

**TOWN OF BEDFORD**  
**April 17, 2018**  
**ZONING BOARD OF ADJUSTMENT**  
**MINUTES**

A regular meeting of the Bedford Zoning Board of Adjustment was held on Tuesday, April 17, 2018 at 7:00 PM in the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: John Morin (Chairman), Melissa Stevens, Sharon Stirling, Gigi Georges, Kevin Duhaime, Len Green (Alternate), Neal Casale (Alternate), Dave Gilbert (Alternate), and Karin Elmer (Planner I)

Chairman Morin called the meeting to order at 7:00 p.m. and introduced members of the Board. All members were present. Those voting tonight will be all the regular members.

**Approval of Minutes:**

**MOTION by Mr. Casale to approve the minutes of the March 20, 2018 meeting of the Zoning Board of Adjustment as submitted. Mr. Green duly seconded the motion. Vote taken; motion carried, with Ms. Georges and Mr. Gilbert abstaining.**

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

**Motions for Rehearing:**

- 1. Request for rehearing for the denial of a request for a variance for 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 Rd., Lot 2-14, Zoned R&A.**

Chairman Morin stated there is no public input for this request for rehearing.

Chairman Morin stated after going through the applicant's request I noted that he had three points. The first was that he talked about selective enforcement, that type of thing. Going through the notes I noticed different people on this Board said to him three different times during this application that each application is judged on its own merits. We don't set precedent when we deal with one case or multiple cases for the same thing. Each case is dealt with separately. We put that out there; it was very straightforward that that's how we do things. The second point is where he talks about that it is not feasible to do any work to his driveway. First, that is the only access that he has by the Town for utilizing his property, so he has to utilize his driveway. Even

though there might be powerlines that go under there for a couple of houses doesn't mean it can't be worked on. They work on those things all of the time, so I don't see that as anything new. His third point he talks about is possibly utilizing a different area for a shed or barn, whatever he was looking to do. That still doesn't take away from what we were dealing with. No matter what is there, we did look at what he was going to utilize for shielding and it just doesn't work, especially at that property. It is so wide open it would just sit right out there. Those are my thoughts.

Mr. Casale stated I would just add in regard to the driveway that this is not something that came up after-the-fact when he purchased the house. He purchased the house, had the RV prior in another location in Bedford, bought the house knowing that the driveway was configured a certain way, he owned the motorhome prior to purchasing the home, so I believe a lot of the onerous is on him for not investigating that and vetting it basically.

Ms. Stirling stated I would like to add that he talks about not being able to drive the vehicle over a leach field, which I think I might have directed him towards going up the side. There is really no engineering report that he provided or even just a specialist for septic and leach fields to give us some sort of corroborating evidence that that's contraindicated. Again, it is really hard with a rehearing because we are looking for new facts and it seemed to me that if he couldn't get the driveway dug up because of powerlines or the leach field issue, that we would have had some testimony/evidence of that submitted with the rehearing request. As sort of a sidebar though, I was not here for the referenced July and August variances that were approved. I was here for Wiggins Road, which was approved, but I actually dissented. It is kind of one of those things where I would just like the Board to take into consideration that nothing we do sets precedent, you are absolutely right, which is why I am a strict constructionist when it comes to these issues because I think it does have the perception of willy nilly. I put it out there. I am not going to be on this Board forever, but it is the same thing with signs. I am always saying people want bigger signs, well then everybody else is going to want to have a bigger sign, so, again, that Wiggin Road property stood out to me because I was opposed to that and it went through. With that being said, just as a sidebar, but not really relevant to this particular rehearing application.

Chairman Morin stated it is funny too because looking at the third piece where he talks about a barn or whatever, he does talk about that with that turnaround where that barn would be he would be able to back the RV up to the park behind the house. So he even states that he can do that if a certain thing happens or whatever. Again, that wasn't part of our discussions two months ago when he was here. Ms. Stirling stated exactly. Mr. Green stated it seems that with due diligence he or whoever searched the title or the Bedford rules it should have been brought up to the potential buyer as you have this problem and I think he went ahead and then hoped that the Zoning Board would grant what he wanted. I think that is presumptuous. Chairman Morin responded or he didn't think about it. Mr. Green stated that is what I said doing due diligence, because due diligence would have said I want to put this in front, is this permitted. It is not like in a case where somebody had it there for 20-odd-years and then somebody made a

complaint and say it has been there for 20 years, we aren't going to change what is happening.

Mr. Casale stated not that it changes anything anyway, but he did add about bringing the RV behind the home but yet at the time of the hearing he had said that that wasn't acceptable to him because it wouldn't allow room for his kids to play back there, that they would have to go to the front of the yard and/or the driveway, which he didn't like that as well. Again, not that it changes anything much.

Chairman Morin asked for further comments from the Board. I would ask for a motion; it sounds like we are pretty much all in the same thought wave. There were none.

**MOTION by Mr. Duhaime that the Zoning Board of Adjustment deny the request for rehearing for the denial of a request for a variance for 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, per our deliberations with the following reasons:**

1. Referencing the requirement for using the second curb cut, which was supposed to be removed;
2. We felt there was insufficient screening from the shed; and
3. There was no new evidence that was submitted for this request, particularly relevant to problematic engineering technicalities unique to this property.

**Ms. Stirling duly seconded the motion. Vote taken - all in favor. Motion carried.**

### **Applications:**

2. **Lyophilization Services of N.E., Inc. – Request for a variance from Article IV, Section 275-28 to fill approximately 6,461 square feet of wetland resulting in a new setback of 43.35 feet where 50 feet is required for the expansion of the current building at 7 Commerce Park Dr., Lot 24-99-4, Zoned PZ.**

Chris Rice from T. F. Moran was present to review this request for a variance on behalf of the applicant.

Mr. Rice stated we have submitted a variance application from Article IV, Section 275-28 of the Town of Bedford Zoning Ordinance to permit the filling of 6,461 square feet of jurisdictional wetlands. They are manmade wetlands with low functions and values according to our certified wetland scientist. The plan that is posted on the screen and basically everything that is shown for the site to be constructed, the building and the pavement, was all approved back in 1999 I believe as a phased project in three phases. The right-hand portion of the building as shown was constructed in 1999, and then they did some of the earth prep work for Phase 2 to get it ready and when they came to do Phase 2, some wetlands had showed up on the property from some of the earthwork

activities that had happened during Phase 1. Then for Phase 3 it required the wetlands permit, which is the crosshatched blue area, and there was one little piece that I didn't crosshatch on the posted plan but I highlighted on the plans I handed out to you, where there is a little 100 square foot piece, as shown. The total is around 2,000 square feet in 2006 that was approved to be filled for the Phase 3 portion of the project. Then they built Phase 2 and then they came forward about six months ago to build Phase 3 and essentially the same thing that happened between Phase 1 and 2 happened between Phase 2 and 3 where the wetlands had kind of encroached more onto the property due to the earthwork activities that had happened on our site and the adjacent property. So when you look at the current wetlands today, this is what is out there now and you can see that the wetlands have encroached into the building footprint and the parking area. Again, everything that is on the plan is per the prior approval. We haven't changed anything obviously other than the amount of wetlands impact. On the narrative that I had initially submitted with the application it did list 6,581 square feet, but as we worked with DES on it during the permitting process, we were able to reduce that by about 100 square feet by doing some minor grading tweaks to the plan.

Mr. Rice stated we did present to the Conservation Commission on March 27<sup>th</sup> of this year and we did receive a favorable recommendation, and we have received our DES permit, which we received on March 30<sup>th</sup>, which staff has a copy of that.

Mr. Rice 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:** It will not alter the essential character of the locality. The affected wetlands were artificially created by prior approved earth moving activities. The variance request is to permit the construction of the previously approved site plan, which was originally approved in 1999. **(2) Whether granting the variance would threaten public health, safety and welfare:** Granting the variance does not threaten the public health, safety or welfare. The impact to the wetlands are limited and will not alter existing drainage courses, therefore, there will be no negative impact to the public. The functions lost through the filling of the wetlands will be managed and maintained through the stormwater management system as reviewed with DES. **2. The spirit of the ordinance is observed:** Granting the variance will not contribute to pollution as the site contains approved facilities for stormwater treatment and the areas of proposed impact do not provide any significant flood storage or flood protection. In addition, these wetland areas were not present when the plans were initially approved and it appears that these wetlands are manmade with low functions and values. Therefore the areas of proposed impact are not unique or natural areas and they do not appear to provide any significant fish and wildlife habitat, there will be no expense to the Town as a result of granting the variance and there is no aesthetic value to these proposed impact areas. **3. Granting the variance would do substantial justice:** Substantial justice is done when loss to the applicant of denying the variance would exceed any gain to the general public by strictly enforcing the ordinances requirements. In this case denial of the variance would not result in any gain for the public, it in fact would be a loss to the public as it would prevent a portion of the previously approved site plan from being construction, which

would have adverse impacts on taxes, available jobs in the community, etc. Also, it does allow the applicant to construct what was previously approved by in 1999. **4. The values of the surrounding properties will not be diminished for the following reasons:** If the variance is granted, again, because the variance will not substantially alter the character of the property, the plan was originally approved to be constructed in three phases and granting the variance allows the applicant to construct the previously approved plan. In addition, the property is located in the Performance Zoning district and is surrounded by other commercial properties, and construction of the previously approved Phase 3 portion of the building and loading will not diminish surrounding property 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:** It would prohibit the applicant from constructing the previously approved plan, the special condition of the property is basically that it was previously approved to be constructed in three phases, the wetlands that we are seeking to fill are manmade, they were created by activities associated with the Phase 1 and Phase 2 construction of the property, as well as adjacent site activities. There has been no change to the building and parking layout from the prior approved plan, and the proposed wetland impacts are purely the result of the manmade wetlands created by the prior phases of construction. **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:** None of the public purposes of the wetland protection are served by the filling of these manmade wetlands. The previously approved Phase 3 portion of the project cannot be constructed without obtaining a variance at this time given how the wetlands have encroached onto the property. **ii. The proposed use is a reasonable one:** Similarly, the manmade wetland areas are low quality, they have limited functions and values, and, again, it allows the applicant to construct the previously approved plan.

Mr. Rice stated I appreciate your consideration in this matter, and I would be happy to answer any questions you may have. There were none.

Chairman Morin stated there are no members of the public present to speak regarding this variance application.

Mr. Casale asked is it ordinary to not have any letters from DES attesting to what T. F. Moran is saying? Ms. Elmer replied yes.

**MOTION by Ms. Stirling to move into deliberations on this variance application. Ms. Georges 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 don't see any change to this commercial area for what they are looking to do. **(2) Whether granting the variance would threaten public health, safety and**

**welfare:** Mr. Green stated it doesn't appear that way. **2. The spirit of the ordinance is observed:** Ms. Stirling stated certainly the spirit is observed because it is being sanctioned by both our own Conservation Commission as well as New Hampshire DES. **3. Granting the variance would do substantial justice:** Chairman Morin stated it is really not a negative issue to the public going forward with this. Again, it is strictly a commercial area, it has happened due to past construction, and this has been a plan that has been around and approved for a long time. It doesn't seem like it is going to make a difference on this specific issue. Ms. Stirling stated I agree. **4. The values of the surrounding properties will not be diminished for the following reasons:** Mr. Green stated we have no evidence. Chairman Morin stated we haven't heard anything on this. **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 a full plan that was approved in phase form since 1999, the way these wetlands were created wasn't a natural creation, it was due to work that was done on the property, it definitely gives it those hardship type issues when it comes to that. **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:** Mr. Green asked is it a fairly common occurrence that when you are digging near wetlands that you may create new wetlands just as part of the normal construction? Ms. Elmer replied not necessarily. It has to do with other things. Changing the drainage on a property and because there has been a lot of new construction in this area over the years, in little nuances here and there. Ms. Stevens stated too that it was low functioning as well. We are not looking at a wetland that has any real significance. **ii. The proposed use is a reasonable one:** Ms. Stirling stated it is reasonable. Chairman Morin stated it is very reasonable to be able to finish their project and get this one building done.

**MOTION by Ms. Georges that the Zoning Board of Adjustment approve the request for a variance submitted by Lyophilization Services of N.E., Inc. from Article IV, Section 275-28 to fill approximately 6,461 square feet of wetland resulting in a new setback of 43.35 feet where 50 feet is required for the expansion of the current building at 7 Commerce Park Drive, Lot 24-99-4, Zoned PZ for the reason that it has met all of the criteria for a variance per 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 variance application. Mr. Duhaime duly seconded the motion. Vote taken – all in favor. Motion carried.**

### **Election of Officers:**

Chairman Morin stated I did say last month that I will stay on as Chairman of the Zoning Board of Adjustment for the next year, unless someone else is interested.

**MOTION by Mr. Green to nominate John Morin as Chairman of the Zoning Board of Adjustment for the 2018 – 2019 term. Ms. Stirling duly seconded the motion. Vote taken; motion carried, with Chairman Morin abstaining.**

**MOTION by Ms. Stirling to nominate Gigi Georges as Vice Chairman of the Zoning Board of Adjustment for the 2018 – 2019 term. Ms. Stevens duly seconded the motion. Vote taken; motion carried, with Ms. Georges abstaining.**

**Old Business:** None

**New Business:** None

**Adjournment:**

**Motion by Ms. Stirling to adjourn the meeting at 7:27 p.m. Ms. Stevens duly seconded the motion. Vote taken – all in favor. Motion carried.**

Respectfully submitted by  
Valerie J. Emmons