

Town of Bedford
Zoning Board of Adjustment Minutes
April 18, 2023

A regular meeting of the Bedford Zoning Board was held on Tuesday, April 18, 2023, at the Town Meeting Room at BCTV, at 10 Meetinghouse Road. Present were Neal Casale (Vice Chair), Sue Thomas (alternate member), Len Green (regular member), Dave Gilbert (regular member), Kathleen Ports (Associate Planner). Absent were John Morin (Chair), Bob MacPherson (alternate member), Alex Kellermann (regular member).

I. Call to Order and Roll Call

Vice Chair Neal Casale called the meeting to order at 6:59 pm, introduced members of the Board, and appointed Ms. Thomas to vote this evening.

II. Approval of Minutes: March 21, 2023.

MOTION to approve minutes for the March 21, 2023 meeting was made by Mr. Green. Mr. Gilbert duly seconded the motion. Ms. Thomas abstained from the vote. Vote was taken - all in favor. Motion carries, minutes are approved.

Rules of Procedure: Vice Chair Casale stated the following: Please silence all cell phones. We will have a presentation from each applicant. There is only one this evening. They'll introduce themselves to the Board and present their application, including the five criteria necessary for a variance. Board members may then ask questions of the applicant. We will have public input after with those in favor, and then those opposed to the variance giving comments or asking questions directly to the Board. If you do speak, we ask that you give your name and address first. I ask that there be no debate between the parties. After public input for or in opposition of the variance, we'll give the applicant a chance for rebuttal and summation. All applicants will be heard in the order of notice. The Board will go into nonpublic input to deliberate and vote after each application. You can wait for the vote tonight or you can call the Planning Office after 8:30 tomorrow morning, finding the result. If we do take a recess, we will by vote. I don't anticipate we'll go beyond ten. Regarding rehearings, any party has 30 days to request a rehearing from a decision of the Zoning Board of Adjustment. The Board has 30 days in which to respond to such requests, per RSA 677:3, tomorrow being day one. All requests must be in writing and must contain new evidence. Please point out any errors you believe the Board made in its decision. Regarding the criteria for granting a variance, concerning the variances that we have in front of the Board this evening, I will not go through the five criteria at this time. We're going to ask each applicant to go through their application and address criteria as part of their presentation. That way we have it recorded. For a motion to pass this evening, there must be 3 affirmative votes. Now there are only 4 Board members. My understanding is that the one applicant that's here this evening, and I'll have to wait to get the affirmation from you when you come up to the desk, but there are only 4 members that are voting this evening. I'm going to ask anybody that wishes to speak this evening, that they stand and get sworn in. Honorable Council is exempt. If you're on the fence about speaking, please stand so that I

can swear you in. If you do have some comments or questions, we'd prefer that you sworn in now so we don't interrupt the meeting. So if you could raise your right hand, do you swear or affirm that the testimony you're about to give in these hearings will be the truth, the whole truth, and nothing but the truth? OK.

The first item on the agenda is a continued hearing, Gerard Dumas Family Trust and Pauline Dumas Revocable Trust. That has been postponed to the May 16th ZBA meeting per the applicant's request.

III. Old Business & Continued Hearings:

1. **Gerard J. Dumas Family Trust and Pauline L. Dumas Revocable Trust**– Request for a variance from Article III, Section 275-21B(3)(c) and Article V, Section 275-33B to allow an elderly housing development (55+) with a density of 54 units, designed as a Cluster Residential Development, where 14 units would be allowed in the R&A Zone, at 227 Wallace Road, County Road, and Bow Lane, Lots 20-26, 20-27, 20-28, 27-24, and 27-110, R&A and CO Zones. [Continued from the February 21, 2023 ZBA meeting.] **(This application has been postponed to the May 16, 2023 ZBA meeting per applicant request.)**

Vice Chair Casale said this evening we have one new item:

IV. New Business:

1. **Matthew Reed** – Request for a variance from Article IV, Section 275-28A to allow the construction of an in-ground pool 41.4 feet from the edge of a wetland where 50 feet is required at 48 Spring Hill Drive, Lot 14-75-14, Zoned R&A.

Vice Chair Casale invited the first applicant to present his application.

Mr. George Chadwick of Bedford Design presented the application: Good evening. Thank you all for coming out tonight. I know we're the only application and we appreciate it. My name is George Chadwick. I'm with Bedford Design. I'm here representing the Reeds tonight. Also with me is Shelly Reed to help answer any questions the Board may have.

Vice Chair Casale said I'm sorry, before you get going, I just need to reiterate, and I know you spoke with the Planning Department about this and you're OK with it. I just need it on record that there are only four voting members, so you have to understand that if there are two, let's say two that don't agree with whatever the motion is, then it would not carry. It could obviously be a detriment to you, where a variance may not pass if you have two Board members against it. So you're aware of that? Mr. Chadwick replied we are. Vice Chair Casale added in a tie, in other words. Ms. Reed said we agree, yes. Vice Chair Casale said OK, so you may proceed. Thank you.

Mr. Chadwick said, sure. Again, my name is George Chadwick. Tonight we are looking at a piece of property on Spring Hill Road. The Reeds would like to construct a saltwater pool out behind their home. The plan that you've got in front of you, Spring Hill Road, is on the top of the sheet. You can see their driveway going down to the existing home with a pool located depending on where you're looking, 8 to 10 feet off the rear of the house. So, it is very close to the back of the house already. If you look at the building setback line—and that's the dashed line that runs around the parcel—within that setback line is

about 1/2 acre of land. Although the parcel is almost 2.88 acres in size, only 1/2 of an acre of it is usable within the structure setbacks. As I stated, it's a saltwater pool. We're looking for a variance from Section 275-28A which requires that all structures, including pools, are located 50 feet away from hydric AmB soils. Just real quickly, as you can see, the shape of the building setback is sort of in a triangular shape and we've done the best we can to tuck the pool behind the house and up as close to the existing home as possible. There will be a fence around the pool, a 4-foot deck or patio around the edge of pool, just to be able to get out of the pool and work back toward the house, and a fence that's located 36.5 feet. Now my understanding is the pool is considered the structure, not the fence. So, we're asking for a variance for 41.4 feet from the permitted wetlands. If you'd like, I can read right out of the application the five criteria.

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:

Granting the variance would not be contrary to the public interest, because the installation of a saltwater pool will not contribute to the pollution or surface or groundwater. No additional tree removal is necessary for the installation of the pool.

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

The pool will be a saltwater pool which needs not to be backwashed. Therefore, there will be no chemicals being discharged during the cleaning process within the buffer or directed toward the wetland, like other chlorine-type pools. The pool will not cause any additional expense to the Town or essential services.

2. The spirit of the ordinance is observed because:

The spirit of the ordinance is observed because the area being disturbed for the pool is void of trees. The wetland buffer being impacted is not unique as stated in my introduction. I didn't read the introduction, sorry. The pool will not block any scenic view or disturb any wildlife habitat. The reduction of the wetland buffer will not create additional traffic or create a need for any additional municipal services, which is one of the main functions of the zoning ordinance. The addition of a saltwater pool will not contribute to the pollution or surface or groundwater. There will be no alteration of wetlands which provide flood protection or recharge of groundwater. The location of the pool will not alter the health, safety and welfare of the community.

3. Granting the variance would do substantial justice because:

Granting the variance would do substantial justice because the construction of the pool will allow the family to enjoy the backyard as they always have intended to. Loss of the family will surely outweigh the gain of the public by allowing the reduction of the wetland buffer that is currently void of vegetation and will not harm the adjacent wetlands. There would be an increase in property taxes available to Bedford.

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

The values of surrounding properties will not be diminished for the following reasons: The addition of a pool will not contribute to the pollution of surface or groundwater. No additional tree removal is

necessary, thus not affecting the scenic view of abutters or disturb wildlife habitat. The in-ground pool will increase the value of the home which will increase the value of the surrounding properties.

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:

(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:

The intent of the buffer is to allow natural buffering around wetlands, which would treat stormwater runoff. The buffer in question is currently cleared and being utilized as the family's backyard. The wetland buffer encumbers three sides of the parcel, with Riddle Brook being to the west, which we are greater than 200 feet away. This lot differs from other parcels in the immediate area, which have much larger usable area. As I stated before, this lot has about 1/2 an acre void of the setbacks. If you allow the variance, the pool will not decrease the ability of the yard to treat stormwater runoff.

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

The proposed use is a reasonable one because it will allow the Reed family to provide a means of recreation for their family. That is reasonable. That will not affect the environment, which is almost expected in Bedford.

(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:

Criteria not applicable, addressed in subparagraph (A).

Those are the five criteria. I think I would like to also mention that we did go in front of the Conservation Commission, and I believe in your packets is a favorable recommendation from the Conservation Commission for this particular application. With that, I'm here to answer any questions the Board may have.

Mr. Casale said the following questions are regarding the hardship. Reading in between the lines, it appears, but it hasn't been specifically stated whether there are any alternatives to requesting a variance, because it hasn't been stated other than there was a comment that you could not put the pool in the front or I think it was regarding that. And somebody had mentioned, I think in the Conservation Commission, that the septic is in the front. So other than that and that you're surrounded by wetlands and that you did state that you tried to hug it up as close you could to the pool, can you tell me specifically are there any alternatives? And the square footage of the pool—and I ask for the square footage because this not a standard square or rectangular, or rectangular mostly, pool. And there was mention of the 4-foot patio, but that it got bigger by the house. So can you address those questions please? Mr. Chadwick replied sure. You correctly stated that the septic is located in the front and that the pool has been pushed as tightly to the home as possible. As I stated earlier, where the chimney is, it's about 8 feet away. Where the stairs are to the pool, it's about 10 feet away—the stairs coming off the deck, the darker set of stairs. Vice Chair Casale asked could you repeat that again and maybe show

with the arrow, please? Mr. Chadwick said yes, sure. Vice Chair Casale said so basically one section of the patio is 8 feet from the house and then 10 feet from the stairway? Mr. Chadwick replied yes. The little bump out behind the back of the house, do you see where the ... Mr. Casale said it's to the right of the word desk? Mr. Chadwick said right. That's where the chimney is. In that area, the pool is 8 feet away from the house. Where the stairs, which are the dark area coming down off the deck, the pool is 10 feet away from the house. So what I've done is we've tried to push it up as close as reasonable to the back of the home. They're going to want a little bit of area to put some chairs and stuff like you typically would have around a pool. We originally had it further away from where it was shown, and after consultation with my client, they agreed to allow us to tuck it up closer to the home. It is a saltwater pool. Saltwater pools, I don't know if you know much about them, but when you think of a saltwater pool, it's not like Hampton Beach, the salt water in the ocean. It's a very diluted salt. That, from my perspective, is a more preferable type of bacteria treatment than a chlorine-based product where it needs to be back washed. Pools typically need to be backwashed and get rid of all the sediment that the filters collect. In this instance, it's a cartridge filter. So the cartridge is pulled out of the filter. It could be brought, and it will be brought out of the setback and washed and put back into the cartridge.

Vice Chair Casale replied OK. Do you know the square footage of the pool? And I ask because I won't say all the time, but usually we get dimensions of a pool, and because a lot of times they know we're going to ask about whether there are some alternatives. So just by saying, hey, there's a pool here and we have this 10 feet and this 8 feet. If this is like a 200 by 100 pool? I understand it's not, but there's nothing here about what the dimensions are, and if they're reasonable, given the fact that you're asking for a variance. Ms. Reed replied yes, I believe, I haven't looked at this in a while, but I think it's something like 16 by 32. And again, it's a little off because of the shape of the pool. It's more of a kidney. It's not a definitive rectangle or an exact circle. So like large end, long end to long end, wherever the furthest point would be, I believe is 32.

Mr. Casale replied OK. One last question—there seems to be some, we'll call it lack of knowledge and the fact that it's a saltwater pool. The saltwater pools, spas, actually create chlorine. So the Conservation Commission, and even in your notes, everybody's focusing on salt and the saltwater coming out of the pool. Actually a saltwater pool or a spa-it uses salt to generate chlorine. But the chlorine it generates is not as foreign to eyes and people's skin. So it's more comfortable. So now having that thought in mind, the fact that it is chlorinated water, and this wasn't dressed even if it was saltwater, what are you doing about winterizing, which, if you do it properly, does require that you have to take water out of the pool? Again, whether it's chlorine or salt, what's happening? Mr. Chadwick answered sure. We certainly will make sure that it's discharged away from the buffer, away from the wetland. I guess in hindsight, whether it's 41 feet or 50 feet, if the saltwater is directed toward the wetland, it's still the same, right? I mean, toward that area. We're talking about a setback for a buffer, right? I mean a structure setback. We will make sure that the chlorine or the saltwater would be directed away from the wetland, but I'm not sure that's really pertinent to the location of the pool. At least that's what the Conservation Commission said. There was one member that brought it up at the Conservation Commission and the majority of the Commission had said that we're here talking about the location of the structure and the buffer it's disturbing. Not the type of pool. Mr. Casale said OK. Thank you.

Ms. Reed said I just wanted to add that just like you pay and have water delivered to your home, you can pay these pool companies too to come in and take 2 feet of water in their big trucks. Do you know what I mean? Mr. Casale said I don't have knowledge of that. Someone on the Conservation Commission mentioned that that they do not take salt water. So, I don't know if that's true or not. And

again it's a little bit of salt, but it is chlorinated water which you can allow to dissipate before you drain it. Ms. Thomas said they don't have to be emptied all the way, though. Mr. Casale said no, but it has to be emptied a certain amount. Ms. Thomas added, which you would any pool. So a chlorinated pool would need to be. Mr. Casale said oh, absolutely. But of course this is closer to the wetlands. Ms. Thomas said if this was a chlorine pool, that issue is the same—whether it's a chlorinated pool or a saltwater pool. Mr. Casale said correct, right.

PUBLIC INPUT:

Mr. Giglio Dessanti of 51 Nathan Cutler Drive, Bedford, comments: Giglio Dessanti, 51 Nathan Cutler Drive, abutter, right behind. Given that I honestly didn't know it was a salt-based pool, one question that I have is where is the water going to be discharged? Vice Chair Casale said OK, so don't ask them directly. We can allow them to answer after. So is it just that one question? Do you have any comments, Sir? Mr. Dessanti said yes. So, that's one question because the terrain slopes down towards the wet area. One comment I have, and perhaps you guys who are very knowledgeable, this is my first time at the Zoning Board of Adjustment. I've been in Town for almost 40 years. So, I'm sure you guys are aware of this, but certainly 41.4 is the minimum setback to wetlands, but kind of south and west of that area, I think that's 41.6 based on what I can determine. So it's not just one portion. You guys probably are aware of that. The only other comment that I'll make is that this particular lot used to be in the order, and don't hold me to the to the number, but in the order of 7 acres or so. In other words, Tax Map 14 Lot 75-15 was part of this lot, I don't know 2, 3, 4, 5 years ago. Just a comment. Mr. Casale said OK, thank you very much Sir.

Vice Chair Casale asked do you wish a rebuttal answer to that question? Mr. Chadwick replied I think as I stated before, we're here talking about the setback and yes, the location of the discharge from the pool during closing, as the client had stated she can have it pumped and trucked off site if that is needed. I really wouldn't want that condition put on her if at all possible. We're talking a buffer—a buffer that's void of trees. The whole intent of the setback from a wetland is to treat the stormwater from the house and yes, from the pool. But we're talking less than 10 feet of relief. As far as the lot, I believe the lot was subdivided in 2011, and that's the reference that's on the plan—the subdivision that created this particular lot. I wasn't involved, nor my client was involved in the lot back then. Maybe that's why the house is located over the buffer setback, but it's an existing condition. I guess that's about all. Vice Chair Casale said OK. Can you address his point which is valid? And I meant to ask it and forgot. It appears to be more than one point you're about 41 feet away. So, is he correct that on the southwest corner you're also only about 41 feet from the wetlands? Mr. Chadwick replied yes, and we're asking for a variance to the 41.4 foot. I think the other one is 41.6, which is larger, so this is the minimum distance. Mr. Casale said OK. Thank you.

Ms. Ports said I'll just reiterate that the Conservation Commission did make a recommendation that they consider a berm or some sort of vegetated plantings in the event of the need for discharge or overflow. Ms. Reed said which we're happy to do. Vice Chair Casale said thank you. Any other questions from Board members before we go into nonpublic? There were no additional questions.

MOTION by Ms. Thomas to move to nonpublic input for deliberation. Mr. Green duly seconded the motion. Vote taken – all in favor. Unanimous. Motion carries.

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:

Mr. Green said it doesn't appear that. Mr. Gilbert said I don't see any evidence of that. Vice Chair Casale said no, I agree.

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

Mr. Gilbert said I don't see any evidence of that. Vice Chair Casale said no, and part of that is where Conservation Commission would come in, public health, and to me there's enough buffer to mitigate any issues with the wetlands.

2. The spirit of the ordinance is observed because:

Mr. Gilbert and Ms. Thomas said it is. Vice Chair Casale said I believe it is. The ordinance being protection of the wetlands and again with that buffer appears to be enough to mitigate it.

3. Granting the variance would do substantial justice because:

Vice Chair Casale said that's the scale—applicant versus the public. Ms. Thomas said I think their comments saying they'd be able to have a pool on their property are pertinent. Mr. Green said, and these things would be true whether it was a saltwater or chlorine pool. So really what the pool is—what water goes in there—is not a determinative issue. Ms. Thomas and Mr. Casale said yes, I agree. Mr. Gilbert said correct. Vice Chair Casale added and, again, as far as the substantial justice, it's not a regular lot. There's very little room for the pool. The Board agrees.

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

The Board agrees there is no evidence of 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 because:

Vice Chair Casale said as we say, there are wetlands on three sides.

(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:

Mr. Gilbert said like they say, the lot differs from other parcels in the immediate area and it's not going to decrease the ability to treat stormwater. Those things, to me, mean that it should be OK. Vice Chair Casale said the other thing I want to add to is that the wetland scientists identified the wetlands surrounding the home, at the edge at least, as not being of high value. So that adds into it.

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

Mr. Green said having a pool is reasonable. Vice Chair Casale added, and it won't alter the essential character of the neighborhood. Mr. Green said, I assume there are a lot of pools in that area. Vice Chair Casale said probably. There are a lot of pools in Bedford in general.

(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:

Criteria not applicable, addressed in subparagraph (A).

MOTION Mr. Gilbert moves that the Board grant the request for a variance from Article IV, Section 275-28A to permit the construction of an in-ground pool within 41.4 feet of the edge of a wetland where 50 feet is required at 48 Spring Hill Road, Lot 14-75-14, zoned R&A. The approval requires the incorporation of a berm or plantings to filter any pool water overflow based on the request by the Conservation Commission. The motion is supported by the following findings of facts:

1. The variance request satisfies all five criteria for granting relief from Zoning Ordinances.
2. The Board includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into this decision.

Ms. Thomas duly seconded the motion. Vote taken – All in favor – Unanimous. Motion Carries. The application is APPROVED.

MOTION by Ms. Thomas to go back into public input. Mr. Green duly seconded the motion. Vote taken – All in favor. Motion Carries.

Vice Chair Casale said OK, the variance was approved. Mr. Chadwick and Ms. Reed said thank you very much. We appreciate the Board's time. Ms. Reed said we appreciate it very much and appreciate your volunteerism with the Town. Vice Chair Casale said, well, thank you. Good luck with it. Is there anything from the Planning staff? There wasn't anything.

Vice Chair Casale said OK. Before we go, we need to publicly recognize Len Green. This is his last meeting. Len has been a member of the Zoning Board for approximately 8 or 9 years. We want to thank him for that. And I personally—I'm sure everybody here agrees—learned a lot from Len in my five years here, and he certainly brought a nice twist to the Board being a former judge. Which leads me to also thanking him for his over 20 years of being a judge, which is a very difficult job, and serving the public. So, Len, on behalf of the Board and the Town of Bedford, thank you very much for your service. Mr. Green said thank you for those kind words. And I just want to say it has been my honor and my pleasure to have served on this committee. And while most things are done unanimously, there have been times of disagreement. But more importantly, it has never been disagreeable, and I think that's something, unfortunately, in this day and age, that we forget. And, also, that there is a need for people to volunteer to serve on some of these. If people want to make sure that the Town thrives and develops, it requires input from its citizens and just letting somebody else do it doesn't cut it. And waiting for problems to happen is not the way to go. Be active. Be involved. Be part of the solution, not part of the problem. Vice Chair Casale replied well said, Len. Thank you very much, again, for your service.

V. Adjournment:

MOTION: Mr. Gilbert moves to adjourn the meeting. Ms. Thomas seconded the motion. Roll call vote was taken – ALL IN FAVOR. Motion carried.

Meeting adjourned at 7:38 pm.

The next meeting will take place on May 16, 2023.

Respectfully submitted,
Sue Forcier