedford and their quality of life for this apartment complex to be located near one of the busiest sections of the busiest road adding turning traffic at crucial times of the day. This is especially concerning when you consider who is travelling. You have students, school staff and parents in this area in the morning and at the end of their day. How would any of us feel if a loved one, especially a child or a friend or a neighbor, were seriously injured or worse at this intersection by a frustrated driver trying to navigate this congested area. I appeal to the Zoning Board to not grant this variance. I believe that according to the Bedford Police Department it is a major traffic issue. Thank you. Chairman Morin responded thank you.

Kim Brown, 21 Wiggin Road, stated I think the traffic is really confounding me that there is 120 units and 240 parking spaces and 43 cars are going to come out, but even if there are only 43 cars that come out, at the last Planning Board meeting a gentleman who works on Chestnut said that he could not get out of there very well and so he often cut through the whole little Pizza Bella complex and came out on Nashua, and I am wondering what is going to be done to stifle that. We have students that walk there and come there after school, after sports, at 5:00 o'clock, and Nashua backs up as well, so

to have people from these apartments, they can't get out Chestnut, there is backup so they cut through and try to turn left on Nashua and go out at the light. I just think it is one more problem this 120 units is going to create. As for the people who are speaking about the workforce and the need for places for young people and older people to live, this is not the only property available for building apartments. There is talk of apartments at Wayfarer, there are two properties on South River Road where apartments could go, I don't think that granting the extra variance for 120 here is going to affect the big picture that much, therefore, I am opposed to it. And as far as the school predicting what their future influx will be; I do know that at least one person on the School Board wasn't even aware of the apartments being built at the Wayfarer property, so I don't think that was probably involved in the prediction. Thank you. Chairman Morin responded thank you.

Rob Grogan, 46 Powder Hill Road, stated I just want to augment some of the things that the other people said. I would really seriously question if any of the engineers from outside this town have sat in the parking lot of Bedford high/Lurgio, McKelvie, or any of the other schools in the morning or on the roadways to get there because it is mayhem. The traffic around that little shopping Pizza Bella area cuts through the back because the traffic is so bad. We are going to have some serious problems. Our kids walk through to the pizza shop, the ice cream shop, whatever and somebody is going to get hurt. We just can't afford any extra traffic there, whether it is 25 cars or whatever. And on the subject of how many folks are going to work. I am just going to say this just because it doesn't make sense to me. If 90 of these 120 units are market rate and most of the people are not going to work in the morning, how is that happening? That just doesn't even make sense. I just don't understand that, so I would really like to understand that better. The last part that I would really like to add; I think it is really gracious of the developers to offer to bring gas to the schools, it will save them a lot of money. I used to serve on the Energy Commission, I am really big into green energy and less expensive energy, however, as soon as we hit that tipping point of schools or public services, police, fire, whatever, we are building new stations, new schools and the debt load of carrying that on bonds is going to sink the town and increase our tax rate substantially. Even that little bit of extra population in town hurts. Thank you. Chairman Morin responded thank you.

Vandna Sharma, 3 Sonoma Drive, stated there are a couple of points I want to make. First is that I have been in the tech industry for the last 25 years, and I know the kids move out of the state and the reason is because we don't have companies here. It is not the housing because we have housing in Manchester and Nashua. There is tons of housing there and in Londonderry. I was a resident of Londonderry for the last 12 years, we moved out because of the apartments and the population and all of the congestion on the roads, that was the reason we moved out to this town and this town is becoming Londonderry and we need to kind of look at what we are doing to this town and the reason why people move into town is for the town feel and how the school district is and everything else. If we keep on adding more and more apartments, it is going to become Nashua or Manchester and we really don't want that to happen. The second point I want to make is the place at Copper Door. If the town has all of the

information of how many apartments are there and how many kids from the Copper Door go to the school district, I would like to see that. Ms. Hebert responded I can answer that question. The school impact study that the developer provided, the same consultant who prepared this study also prepared the impact analysis for the Wayfarer apartments so that indeed was taken into account, and their per unit rate for a building type is specific to Bedford. We don't use the statewide 0.22 rate that Peter Francese had mentioned. It is 0.278 for Bedford and that looks at the actual school enrollment in Bedford Hills and Bedford Green, which are also workforce housing apartments. Ms. Sharma stated the third point I want to make is, the reason why the Bedford town population has gone because of people like me, and I know 60 other families who have signed the petition, which Ms. Hebert has, moved with the kids. I have two young kids who are in high school and that is the reason why you don't see the kids coming into town. Thank you. Chairman Morin responded thank you.

Chairman Morin stated I am going to ask, anybody else who is going to speak please stand now, because if you are not standing behind that microphone, I am going to stop you. We are after 10 o'clock but I am going to let you get your words in but just please be to the point.

Erin Montgomery, 43 Woburn Abbey Drive, stated it was interesting to hear the research mentioned. I know Mr. Francese is an expert and has done a lot of research, but I am curious to know more about Bedford versus New Hampshire, a lot of the stats about New Hampshire being one of the oldest states. I think Bedford is in and of itself a different animal, as New Hampshire may be as a state. So I would just be curious to hear more about Bedford specifically. I know that there was talk about the unlikeliness of more students being in the school system. I am pretty sure that this year alone there were about 50 students more in Memorial elementary school. My understanding is that they had to hire an additional teacher and they were scrambling earlier in the year because the amount of children there had been so much higher than what had been projected. I also just wanted to address the idea that people are here out of fear. I first became interested in the issue because of the environmental aspect. I went to a Conservation Commission meeting with my kids. They printed out pictures of their favorite animals in the back yard, we were there to save the animals, and the more I have learned about this project the more concerned I have become about it in several ways and it is not due to fear and it is not because I am an opponent of workforce housing, none of those things. I just wanted to clarify that. I find that very insulting. It was also mentioned that this is just a straight-up business, this should just be a business straight transaction, that is the whole point of it. I don't agree; I think the community input is very important and the residents of the town do matter and what they say should matter. Finally, I just think that the entire idea of the variance is because of the developers wanting to make more money, which is their right, which of course makes sense, but I don't think that that alone is a reason for us to change zoning rules and regulations just to please commercial interests of private companies and citizens. Thank you. Chairman Morin responded thank you.

Gerald Hanauer, 20 Highland Farms Drive, stated I have been in town since 1984. There is just kind of an undercurrent of both the consideration of the wetlands issue and the traffic issue that I think ought to be flushed out a little bit. That is the inherent, and I am not casting aspersions on anybody, in fact, I have worked with Mr. Anagnost in the past in my professional career and I know him to be very much of a professional and high ethical person and I consider the developer's team to be high caliber people and high quality people and ethical people and certainly they are in business to make money and that is what creates housing in the first place. But we found in the discussion of the wetlands issue that there was something wanting apparently in TF Moran's person who came out and defined the wetlands as submitted to this appeals board. It seems as if a lot of comments about the traffic both from an engineer, Mr. Gagne, and from other people who just feel that the traffic numbers of 43 people coming out of workforce housing in the morning and coming back in the evening in any given hour just doesn't pass the spell test. Although I certainly believe that workforce housing is a good thing, it seems like regardless of the demographics and what is happening to the workforce and the lack of opportunities for people who need housing opportunities, irrespective of that, sometimes a proposed development is just in the wrong place, and I will leave it at that. Thank you. Chairman Morin responded thank you.

Chairman Morin stated just to put this on the record, with our packets there were numerous emails and those types of things, so I just want to let people know that of what we received in our packets there were 11 for the development and then there were nine against the development, plus the petition. At the time when we received our information, there was 524 names signed to that petition. I am just putting that on the record, so that it is on the record.

Chairman Morin stated we are getting late. I am to the point that I am going to make a suggestion to the Board at this point is that we table until next month, and the only reason I am saying that is some of us get up early, some of us have babysitters at home right now waiting for people to get home, and I think there is still a lot of discussion, possibly questions and answers, and that it would probably be a good idea to table until next month. Chairman Morin asked do you have an issue with that? Attorney Cronin asked could we maybe have five minutes to rebut some of the comments while it is fresh in people's minds? Chairman Morin responded you have five minutes.

Attorney Cronin stated it seems the predominant number of comments were related to traffic. This is one of those rare case in which three separate traffic experts, engineers with expertise in traffic say the traffic works. A number of other comments related to wrong place, not appropriate for apartments, in fact that is inconsistent with both the Master Plan and the ordinance. The drafters of the ordinance identified this area as being an appropriate area for workforce housing, and I believe that sprung out of the enabling legislation in the workforce housing statute which said we need these types of projects. Granted some people don't like housing, some people don't like apartments, some people don't like the big houses, I get it, people have fears, they have concerns, but this is an area that has been identified as appropriate for this particular property. As far as the economic piece of people making profits and what they do, we are a

capitalistic society, people do build these things as part of their business. That shouldn't be a factor that is contemplated; it should be looking at the criteria and the layout here. We are looking at the incremental difference, and I think the Chairman noted that early, that this is an approved site for this type of use and the question is it 94.6, call it 94, or is it 120 and does that make sense. A lot of the other issues that were raised related to things that the Planning Board takes up, not that you shouldn't weigh them and consider them, but certainly traffic is something that is vetted aggressively by the Planning Board, layouts and all of those sorts of things are things that the Planning Board spends a lot of time with doing. As far as the Dumas', I regret that Attorney Sokul has to be here today and I don't want to get sidetracked by it. I appreciate and respect Mrs. Dumas' right to say no, we don't have deal, but as far as not being cooperative, there was a personal meeting, I can't tell you the number of calls and emails and drafts of documents, and I came here tonight thinking that there was great cooperation and good faith and the issue that kind of broke things down was the public road issue and that is something we can't do anything about. So to the extent that they don't want to do a deal, I respect it. As far as what the applicant was willing to do, I think by Mr. Duval's calculation was \$800,000 in benefit to the Dumas family. There is not much more that we can do other than continue to talk, but as far as this issue, probably not germane. In terms of the demographic pieces and the schooling that over time it will fill up, the evidence we have here, the numbers, even if you use Ms. Hebert's number, this isn't a 500-unit project, it is not a 1,000-unit housing development, it is 120 units that I think at 0.27, that is a really small number of people that will go into the schools, and when you look at the demographic information, that I don't think has been disputed, those fears about the school overcrowding seem to be misplaced. Thank you. Chairman Morin responded thank you.

Chairman Morin stated I am going to hold off sir (addressed to a gentleman in the audience). We are at our limit. The gentleman stated I am the only person here representing a direct abutter. Chairman Morin responded I understand that, Sir, and we are going to table this until next month and we will continue testimony next month. We are not going to stop testimony, but at this point, like I said earlier tonight, we are all volunteers, we all have jobs to do tomorrow. The gentleman stated fair enough.

Chairman Morin stated are we good with that? I will put the motion out there.

MOTION by Chairman Morin that the Zoning Board table Items 2 and 3 on the agenda and they will be tabled until the February 19, 2019 Zoning Board of Adjustment meeting, with this motion to serve as public notice. Mr. Casale duly seconded the motion.

Ms. Hebert stated Mr. Chairman, I would just like to make a point. If we are able to have the wetlands reviewed, I would like to suggest that we re-notice abutters just so people are clear that that application will be moving forward, that we should let the applicants bring that request in 30 days if it is possible. Ms. Elmer stated if we get the wetland consultant done sooner rather than later, they will be coming back in 30 days.

Chairman Morin called for a vote on the motion to table Items 2 and 3 on the agenda. With all Zoning Board members voting in the affirmative, the motion carried.

- 2. 206 Route 101, LLC and Bow Lane Bedford, LLC (Owners)– Appeal from Administrative Decision from Article III, Section 275-21.B.4(c)[1] regarding the density calculation for the proposed apartment buildings off Chestnut Drive, Lots 20-99-1,2,3& 4 and 20-22-14. Zoned CO.**

New Business: None

Old Business: None

Adjournment:

Motion by Ms. Stirling to adjourn the meeting at 10:16pm. Mr. Casale duly seconded the motion. Vote taken – all in favor. Motion carried.

Respectfully submitted by
Valerie J. Emmons