

A

Town of Bedford
March 17, 2020
Zoning Board of Adjustment
Minutes

regular meeting of the Bedford Zoning Board was held on Tuesday, March 17, 2020 at the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH.

Present: John Morin (Chair), Kevin Duhaime (Vice Chair), Sharon Stirling, David Gilbert (alternate member), Neal Casale (alternate member), Karin Elmer (Planner 1)

Absent: Melissa Stevens, Len Green (alternate member)

Chairman Morin called the meeting to order at 7:00 p.m. and introduced members of the Board.

1. **Approval of Minutes:** February 18, 2020

MOTION by Mr. Gilbert to approve the minutes of the February 18, 2020 meeting of the Bedford Zoning Board of Adjustment as written. Mr. Duhaime duly seconded the motion. Vote taken – 1 abstention (Ms. Stirling) all others in favor. Motion carried

Chairman Morin reviewed the rules of procedure and swore in anyone who might give testimony.

2. **Applications:**

1. Lyophilization Services of N.E., Inc. – Request for a variance from Article IV, Section 275-28 to build an addition 8.23 feet from the edge of a wetland where 50 feet is required at 7 Commerce Park Dr., lot 24-99-4, Zoned PZ (Continued from February 18, 2020)

Jeff Kevan of T.F. Moran introduced himself and reviewed plans from the last meeting on February 18, 2020. At that meeting, the Board raised concerns about how close in proximity the back of the building was to the wetlands and suggested extending the back of the building back over the pavement.

To address some of the concerns the Board had T.F. Moran worked with the architects and Lyophilization Services of N.E. Inc. (LSNE) on how the equipment was laid out and are coming back with the suggestion to shorten the building by 10 feet and to slide it forward by 10 feet (removing the front door from the portion of the building that is sliding forward and moving the front door around the side of the building instead). By shortening the back of the building, they are now 28.4 feet from the wetland, rather than 8-feet from it. The encroachment of the building into the buffer was reduced from 4,362 square feet (about 18.2% of the building) to 2,494 square feet (10.8% of the building). One third of the back of the building is within the 28.5-foot pinch point to the wetlands, and other 2/3 of the building are 35-50 feet from them.

The Board had asked if the applicant could move this facility to one of their other properties, but it is not possible because the other buildings LSNE has are currently under separate contracts and performing other functions and they cannot squeeze more within those other buildings. The building under construction on Harvey Road is targeted for specific functions and this could not fit within that; so, relocating to one of their other facilities is not an alternative.

The existing two units on this site are in full operation and could not shut down in order to move this addition elsewhere.

The Board had suggested going around either end of the building and Mr. Kevan said they explored that option but doing so would have a direct impact to 500 square feet of wetlands in order to have their trucks circulating in and out of that area. The New Hampshire Wetlands Board would not allow that. They do not have a buffer as the Town of Bedford does, and their first criteria is to avoid wetland impact, so this is not an alternative Mr. Kevan thinks they would support.

When the facility was built in 1999 there was a little basin and treatment swale in the back of the building which was part of the original alteration of terrain permit. If they were to try and swing the addition around the back side of the building they would have to fill in the basin and the treatment swale in order to accommodate a truck coming around through that side. One of the primary functions of a buffer is to provide stormwater treatment and filtration, so they feel this swale basin is important, and because it is so well-established something else would not function as well as what is out there today. That is why the two options suggested by the Board are not really viable.

In talking with Planning Staff, one of the other things they suggested was to plant the disturbed area with wetlands buffer or bordering vegetation; so, in the landscape plan they've called for a variety of typical vegetation that would go in adjacent to the wetlands and provide some additional screening and stormwater treatment as far as filtration goes.

They've also added a leaching catch basin where the roof runoff would be discharged into a leaching structure. They've also called for the building to be surrounded by a manufactured soil which is a combination of sand, wood chips and some other material that is considered a good filtration. It will force the roof runoff to infiltrate through this material and out to the wetlands, providing additional treatment.

Mr. Kevan showed the Board on the plans where the restrictions on the property (the wetlands in the back) are located, as well as the basin and treatment swale that was constructed in 1999. There is also a swale located in the front of the building for treatment. It carries stormwater and treats it. The town also normally looks for a landscaped strip across the front of a building, and there is one located in the 30-feet in front of the building.

Hearing the Board's concerns, they pulled the building forward and shrunk it down some without hurting the operation too much and think this is the best option.

Mr. Kevan opened the floor for any questions the Board might have.

Q: Mr. Casale thanked them for looking at all the alternatives and explaining what they have proposed. Just to rule out any other possibilities, he asked why the building cannot be moved any further south to get the addition further from the wetlands. And secondly, the applicants were told a swale needed to be created in the back of the building by Environmental Services (as part of the permit), so could that even be changed?

A: Mr. Kevan said they would have to go back and get amended approval for that and bring the site up to current standards and go through some hoops. They are unable to move the building any further south because the front edge of the existing pavement would be too close to the front swale and they are currently at the limit for employee parking and cannot lose any parking space. The building has been moved south as much as possible to allow trucks being able to get around it on the road to the side of the building and not impact the passage of stormwater on the side of the building. The process being undertaken inside the building is very linear in nature and moving it any further would disrupt functioning. Mr. Kevan said that because they've moved the building forward and eliminating some pavement, they've reduced the impervious coverage by 1,300 square feet.

Chairman Morin opened the floor for any comments from the public.

William Carter of 100 New Boston Road was here for the last Zoning Board of Adjustment

meeting on February 18th and wanted to commend the applicant for listening to the Board's concerns. Mr. Carter's concern is to make sure that the water off the building was being filtered before it went into the wetland area, and he feels the applicant has stepped up and pulled it further away.

Mr. Kevan went over the criteria at the prior meeting on February 18th, so the Board made a motion to move into deliberations.

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

1. Granting the variance would not be contrary to the public interest because:

(1) Whether granting the variance would alter the essential character of the locality:

Chairman Morin does not see it changing the locality, as it is a commercial area anyway. Ms. Stirling also did not see a problem with that.

(2) Whether granting the variance would threaten public health, safety or welfare:

Ms. Stirling said there was no evidence of that.

2. The spirit of the ordinance is observed because:

Chairman Morin thinks with what the Board asked last month, the applicant has come back with excellent changes. Moving the building and the extra vegetation that they are going to put in goes to the spirit of the ordinance. Mr. Casale added that the treatment from the roof also observes the spirit of the ordinance.

3. Granting the variance would do substantial justice because:

Mr. Duhaime said it allows them to build a third building and a third line for their business. Chairman Morin said it allows them to maintain some type of setback too.

4. The values of the surrounding properties will not be diminished for the following reasons:

Ms. Stirling said there was no evidence of 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 because:

Chairman Morin said it is unique how it has been built out over phases. Ms. Elmer said when they first came for their application we noted it as an 8.3-foot setback from the edge of the wetland because that was the closest pinch point. They've now slid the building so that it is 28.4-feet which now means that the setback on the west side is now the shortest setback (25.8-feet), so please clarify that when making motions so that people don't think they got away with something when people look at this record in the years to come.

(A) Denial of the variance would result in unnecessary hardship because

(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 because:

Chairman Morin said it is kind of tight, but the applicant has worked with the Zoning Board very well to fit it in and give extra filtration.

(ii) The proposed use is a reasonable one because:

Chairman Morin said it is reasonable to expand your business.

MOTION by Mr. Casale that the Zoning Board of Adjustment approve a request for a variance from Article IV, Section 275-28 to build an addition 25.8-feet to the west from Phase 3 and 28.4-feet to the north of that same building from the edge of a wetland where 50-feet is required at 7 Commerce Park Dr., lot 24-99-4, Zoned PZ as presented by the applicant and per our deliberations. Ms. Stirling duly seconded the motion. Vote taken - all in favor (5-0). Motion carried.

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

2. Jacqueline B. Finer – Request for a variance from Article III, Section 275-22.A & Table 1 in order to construct a residential addition 28.7 feet from the front property line where 35 feet is required at 24 Constance St., Lot 42-60-14, Zoned GR.

Jacqueline Finer introduced herself. She has been living in Bedford for 13 years. She reviewed a photo of her property with the Zoning Board. There is currently a space between her house and the garage. She is proposing to bump her house out into that space by another 10-11 feet in order to expand her kitchen and create a further structure on her owned property.

Ms. Finer reviewed the criteria for the variance:

1. Granting the variance would not be contrary to the public interest because:

(1) Whether granting the variance would alter the essential character of the locality:

Ms. Finer stated that granting the variance would not be contrary to the public interest because the 11x23 future kitchen will not alter the character of the locality and will be constructed in a quality and tasteful manner in line with the existing character.

(2) Whether granting the variance would threaten public health, safety or welfare:

Ms. Finer said there are no conditions in the proposed future kitchen that would be a threat to public health, safety or welfare.

2. The spirit of the ordinance is observed because:

Ms. Finer said the spirit of the ordinance is observed because the existing home is located in the general residence district. The neighborhood was established in the 1950's. The proposed future kitchen will be harmonious with the intent and character of the general residence area. The future kitchen will not encroach on any neighboring property. She referred to the yellow rectangle on the plans to indicated where the future kitchen would be located.

3. Granting the variance would do substantial justice because:

Ms. Finer said granting the variance would do substantial justice because due to the nature of the GR district which was created in the 50's a variance would be required to improve property in any capacity; thus, granting the variance would be required to improve the property adding value to the entire neighborhood.

4. The values of the surrounding properties will not be diminished for the following reasons:

Ms. Finer said the values of the surrounding properties will not be diminished for the following reasons: The proposed 11x23 kitchen will be tasteful; it will improve quality; and is harmonious with the existing neighborhood. It will not encroach further to any lot line that already exists, and due to the harmonious and careful attention to detail, the values of the surrounding properties will be positively affected.

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 because:

Ms. Finer said 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 because the subject is located in the GR district with the rules and regulations created in the 50's. The hardship exists that since the existing property already encroaches beyond the setbacks a variance would be required to make any improvements to the house; thus, creating a hardship situation, and due to hardship the variance is the only option for Ms. Finer to improve her home.

(A) Denial of the variance would result in unnecessary hardship because

- (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 because:**

Ms. Finer said the minor impact of an 11x23 future kitchen would not create hardship. The additional future kitchen space sits between two owned properties (Ms. Finer's house and garage). Through verbal communication directly with her neighbors, they've expressed support of the project.

- (ii) The proposed use is a reasonable one because:**

Ms. Finer said the use is residential in nature and improves the value of the neighboring properties. Care and discretion will be used to create a quality improvement and keep within the existing character of the neighborhood

(B) If the criteria in subparagraph (A) above are not established, explain why the property cannot be used in strict conformance with the ordinance and why a variance is therefore necessary to enable a reasonable use of it:

Ms. Finer said a pre-existing non-conforming hardship exists. The lot is really small; therefore, it would be very difficult to improve this structure without a variance. It is impossible to improve the structure without the variance.

Chairman Morin opened the floor for comments or questions from the Board. Ms. Stirling indicated that she does not have a problem with this. She thinks the lot's limitations justify the accommodation in this matter and it's not egregious in her mind.

Chairman Morin opened the floor for comments from the public. There were none.

He asked if there was anything else that Ms. Finer would like to add before the Board goes into deliberations. She added that her house is the last on the street that has not added on to the property yet, so all other variances have been approved on the street. Chairman Morin indicated that he remembers quite a few of them.

MOTION by Mr. Gilbert to move into deliberations on this variance 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 because:

- (1) Whether granting the variance would alter the essential character of the locality:**

Chairman Morin does not see it doing that at all here. It's going to be between the house and the garage and is not going to affect anything.

- (2) Whether granting the variance would threaten public health, safety or welfare:**

Chairman Morin said there was no evidence of that. Ms. Stirling agreed.

2. The spirit of the ordinance is observed because:

Chairman Morin said, as Ms. Stirling mentioned, these are all small lots and everything was built well before a lot of the zoning came out and there is barely enough room to put a footprint on the lot if you start anew. Ms. Stirling said the balancing act between use of personal property and the strict conformance to the ordinance doesn't make sense in this case. Chairman Morin agreed.

3. Granting the variance would do substantial justice because:

Chairman Morin indicated it would, and it would help them to build an addition.

4. The values of the surrounding properties will not be diminished for the following reasons:

Mr. Casale said, if anything, it would improve it. Chairman Morin agreed.

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 because:

Chairman Morin said this is a very old sectioned development where everything is very small, so to be able to meet those standards would be very difficult and it is good that they have put the addition right in the middle of the property which gets it away from the sides of the property.

(A) Denial of the variance would result in unnecessary hardship because

(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 because:

Chairman Morin agreed.

(ii) The proposed use is a reasonable one because:

Chairman Morin said the proposed use is reasonable.

(B) If the criteria in subparagraph (A) above are not established, explain why the property cannot be used in strict conformance with the ordinance and why a variance is therefore necessary to enable a reasonable use of it:

Chairman Morin said the memo Ms. Elmer put out addressed some areas that would need some conditions put on this approval, so please remember that when making a motion.

- 3. MOTION by Mr. Duhaime that the Zoning Board of Adjustment approve the application from Jacqueline Finer on her request for a variance from Article III, Section 275-22.A & Table 1 in order to construct a residential addition 28.7 feet from the front property line where 35 feet is required at 24 Constance St., Lot 42-60-14, Zoned GR with the following condition: That the building permit not be issued until the applicant successfully make a ZBA application for the deck off the rear of the house, the deck by the pool, and the screen porch off the garage per our deliberations. Ms. Stirling duly seconded the motion. Vote taken - all in favor (5-0). 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.

Ms. Elmer will call Ms. Finer in regard to the other things that she needs to do; but it will not slow down the building permit.

Ms. Finer thanked the members of the Zoning Board for coming in at this time (Covid-19 pandemic). She knows it is unprecedented, and appreciates all of them coming in

3. New Business

The next meeting will take place on April 21, 2020.

4. Adjournment

Motion by Mr. Gilbert to adjourn the meeting at 7:35 p.m. Ms. Stirling duly seconded the motion. Vote taken – all in favor. Motion carried.

Respectfully submitted,
Tiffany Lewis