

**TOWN OF BEDFORD  
February 20, 2018  
ZONING BOARD OF ADJUSTMENT  
MINUTES**

A regular meeting of the Bedford Zoning Board of Adjustment was held on Tuesday, February 20, 2018 at 7:00 PM in the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: John Morin (Chairman), Catherine Rombeau (Town Council), Sharon Stirling, Gigi Georges, Kevin Duhaime (Alternate), Neal Casale (Alternate), and Karin Elmer (Planner I)

Chairman Morin called the meeting to order at 7:00 p.m. and introduced members of the Board. Alternate Len Green was absent. Mr. Duhaime was appointed a voting member.

**Approval of Minutes:**

Chairman Morin stated there are only two members here that were present at the December 19, 2017 meeting, which are Mr. Duhaime and Councilor Rombeau. I did go through the minutes today with the video online, so I will be voting on these minutes also.

**MOTION by Councilor Rombeau to approve the minutes of the December 19, 2017 meeting of the Zoning Board of Adjustment as submitted. Mr. Duhaime duly seconded the motion. Vote taken; motion carried, with Ms. Stirling and Ms. Georges abstaining.**

**MOTION by Councilor Rombeau to approve the minutes of the January 16, 2018 meeting of the Zoning Board of Adjustment as submitted. Mr. Duhaime duly seconded the motion. Vote taken; motion carried, with Ms. Stirling and Ms. Georges abstaining.**

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

**Applications:**

- 1. Kai Nalenz (Owner) – Request for a variance from Article III, Section 275-18 in order to keep an existing camper in the front yard where it is not allowed at 112 McAllister Rd., Lot 2-14, Zoned R&A.**

Kai Nalenz was present to address his application for a variance. Mr. Nalenz stated I am here today to apply for a variance to keep my motorhome parked on a temporary

basis in the front yard of my property. One of the issues is that it is physically impossible for me to move that motorhome up behind the house. The road crowns right in front of my paved driveway, and given the long overhang of the motorhome in the rear, it actually touches the road. I took pictures to show you. I did try it once and it scrapes the road, and I caused damage to the rear spray guard, which is \$750 damage. I can pass this photo around; there are further scratches on the road and those are not from my motorhome. Mine are right by the yellow line in the photograph. It is obviously not just my vehicle that has trouble getting up there due to the road crowning but other vehicles as well. Another one is a safety feature. If I were to fully comply with the ordinance, the only really flat part for my children to play would be up behind the house, that is where the motorhome would have to be, and it is a nearly 400 foot driveway, and I would have to back up a 40 foot motorhome up that driveway with my children playing there, which is quite the danger. If the motorhome was up there, now they would be forced to be playing down by the street. If you look at McAllister Road, it is interesting if you go from south to north the speed limit is 35 miles-per-hour, coming north to south it is 30 miles-per-hour. To those of us who are parents it doesn't matter how many times you tell a 5-year-old you do not run after your ball, chances are he will and that is just not a risk I am willing to take.

Mr. Nalenz continued ever since we made our offer on that house we have been working with the Town Building Department on a shed placement. Initially I wanted to use the existing foundation and I was told that is not possible due to wetland. I had a surveyor come out and we finally figured out the correct location, and I have a plot plan that will show this. Ms. Elmer stated I got a copy of the plot plan from the Building Department. Mr. Nalenz stated given the size of that shed, it will hide most of that motorhome. It is going to be perpendicular to the road and I can park the motorhome behind. As far as the gravel and everything else goes, we moved in in November and I simply did not have time, the weather changed, I wasn't able to finish any kind of landscaping projects, so I have every intention to plant trees and pretty much completely hide that motorhome once it is there. It is a very expensive motorhome, it is not designed to be a yard ornament, and I am actually using it for travel extensively throughout the year. It is for my own benefit that I try and find winter storage next year. I have no way of plugging it in, I wasn't able to maintain my batteries and they all had to be replaced. That is a significant expense to do that. Next winter I have every intention of moving it offsite; it is just that we moved in so late and when I called around, there was simply no more storage available for a unit that size. Again, it would just be a temporary thing, maybe a couple of days during the summer in between trips that it is actually parked there.

Mr. Nalenz stated the third point I have is the actual enforcement of this ordinance is very selective. I looked through your meeting minutes and I was never able to find anything regarding trailers that are also part of this ordinance, a variance needed for a trailer. If you look around town, I have been a resident for over 10 years in Bedford, I had a trailer in 2001 and I had an RV since 2012, and we used to live on 14 Edinburg Drive, pretty much the same setup that was even more visible. At Edinburg Drive we had numerous visits from building inspectors, Town assessors, we were right on the

route for the Rotary Club road race, police officers went by, literally thousands of people a year went by and nobody ever complained. Again, it was a lot more visible than this motorhome would be once I am done with all of my landscaping and the shed I will order next week. Another point as I said, I have never found anything regarding trailers. I have heard in the past that it is selective due to staffing issues, but quite frankly anyone going to the Town Hall you will pass at least two to three properties that are in violation of this ordinance. It doesn't matter which way you come in, so this entire process is very selective.

Mr. Nalenz stated we can come to an agreement, as I said; I have every intention of hiding it as much as possible. I just got that letter, my intentions were to mostly plant trees along the street but I am more than happy to also plant them along the property line with the current house that is being constructed at 108 McAllister Road, to further shield it from that complaint. They have fast growing trees and conifers are one of them. They grow 12 inches per year, and I would be more than happy to plant those.

Mr. Nalenz continued I do have pictures of the location of our motorhome at our previous address and showing how far back it is now. It is absolutely no danger to any motorist. It is sitting back over 50 feet from the road now and was much closer. Chairman Morin stated we don't need that one because we are just dealing with where you are now. Mr. Nalenz stated I am showing a contrast of what it was on Edinburg Drive and how far back it is now. Chairman Morin stated but the Edinburg Drive piece doesn't have any significance to tonight's application. Every application we get is a different application. We look at every case individually. We don't have a precedent type issue where if one topic comes in we always approve it or don't approve it. Every application stands on its own merits. Mr. Nalenz stated I brought Edinburg Drive up to also outline the selective enforcement that is being used.

Chairman Morin stated please go through the five criteria on your application so it is on record.

Mr. Nalenz proceeded to review the criteria for his 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:** The RV is more than 50 feet from the road and will be obscured by plantings and a barn-like shed. Due to the setback from the road, there is no risk for motorists or snow plows hitting the RV. The RV will not be occupied in any way. I will, however, have to enter the motorhome as I get ready for a trip, loading clothes and food and all of that stuff, but otherwise it will not be occupied. **2. The spirit of the ordinance is observed:** The RV will be obscured behind plantings and the future barn-like shed. We closed and moved into our house in November of 2017 and we were not able to plant anything yet due to weather. The growing season ended at the end of September. **3. Granting the variance would do substantial justice:** The Town ordinance is only enforced on a highly selective basis, which is not legal. The Town does not enforce this ordinance for every trailer, RV or boat. At our previous residence in Bedford we parked the same

motorhome, as well as a trailer, in the side yard and this was never an issue despite Town officials regularly driving by and citizens running the Rotary race past the property. This is a street legal vehicle that I pay Town and State taxes registration fees for, I keep it inspected, maintained and in good repair, and this is not some rusty piece of junk. The retail value for these things is \$250,000. **4. The values of the surrounding properties will not be diminished for the following reasons:** No homes are located in the immediate surroundings of the RV. Furthermore the RV will be obscured by plantings, to be placed in the spring of 2018 and a 15-foot-high barn-like shed is to be placed in the same timeframe. I travel an extensive amount with the RV in the spring through the fall so it will not always be parked at the property. I will try to secure winter storage next year but none were available this year. **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:** The RV has a 10 foot overhang behind the rear axle. I have attempted to drive the RV up to the house but due to substantial crowning of McAllister Road, my RV bottoms out and causes damage to both the road and my RV if I attempt to drive up. **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:** There are no residential dwellings in a 100 foot radius of the RV. The RV sits back far enough from the road not to be a danger to any motorists. The RV will be obscured by plantings and a barn-like shed in the spring of 2018. **ii. The proposed use is a reasonable one:** I am not able to park my RV anywhere else on my property without causing significant damage to the RV, as well as McAllister Road, anytime I try to use it. **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:** I am not physically able to drive the motorhome up my driveway.

Ms. Stirling stated my questions are directed to Ms. Elmer. Part one of the question is the ordinance itself in terms of where this RV is parked; does it specify whether or not there is tree coverage and/or a shed that would obstruct the view of it? Ms. Elmer replied no; it strictly says within or behind a home or garage. Ms. Stirling asked so technically under the ordinance, even if he were to mitigate the visual damage with plantings and the shed, that would still be in violation of the ordinance with strict conformance? Ms. Elmer replied correct. Ms. Stirling stated my second part is in your staff memo you talk about going to the Highway Department to discuss modification of the driveway to be able to get the RV around the back. Could you talk about that a little bit? Ms. Elmer replied Mr. Nalenz mentioned that because of the overhang that he has on his RV he can't get it into his current driveway, and if you look at the photo indicated on the screen, you will see that there is like a hump in his driveway and that is where he is having the issue because he is going down and up and with the 10-foot overhang it is hitting the road. My suggestion was maybe meeting with the DPW to see if that hump in his driveway could be eliminated or somehow altered so he doesn't have that problem, because he is not having the problem in his current location where he is parking it. He

is only having it where his paved driveway is. Is that correct? Mr. Nalenz indicated yes. Ms. Elmer stated so my suggestion was maybe he would be able to modify that.

Ms. Stirling stated and then secondarily you talked about a second cut approved by the Highway Department. Ms. Elmer stated it was not approved. This subdivision specifically required a condition of approval that this driveway be closed. It was a condition of this driveway permit being issued was this driveway being closed. So even if the Zoning Board were to grant the variance to park the RV in the front, you do not have the ability to grant a variance for him to use that curb cut. He would have to go back to the Planning Board to get the subdivision modified. Ms. Stirling responded right, that is the point I wanted clarified as well. Thank you very much. Ms. Georges stated I would like to follow up on that. If the applicant were to go to the Highway Department and have that change made, he would then have the ability to park it in the rear of the house? Ms. Elmer replied in theory. Ms. Georges stated so maybe this is a question to you. If that were done, what might prevent you from then being in compliance and parking it behind the house? Mr. Nalenz replied another issue is the Town required a culvert system to be placed by the paved driveway and that makes the driveway so narrow that currently I can just pull up and make a 90 degree turn into the front yard down there, and with this I cannot do this because the motorhome is so long it off-tracks and I would end up in the culvert with the rear axle so I would have to go down Cobtail and then come across McAllister Road and at that point I cannot see traffic approaching on either side. That would be quite a danger. But, again, once I park it up there, now my kids have to play down in that area. This area is called the Pinardville area of Bedford and just across the town line on January 5<sup>th</sup> we had a case where a stranger walked into a house with a girl and that guy has never been caught, and if my kids play down there, even if I was fast I would not be able to make it down there if any such thing would occur. Ms. Elmer stated there is room in the backyard. If you were to pull the RV up the driveway and just park it here, your kids have the whole backyard to play in. Mr. Nalenz stated that is still not in compliance. It says behind the house. Ms. Elmer responded if you look at the screen, this back part of your building, that is what we consider the backyard setback. It doesn't mean directly behind the house. It is a parallel plane so it would be behind. Mr. Nalenz stated that is not specified. That is not how I understood the ordinance. It was very specific that it has to be behind the building. Ms. Elmer responded right, and it is how we interpret that 'behind.' Chairman Morin stated in the backyard. Ms. Elmer stated right, in the backyard. Mr. Nalenz stated that needs to be clarified in the ordinance. Ms. Georges stated so from the visual it does appear that there is physically room on that side of the house behind that line. Mr. Nalenz stated the driveway is extremely narrow, I only have 2 inches on each side backing that up 400 feet and I have to cross wetland. If I off-track, and if I brought that thing into wetland, there is a significant amount of diesel onboard. Chairman Morin stated I can't tell off from the plan but your application shows your driveway width of 20 feet. The application shows it. Mr. Nalenz stated I was not involved with the development of that property; that would have to be brought up with the builder. I bought a turn-key house. Ms. Elmer stated this was the plot plan that was done for the as-built foundation when the home was built, and you can see the only

viable driveway that was approved for that lot was through here. This was never allowed; it was supposed to be closed.

Chairman Morin stated my question to you is if we approve this, how would you get it to where it is now because you would still have to use your driveway. Mr. Nalenz replied I would have to enter it over grassy area. My profession is I restore historic race cars and once I stabilize with extremely heavy gray stones with gravel, I could do the same there. It allows for drainage and there are going to be no water flow issues and I would just have to drive over gravel and then cover it up with dirt and grass to make it more sightly. As I said, this was just the beginning of a landscaping project; this is not the finished product. Chairman Morin stated but to actually pull in your driveway, you are still going to have your same issue. Mr. Nalenz responded I would not be able to enter through the paved driveway.

Chairman Morin stated during your presentation you said the RV would be parked there on a temporary basis. Mr. Nalenz responded the main reason I have it is to travel with it. Chairman Morin stated but the thing is for a variance is that the variance doesn't talk about temporary. A variance is permanent; just to make sure you understand that piece. Mr. Nalenz stated yes.

Chairman Morin asked how tall is the RV? Mr. Nalenz replied it is 12 foot, 8 inches. Mr. Casale asked what is the length? Mr. Nalenz replied 39 feet and 102 inches wide, with a vehicle weight of 32,000 lbs.

Councilor Rombeau stated obviously we don't have control over the second driveway cut, but if you can't turn the vehicle onto your driveway now, if you are able to have that second cut to get to your driveway to get to the rear yard if that is a possibility. I realize that has several moving parts to it. Mr. Nalenz replied due to the setback requirements for that shed, I would not be able to make that turn once that shed is placed. Councilor Rombeau stated no, I was not thinking of the shed. I was thinking if you had the second driveway entrance that would connect to your current paved driveway. Mr. Nalenz responded that is what I was referring to. I have to make three 90 degree turns with it coming from the road. Councilor Rombeau asked if you turned it into the additional driveway? Mr. Nalenz stated due to the setback requirements there is wetland and now that shed has to be pretty much right in the middle of that yard. Councilor Rombeau responded no, I am saying if you parked it in the rear yard of your property, I am not talking about the shed then. There are too many turns? Mr. Nalenz stated that is what I was getting to. I just do not have enough room to get around the shed and then get back up to that driveway and make that turn. Ms. Elmer stated his shed is going where I am indicating on the screen. Councilor Rombeau stated but the shed is not there right now. The shed is in part to block/cover and I am saying if you didn't put the shed in. The shed is not there right now and if there was a way to connect the second driveway entrance to the paved driveway to bring it to the rear yard, then you wouldn't have the shed there necessarily. Mr. Nalenz stated I don't know where else to put the shed. I can't put both back there, the shed and the motorhome, as there is not enough room. Driving around I have seen that I am not the only person with that issue. If you really

want to enforce that, most of the homes simply cannot comply with this ordinance. Either they have a leach field back there, there is a steep drop-off and most folks can't comply with this. Councilor Rombeau stated this is a big vehicle; it is probably particularly hard to comply. Mr. Nalenz responded yes. I think I found a very good way to pretty hide the entire unit from view. Chairman Morin responded I don't know if you can hide the entire unit because you are talking a 24-foot shed with a 39-foot RV. Mr. Nalenz stated plus trees or bushes that grow. As I said, a conifer grows 12 inches per year. Ms. Stirling stated my issue is that it is not in compliance even with the vegetation and the shed. Councilor Rombeau asked because of the second cut? Ms. Stirling replied no; because it is not behind the house, and never mind that; that is a whole secondary problem.

Ms. Stirling stated I think maybe what you don't understand is what we have to balance is the right to maximize the use of your property with the ordinance we are given. Even like when people want to put a shed so many feet from the side line, we have to look and say how else can this be made feasible with the land they have. You have given us that my kids can't play in the front yard, it is problematic because of the hump in my driveway, you are putting up a lot of roadblocks when we can still see ways that it can work. I guess I challenge you to really think about it from the standpoint of I have to make this work somehow and get it to the backyard. That is what I would say to you. Mr. Nalenz responded I thought of all the options. I am very skilled driving this motorhome, and despite all of my experience, it would be a huge challenge backing that up 400 feet. Ms. Stirling stated pull it forward and turn it around. I do that with my car. I can't back up a vehicle to save my life. I pull forward and then I do zig-zag, zig-zag and drive out. Mr. Nalenz stated this has an astronomically larger turning radius than your car. It cannot turn around up there. Ms. Stirling stated I understand that but if I were to measure this, you mean if you parked it behind where we identified in your backyard and you pulled it in, there is no absolute way, it is totally impossible to turn it around to drive it out. Mr. Nalenz replied my leach field is in the front. I cannot bring a 16-ton vehicle over my leach field. Ms. Stirling stated I am not even talking about the front; I am talking about the back. Mr. Nalenz responded there is no room to turn it around, I am sorry. Ms. Stirling stated I have nothing further.

Ms. Georges stated I guess I just want to underscore what Ms. Stirling is saying. I think what we are all trying to do here is help you think through some creative ways to address this. I appreciate that you feel that you drive around town and you see RV's but we, as a Board, can't look at that evidence. We have to look at this application on its own, on its merits, and we do our best to try to be as flexible and as creative within the law and the ordinance. We will talk this through but this is sort of an RV situation that if you find you have to have your shed, that you can't sort of apply for that second driveway and that there are other things that you just can't see yourself making some additional compromises on, and I know you called around, but it really is a prime candidate to have it offsite. It is just really hard for us to make a whole bunch of exceptions, but we are obviously going to talk it through. I just wanted to give you a little bit more of a sense of what the thought process is here, that it is not by any means trying to deny you. We are actually trying to figure out how to get this to work for you.

Mr. Nalenz stated I hope you understand my point as well. It would be in my own interest up there because I can plug it in and I wouldn't have to spend \$1,000 on batteries. Ms. Georges stated it is a very big vehicle, so it does create a lot of limitations for you trying to keep it on your property. Mr. Nalenz stated there is actually a motorhome that is much bigger than mine not too far from it not parked behind the house. On that same street there are two additional RV's parked in violation of this ordinance. I am a little hung up also on the fact that it is such a selective process to enforce this ordinance. Chairman Morin stated again, for the Board itself, we are here to deal with applications. We don't do enforcement; we don't go out there looking for this stuff. What we do is we get an application, for the most part we drive by the location to see where it is, to see what is going on, and then we get the information, the facts here during the testimony, and make a decision off from what we have. Again, we are not the enforcement group; we are dealing with this specific application. Mr. Nalenz stated as much as I would like to bring it up, again, with my experience, I am backing up a large pickup truck in historic cemeteries so I am pretty good at that, but going up and down that driveway is quite the danger and it is a very long way. It is almost 400 feet to do that and that is why I am trying to do everything to pretty much hide the motorhome. The shed will take care of most of it and then, again, there are plantings that will cover it probably by the end of this year.

Mr. Duhaime asked are you willing to talk to the Highway Department to talk about reconstructing your driveway as at least an option? Mr. Nalenz replied of course. But I also feel that seeing how much the sidewalk to the high school cost, I can't imagine how much that would be and I don't want to put that kind of financial burden on the Town. Ms. Elmer stated it wouldn't be on the Town, it would be on you. Mr. Nalenz asked I have to pay for the street? Ms. Elmer replied no, you wouldn't be paying for the street; you would be paying for reconfiguring the driveway if possible. Councilor Rombeau stated that was actually one of my questions. Where is the bump? Ms. Elmer stated you have both. Mr. Nalenz stated it is right in the center of McAllister Road. Ms. Elmer replied right, but it is not causing you a problem where you are parking the RV now. It is only causing you a problem where your existing driveway is. Correct? Mr. Nalenz responded because there is no bump where the RV is parked right now. It is only in front of the paved driveway. Ms. Elmer stated but if you look at the screen, I was talking about this bump in your driveway. Mr. Nalenz stated yes, and there is no bump to the left. It is only in that area. Ms. Elmer stated correct, and that is your driveway so you would be responsible for reconfiguring that, not the Town. Mr. Nalenz stated the bump is on the road, the crowning is on the road. The road crowns right in front of the driveway and then it levels out further down. It is actually creating quite a hazard for me every time it snows because the plow goes down the street and it can't catch all of the snow and when it melts, I have quite the ice jam down there and that is the school bus stop for my son. It is the road that is actually causing the issue, not my driveway.

Chairman Morin asked the public for those wishing to speak in favor of this application. There were none. Is there anyone wishing to speak in opposition to this application.

Kevin Doherty stated I own the building lot across the street. I came here in opposition to the application. First of all let me state, I am a short-term owner across the street. I will be building for somebody else, so this isn't going to affect me personally for a long time, so bear that in mind. But I have had a recent customer whose first question was what is going on with the motorhome. They disappeared and I don't think it was because of this but it certainly was a negative. I don't want to imply that that ruined a sale by any means. I am fully supportive that if you deny this you give him time to get this off property next year or whatever. If I were a builder, I would be more than happy to just convey to a perspective buyer that it is going to be gone in a year or something like that, if that helps anyone. I don't see where they have met the five requirements at all. I guess I would leave it at that. Thank you.

Mr. Nalenz stated as far as that lot across the street goes, I haven't seen a plot plan but there is a significant amount of wetland surrounding that plot, and I believe that is the most challenging part of selling that kind of corner plot. First is a corner plot, and then with all the setback requirements for that wetland, I think that is the main reason why the buyer backed out, not the motorhome. And, again, once I am done with that shed and the plantings, it would be virtually impossible to see from across the street.

Chairman Morin stated we also received a letter from Nicole Roy, 100 McAllister Road, who is also in opposition of the application. This letter will be included in the file for this application.

**MOTION by Councilor Rombeau to move into deliberations on this application. Ms. Stirling 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:** Chairman Morin stated I think this is the biggest piece of this is that motorhome in the front yard out there will alter the essential character of the locality. Driving by it the other day it is out there. Even if there is stuff around it, a shed that blocks  $\frac{3}{4}$  of one side and plantings, you can't miss it. It is out there by itself. Ms. Stirling stated I would agree. **(2) Whether granting the variance would threaten public health, safety and welfare:** Ms. Stirling stated I don't think it would do that. **2. The spirit of the ordinance is observed:** Chairman Morin stated actually the spirit is to have them push back pretty much blocked by a house in some way. Councilor Rombeau stated this isn't a situation where we are close to getting to the rear yard or trying to approach it and not quite getting there. This is right out in front on the edge. Chairman Morin stated I agree with that. Ms. Stirling stated I agree. Councilor Rombeau stated it is not going to be in an enclosed building either. **3. Granting the variance would do substantial justice:** Ms. Stirling stated when we grant a variance, we take into account the idea that we have justice to the community in terms of what the ordinance says and honoring that and the balance of using private property to the maximal benefit, and as we have determined through our deliberations, there are other options to meet justice for the community in the ordinance as well as for use behind the property with modifications,

granted. **4. The values of the surrounding properties will not be diminished for the following reasons:** Chairman Morin stated we have not heard any evidence on that. **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:** Councilor Rombeau stated just to be clear on this, the applications references the overhang on the RV. That is not the property with the special condition that we are talking about, not the land. Chairman Morin stated it does talk about the crowning but most roads are crowned, and by what we have heard and that I interpreted, he would not be using the driveway, he would use the grass anyway to get it to the location. So he wouldn't hit the crown. Ms. Stirling stated and as mentioned, I think Councilor Rombeau alluded to the fact that a lot of the perceived obstacles that would make it an unnecessary hardship are imposed by the size of the vehicle, the other conditions, not the property itself. There is nothing unique about this property. Councilor Rombeau stated where there is rear yard accessibility or usage it is not a special condition of the property, where there is no backyard or couldn't comply with the ordinance in that sense of not having a rear yard space. Ms. Stirling stated exactly; I agree. **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 I think Ms. Stirling spoke to this already under one of the other sections. It just doesn't meet that. **ii. The proposed use is a reasonable one:** Chairman Morin stated I would say that it is not reasonable where it is for what it is and how big it is. Ms. Stirling and Mr. Duhaime agreed.

**MOTION by Ms. Georges that the Zoning Board of Adjustment deny the request for a variance submitted by Kai Nalenz (Owner) from Article III, Section 275-18 in order to keep an existing camper in the front yard where it is not allowed at 112 McAllister Road, Lot 2-14, Zoned R&A, as it does not meet the five criteria for a variance determined by our deliberations. Ms. Stirling duly seconded the motion. Vote taken - all in favor. Motion carried.**

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

- 2. Alba Architects (Applicant), Michael & Deborah Fedder (Owners) – Request an Equitable Waiver from Article IV, Section 275-28 in order to keep two previously constructed decks 41 feet and 44 feet respectively from the edge of a wetland where 50 feet is required at 35 Church Rd., Lot 14-55, Zoned R&A.**
- 3. Alba Architects (Applicant), Michael & Deborah Fedder (Owners) – Request a variance from Article IV, Section 275-28 in order to construct a new deck 41 feet from the edge of a wetland where 50 feet is required at 35 Church Rd., Lot 14-55, Zoned R&A.**

Phil Bennett, Alba Architects, and Michael Fedder, owner, were present to address both the Equitable Waiver application and the variance application.

Mr. Bennett stated the reasoning behind the Equitable Waiver is that the previous owner of the property obtained a building permit for the addition to the existing structure in 1998, subsequent to the zoning requirement being implemented. At that time no investigation was done apparently to determine whether there was wetlands or not and the building permit was issued based on the owner's statement that there were no wetlands.

Mr. Bennett proceeded to review the Equitable Waiver criteria.

**Facts Supporting This Request:**

**(a) The violation was not discovered by any owner, former owner, owner's agent or municipal official until after the structure had been substantially completed:** Michael Fedder did due diligence prior to even buying the property. He checked with the Town and the building permit that was given in 1998 to make sure that there weren't any restrictions. They already had a good idea of what they wanted to do with the property before they even bought it, and obviously the building permit didn't show it and there was no indication of wetlands so he obviously went through with the purchase of it. **(b) The violation was not caused by ignorance of the law, misrepresentation or bad faith, but was instead a good faith error in measurement:** We have no idea why the violation was carried out. I suspect it was probably lack of knowledge of what a wetland is. **(c) The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property:** The violation has been in existence for over 19 years and no nuisance, loss of value, or adverse effect on the local properties I think could be proven. **(d) Due to the degree of past construction or investment made, the cost of correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected:** I think there is little argument that, as I said, the property has been there for 19 years, there is no evidence of deterioration of the wetlands. There would be significant deterioration in Mr. Fedder's budget should he have to alter this house. It is a significant structure and its impact on the site is negligible by any account. **(e) OR, In lieu of the findings in (a) and (b) above, the owner may demonstrate that the violation has existed for 10 years or more, and that no enforcement action has been commenced against the violation by the municipality or any person directly affected:** I think that is self-evident.

Chairman Morin stated why don't you review the criteria for the variance and then we can ask all the questions at once, which will probably be easier. It will be separate when we deliberate on each one.

Mr. Fedder stated I would like to add one bit of information. It is not just these two decks that are not conforming to the wetland setback. It is roughly 1/8<sup>th</sup> of our family room, the home itself, not just deck structures. You can see on the posted sheet, the

deck structures are the extreme north and south of the property and it is the space in between that is our family room. Chairman Morin stated thank you.

Mr. Bennett stated before I get into the criteria for the variance, to make sure this is properly documented. There is a slight change to the previous application. Effectively one of the previous drawings submitted indicated two additional posts for the link between the two decks. One of those posts will not be necessary because the patio is on a concrete wall so the beam supporting the link will be built off from the existing patio structure and then an additional column will be added as shown on the posted plan. Right where the dimension is, the 11 9 <sup>3</sup>/<sub>4</sub>, that will be the new post for the north end of the deck. A little bit further up you will see there is kind of a square area right underneath the setback. That is the location for a Jacuzzi and that will be dropped and the structure will require an additional post underneath to carry the load of the Jacuzzi, which is about 4 inches from being compliant. It is right on the boundary of the wetland setback. Mr. Fedder stated I just want to make one correction. You said 11 feet, 9 <sup>3</sup>/<sub>4</sub> inches and that is 41 9 <sup>3</sup>/<sub>4</sub>.

Mr. Bennett proceeded to review the criteria for the requested variance. The intention is to add a link between the two decks, the southerly patio and then on the north a raised deck. They want to put a bridge between them to link the two so that communication between the two decks doesn't have to go through the house. **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:** I think it is quite obvious that the wetland setback is to protect the quality of the wetlands as it filters water that goes into the local water river and stream network. Again, this 11-foot x 5-foot structure will create some more moderately porous structure over that area but it doesn't really impact the quality of the wetlands. The Fedder's are doing an expansive alteration to the site as well as the deck and part of those landscaping alteration is flattening out the area around it, which will slow down the water sheet affect and encourage more absorption into the property prior to reaching the wetlands. The 11-foot x 5-foot structure I think you could argue that it is not really changing the character of the property. It is a small addition to what is already there and isn't affecting the quality of the reasoning for the setback. **2. The spirit of the ordinance is observed:** As previously addressed, you are making measures to any moderate impact that the deck addition might make by creating more runoff from the house is being addressed in the landscaping, and the spirit of the ordinance is to protect the wetlands quality and by adding this addition it is not having any impact. If anything, it will be an improvement with the landscaping that is proposed. **3. Granting the variance would do substantial justice:** As discussed in the request for an Equitable Waiver, the Fedder's had no knowledge of the line of setback from the wetlands. They took every measure they could prior to buying the property to confirm that there weren't any restrictions that might affect what they want to do. Shortly after purchasing the property they carried out a survey knowing that they were going to do the alterations and that is when the wetlands became apparent and confirmation of exactly where the setback is. By imposing this 50-foot setback and refusing any further addition, it is kind of retrospectively creating a

burden on the owner for something they had no idea and no way of knowing existed. By giving the variance is doing justice by letting the owner use the property the way they intended when they purchased it without creating any substantial degradation of the site. So the ordinance is effectively served even without enforcing the absolute 50-foot setback. **4. The values of the surrounding properties will not be diminished for the following reasons:** The alterations to this property will largely improve the value of the property, which obviously has an effect on surrounding properties. In addition to that, it is not causing any impact on the site, which might reduce the quality of the property. So I don't think that there is anything proposed here that would have any impact on the surrounding properties whatsoever. **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:** Literal enforcement of the provisions would be impacting the present owner's ability to tailor their property to their own personal preferences and intended usage. The existence of this setback could not have been known and they would have not known the restrictions when they purchased the property. The fact that the strict enforcement of the wetland buffer in this situation serves no betterment to the local water quality, this site or the neighborhood seems a clear example of an ordinance not achieving the intention it was aimed at addressing. **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 owner's overall proposed alterations to the site will create significant improvement in terms of goals of the ordinance while denial of the deck connector will not achieve any outcome other than preventing the owner to utilize the property the way they intended when purchasing it. **ii. The proposed use is a reasonable one:** The proposed layouts better serves the use of the two deck areas and the impact on the site and any impact on the environment is insignificant. The owner's intention for landscaping more than address any potential detrimental affect the proposed alterations would create. **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 as intended with the proposed alteration cannot be carried out in strict conformance with the ordinance as an existing condition of the development already established by the previous owner. The location of the work to be carried out can only be done in that one area, that is where the decks are, and achieving what they want between the two decks, there is no other location that could happen. Again, all of this is beyond the owner's control. He would have not been able to have knowledge of any of this prior to the purchase of the property and having it surveyed.

Chairman Morin asked how far back is the house from the road? I know it is quite a bit. I could barely see the house from the road when I drove by, but I was just wondering offhand. Mr. Fedder replied I actually walked the driveway with a wheel measure and got to 400 feet about 2/3 up the driveway. I didn't keep going after that. I was looking for the Historic District mark, so I am going to estimate it is 650 to 700 feet up.

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

Scott Crandall, 37 Church Road, stated the Fedder's are our new neighbors. We have met with both Michael and Debbie and reviewed their site plans, their construction plans to put on this communicating deck, and they have been extremely transparent about everything that they are planning to do with their property. They are going to be renovating the home completely and we are in complete support of the variance. We would hope you would offer them for this communicating deck. We didn't really understand exactly what it was until we went to their property last weekend and the deck is really kind of recessed against the home and it really can't be seen, and I think they have taken every steps available to minimize the amount of impact on the ground by having a single post and we also reviewed their landscape architect's plans to change the drainage in the back to actually improve the environmental impact, or lack thereof, so we are in complete support of what they are proposing to do on their property. Chairman Morin stated thank you.

Ms. Elmer stated you also saw that the Conservation Commission reviewed it and recommended approval. Chairman Morin responded yes.

Mr. Fedder stated my wife and I deeply respect and adore this property. The renovations that we are making are designed to help bring the beauty of this property into the home. We will certainly do everything possible to protect the wetlands and encourage their continuing development and flourishing. They are beautiful. Chairman Morin stated thank you.

**MOTION by Ms. Stirling to move into deliberations on these applications. Mr. Duhaime duly seconded the motion. Vote taken – all in favor. Motion carried.**

**Equitable Waiver:**

**Facts Supporting This Request:**

- (a) The violation was not discovered by any owner, former owner, owner's agent or municipal official until after the structure had been substantially completed:**
- (b) The violation was not caused by ignorance of the law, misrepresentation or bad faith, but was instead a good faith error in measurement:**
- (c) The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property:**
- (d) Due to the degree of past construction or investment made, the cost of correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected:**

Chairman Morin stated we can skip all the above items (a) – (d) and start with Item (e).

**(e) OR, In lieu of the findings in (a) and (b) above, the owner may demonstrate that the violation has existed for 10 years or more, and that no enforcement action has been commenced against the violation by the municipality or any person directly affected:** Chairman Morin stated by everything we have, it has been a lot more than 10 years. Ms. Stirling stated I see no reason not to grant this Equitable Waiver. Chairman Morin stated it meets all of the criteria for that. Ms. Stirling stated in addition, Ms. Elmer might speak to this, but the wetland ordinance didn't pass until significantly after the time this was built. Ms. Elmer stated the ordinance got passed in between the house and the deck. So when the deck and the patio got added, we actually did have the wetland ordinance but at the time nobody thought to have a survey done, there was no wetland shown on the plan, so the Building Department approved the additions not realizing there were wetlands on the property. That was in 1998. Ms. Stirling stated so we are kind of at that cusp where, and again, he is going to further mitigate any issues and the Conservation Commission we rely on, so to me it is just kind of a no brainer.

**MOTION by Councilor Rombeau that the Zoning Board of Adjustment approve the request for an Equitable Waiver submitted from Alba Architects (Applicant), Michael and Deborah Fedder (Owners) from Article IV, Section 275-28 in order to keep two previously constructed decks 41 feet and 44 feet respectively from the edge of a wetland where 50 feet is required at 35 Church Road, Lot 14-55, Zoned R&A, for the reason that it has met all the criteria for an Equitable Waiver per our deliberations. Ms. Stirling duly seconded the motion. Vote taken - all in favor. Motion carried.**

**Variance:**

Chairman Morin stated we are only talking about that small deck that is connecting the two that already exist. **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:** Councilor Rombeau stated by all accounts it is not visible. Chairman Morin stated exactly. Ms. Stirling stated right. **(2) Whether granting the variance would threaten public health, safety and welfare:** Chairman Morin stated again, we are not seeing anything with this, and even the wetland issue is far enough away and those issues are being mitigated. **2. The spirit of the ordinance is observed:** Ms. Stirling stated I believe it is for all of the reasons we have discussed. Councilor Rombeau stated they are trying to improve the drainage situation in terms of the purpose of the wetland setback and they are actually addressing or mitigating the problems that were existing there. **3. Granting the variance would do substantial justice:** Ms. Stirling stated I think it would. Chairman Morin stated I think utilizing what you used earlier from what the ordinance and the Town is dealing with and what the landowner is dealing with and looking at the two and seeing how that fits on that scale and balances out. I think it meets it fine there. **4. The values of the surrounding properties will not be diminished for the following reasons:** Ms. Stirling stated we have had no testimony either way, but I would say just anecdotally I would imagine it would not affect values. **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:** Ms. Stirling stated if we couldn't find for anything, we certainly would find here. For the respective 41 and 44 feet to have him be in full compliance, we would have to take off part of his house and the decks, and certainly if ever the literal enforcement would be an unnecessary hardship, this would be the poster child. **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 I think we have already talked about this where it is at, how it is being done, very minimal footprint, per say, on the ground and really with what they are doing with the landscaping and stuff, it actually pretty much gets rid of all of that additional groundwater making it all the way down there. **ii. The proposed use is a reasonable one:** Chairman Morin stated it is very reasonable.

**MOTION by Ms. Georges that the Zoning Board of Adjustment approve the variance request submitted by Alba Architects (Applicant), Michael and Deborah Fedder (Owners) from Article IV, Section 275-28 in order to construct a new deck 41 feet from the edge of a wetland where 50 feet is required at 35 Church Road, Lot 14-55, Zoned R&A, for the reason that it has met all of the criteria for a variance per our deliberations.**

Chairman Morin stated I would like to add an amendment. There is no date on the plan that we were handed today, so I would say by the note is the PreCon issue update, the note and the general notes. Ms. Elmer stated you can put today's date because I will stamp the plan when I get to the office tomorrow. Chairman Morin stated that would be February 20, 2018. By doing that we have the updated plan.

**Ms. Georges approved the amendment to the motion. Mr. Duhaime duly seconded the motion as amended. Vote taken on the amended motion. With all members voting in the affirmative, the amended motion carried.**

**MOTION by Councilor Rombeau to move out of deliberations on these applications. Ms. Stirling duly seconded the motion. Vote taken – all in favor. Motion carried.**

### **New Business:**

#### **1. Review of proposed changes to Zoning Board of Adjustment applications and fees.**

Chairman Morin stated this item is just for discussion, but if we feel it is good, then we will push it forward to the next meeting for a public hearing. This is concerning changing the Special Exception fee for telecommunication towers, which is now \$200 plus abutters fees, to \$750 plus abutters fees. Ms. Stirling stated I think that seems reasonable given what packets come through and the work involved. Chairman Morin stated those are books not packets. Ms. Stirling stated to me that supersedes whatever

would be a normal expectation to come before here. Ms. Elmer stated I am hoping with the new applications to have almost like a checklist so everybody will know up front what has been submitted, what hasn't been submitted, along with the applicant so they can say I am missing 8 out of the 12 things, maybe I shouldn't be applying this month until I get my act together. Chairman Morin stated I was going to bring up the new checklist. I actually went through the ordinance book and just made sure they mirrored and they are perfectly mirrored. Ms. Elmer stated I tried to do that. Ms. Stirling stated I think this is a very reasonable request to put on the agenda for next month.

Chairman Morin asked do we need to vote on this? Ms. Elmer replied no. We wanted to know if it should go any further or not. If you are all opposed, then it drops dead in the water. Ms. Georges stated it seems very reasonable. Councilor Rombeau stated obviously the number is in line with others. It appears it is not an outlier to other communities. Ms. Stirling stated I don't think you are going to find any objections given the level of commitment you make to those packets.

Chairman Morin stated with that, we will move it to next month's meeting for a public hearing and then vote on it.

**Adjournment:**

**Motion by Ms. Stirling to adjourn the meeting at 8:09 p.m. Ms. Georges duly seconded the motion. Vote taken – all in favor. Motion carried.**

Respectfully submitted by  
Valerie J. Emmons