

A

Town of Bedford
April 21, 2020
Zoning Board of Adjustment
Minutes

regular meeting of the Bedford Zoning Board of Adjustment (ZBA) was held on Tuesday, April 21, 2020 via the Zoom Meeting platform.

Present: John Morin (Chair), Kevin Duhaime (Vice Chair), Melissa Stevens, Len Green (alternate member), David Gilbert (alternate member), Neal Casale (alternate member), Karin Elmer (Planner 1), Becky Hebert (Planning Director)

Absent: Sharon Stirling

I. Call to Order and Roll Call

Chairman Morin called the meeting to order at 7:00 p.m. and introduced members of the Board. He appointed Len Green and Neal Casale as voting members this evening. In accordance with the right to know laws all members present were alone in their homes while on this Zoom call.

Ms. Elmer read a statement: Due to the Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Zoning Board of Adjustment is authorized to meet electronically. This meeting is being conducted using the Zoom platform. All members of the board have the ability to communicate with each other during the meeting and the public has access to listen and participate by dialing 929-205-6099 and entering the Meeting ID: 67119201 and the meeting password is: 714465. Instruction regarding remote access to the meeting have been published in advance and are available on the ZBA agenda which is posted on the town website. There is no physical location for this meeting tonight which is permissible to the Governor's emergency order. The Town of Bedford is providing public access to the Zoom Meeting by telephone and the meeting will also be broadcast live on BCTV's Channel 22. Members of the public may email staff at: planning@bedfordnh.org to ask questions during the meeting or notify us of technological issues. If you have joined the meeting using Zoom you may also ask questions when the Chair opens the hearing for public comment through the phone connection. All votes tonight will be taken as roll call votes. If there are technological issues during the meeting the Chair will recess the meeting and we will try to correct the problem. If the issues continue, the applications will be postponed and the meeting will be adjourned.

Ms. Elmer read the agenda for the evening.

Chairman Morin read the notice for rehearing: Any party has 30 days to request a rehearing from the decision of the ZBA. The Board has 30-days in which to respond to such request per RSA 677:3 (Tomorrow being Day 1). All requests must be in writing and must contain new evidence. Please point out any errors you believe the board has made in its decision.

Chairman Morin said this will serve as notice that those participating and may wish to speak that you are required to tell the truth, the whole truth, and nothing but the truth.

II. Approval of Minutes: March 17, 2020

MOTION by Mr. Casale to approve the minutes of the March 17, 2020 meeting of the Bedford Zoning Board of Adjustment as written. Mr. Duhaime duly seconded the motion. Vote taken - 2 abstentions: Ms. Stevens & Mr. Green, all others in favor. Motion carried 4-0.

III. Old Business & Continued Hearings: None

IV. New Business:

1. Michael Franzino – Request for a variance from Article III, Section 275-22.A & Table 1 in order to construct an addition 14.5 feet from the front property line where 35 feet is required at 115 Bedford Center Road, Lot 20-45, Zoned R&A.

Mr. Franzino introduced himself to the Board. He purchased his house in 2004, and the house was built in 1840. Mr. Franzino showed a plan of his property noting the frontage and that the house is located very close to the road. The current setback for the house is 10.5-feet, so he is not asking to encroach any further than the remaining house that is there.

He thanked Mark Connors, Ms. Elmer, Ms. Hebert, Wayne, and the Department of Public Works, and Jeanne and Emile in helping him through the process.

On the plans he noted a white section of the house labeled "to remain" is the section of the house that is going to stay. The slashed outline indicates the existing house overall. The shaded area is where the proposed addition would be. Mr. Franzino is not looking to extend the house any further backwards, and is not looking to extend the house any further to the left, but looking to bring it in. The Franzino's are not looking to encroach on the current setback of the house and the front of the house will be further in. The house was built in 1840 before zoning requirements existed. In looking at the building setback going around the property and the area of the house marked "to remain" - where the house ends is directly in line with the setback requirement. For him to be compliant with the zoning requirements the current house could come to the part that Mr. Franzino is re-doing (they do not line up). Overall he hopes the ZBA sees this as a good change to the property and Bedford. He will be removing the driveway in front of the house to the side. The front of the house will be grass with a stone wall. Drawings of the existing and proposed home were reviewed. With the proposed home more grass will be seen in the front as opposed to having a garage there as it exists now

Ms. Elmer reminded everyone that tonight, the zoning board is only looking for a variance to the setback. The Historic District Commission (HDC) will be reviewing all the architectural detail, so please try not to get hung up on roof lines and things of that nature because they are under HDC's purview.

Mr. Franzino reviewed the criteria for his application:

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

Mr. Franzino said granting the variance would not be contrary to the public interest because the house is non-conforming and we are looking to improve the current property and its value while maintaining the same style. We would demolish the current garage that does not meet current code and has some issues with it. We intend for the addition to match the character of the house and the neighborhood and are in the process of working with the Historic District Commission for their approval. We don't believe there would be any public health implications. We believe our neighbors would appreciate the renovation

2. The spirit of the ordinance is observed because:

Mr. Franzino said the spirit of the ordinance is observed because we believe these proposed changes will only enhance the property and the new structure will certainly be safer than the existing barn/garage. The height overage for the cupola will be minimal and will not diminish any neighboring views. It was a detail added to make the addition seem more like a barn and in line with the look of a historical farming community.

3. Granting the variance would do substantial justice because:

Mr. Franzino said granting the variance would do substantial justice because the property was built in 1840 before zoning ordinances and is non-conforming. It would allow us to improve the property, making it safer, and more useable and practical for our family. To comply with the zoning law the house would need to be moved since a 35-foot setback would not align with the current house.

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

Mr. Franzino said the values of the surrounding properties will not be diminished for the following reasons: We will be demolishing a non-conforming garage in poor condition with a new structurally sound and aesthetically pleasing addition. We intend for this project to increase the value of our home; and therefore, the surrounding neighbors.

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:

Mr. Franzino explained that the entire house is non-conforming. The new footprint will be fairly similar to the old one. Placing the addition in conformance with the 35-foot setback would require a disjointed addition and also setback issues in the rear of the house (which is also near the property line). We would like to maintain the rest of the house with yard, garden, and fruit trees and green space.

(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. Franzino said the house was built in 1840 before zoning ordinances and is non-conforming. The existing structure will be closer to the road than this addition (so we are actually setting this back so not encroaching on the setback already). Demolishing or moving the entire house and rebuilding elsewhere would probably be cost prohibitive. It's a very similar footprint to what is there currently but it doesn't move all the way to the left or move as far back as it is currently, and the front part does not encroach any closer to the road than the existing structure.

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

(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:

Mr. Franzino said he would be happy to answer any further questions the board may have. Ms. Elmer indicated that this board is not privy to all of the structural issues that you have in the house that the HDC was made aware of; so, she asked if Mr. Franzino would like to tell the board, very briefly, about those.

Mr. Franzino said the barn roof is sagging and he has a bunch of temporary support beams in there. We tried reinforcement. We had builders over but nobody would build on it and told them they would have to tear that part down. There is insect damage. The floors are not even close to being level in that section. Mr. Franzino totally renovated the right side where the red door is in photographs of the house. The middle side section where the four windows are was completely renovated with new windows and new insulation, all new electric, ductwork, and also includes a new well. The part where you see the front porch and two garage doors - that area is not buildable due to insect damage and the floors aren't really level and the whole roof is sagging. He is proposing tearing down the garage and the porch area and putting a complete foundation on the entire house because there are foundation issues and then rebuilding the section that he took down. He showed the drawing of the existing and proposed house and noted that half of the driveway right now is driveway and asphalt and rather than having it go to the front of the house it would go to the left, and the rock wall that you see would go perpendicular behind those garage doors.

Chairman Morin opened the floor for questions from the board.

Q: Mr. Duhaime asked if the relocation of the garage makes it safer to access the road? Will you have the ability to turn around and drive out, as opposed to having to back out?

A: "Yes, absolutely," Mr. Franzino answered. He noted the proposed grade change from existing grade which would be 505-feet vs. 510-feet, so rather than being on a steep incline coming down (thus avoiding sliding down in the winter with the ice) they will have the driveway come along the side and the grade will be more level, and it also will not be as short a driveway so they will be able to back up and turn around

Ms. Stevens, Mr. Green, Mr. Casale, and Mr. Gilbert indicated they had no further questions.

Chairman Morin asked if there was anyone from the public looking to testify. Ms. Elmer had none, and Ms. Hebert indicated that no emails were received during tonight's discussion.

Chairman Morin asked if any other paperwork was received on this. Ms. Elmer said she received no abutters letters.

Chairman Morin asked Mr. Franzino if there was anything else he wanted to say to the board. Mr. Franzino said that he loves living here, he moved here in 2004. The house has been great. They looked at moving to other locations in but found that renovating in this area would be better for their family. Their goal is to live here. His wife is having another baby in May and the goal is to live here for another 22-years and to raise 4 kids.

MOTION by Mr. Green to move into deliberations on this variance application. Mr. Casale duly seconded the motion. Vote taken – Chairman Morin, Mr. Duhaime, Ms. Stevens, Mr. Green, and Mr. Casale 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:

Ms. Stevens said that we did not receive any information that it would make any substantial change to the aesthetic of the neighborhood.

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

Mr. Duhaime does not think it will be a huge change and eliminating the short, steep driveway that would require backing into the public road would help safety overall.

2. The spirit of the ordinance is observed because:

Mr. Green doesn't think it violates the ordinance. The house was there when houses were close to the road, and this is basically improving a problem that was there. Ms. Stevens added that the house pre-dates the Zoning Board and he is keeping with what the setback is for the most part.

3. Granting the variance would do substantial justice because:

Chairman Morin said it is an old house that has been there for many, many years. They are going further back, and are not coming any closer to the road. That section of the house is in some hardship as in how old it is and falling apart. Chairman Morin thinks it would do substantial justice for this piece for this variance.

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

Mr. Green stated there's no evidence, nobody is here objecting and it seems the improvement will enhance the areas.

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 given the age of the house and that it has been this close to the road for many years - they are trying to better the property and make it more useable. He thinks it will help and that there is a hardship in that.

(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 this has been hit by all the items we've put in for this and talked about already in the other criteria

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

Chairman Morin finds what he is looking to do with the property very 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:

MOTION by Mr. Duhaime that the Zoning Board of Adjustment approve the application for Michael Franzino for his request for a variance from Article III, Section 275-22.A & Table 1 in order to construct an addition 14.5 feet from the front property line where 35 feet is required at 115 Bedford Center Road, Lot 20-45, Zoned R&A per our deliberations. Mr. Green duly seconded the motion. Vote taken - Chairman Morin, Mr. Duhaime, Ms. Stevens, Mr. Green, and Mr. Casale all in favor. Motion carried 5-0.

MOTION by Mr. Casale to move out of deliberations on this variance application. Ms. Stevens duly seconded the motion. Vote taken – Chairman Morin, Mr. Duhaime, Ms. Stevens, Mr. Green, and Mr. Casale all in favor. Motion carried 5-0.

2. Jeffrey Radin – Request for a variance from Article V, Section 275-43.F(2)a in order to construct a pool 25 feet from the edge of a property line and within the 50 foot non-disturbance buffer at 7 Pulpit Road, Lot 16-17-6, Zoned R&A.

Mr. Radin introduced himself to the board. He lives at 7 Pulpit Road and moved to Bedford in July; have a 6-year old and a 5-year old currently going to school in Bedford. The Radins love living here and are looking to add a pool in their backyard.

He reviewed the plans showing that the existing house is set back sort of in the middle of his property with some wetlands in the front. There is a 50-foot barrier maintained between the front of the house and the wetlands in the front. They would like to install the pool in the back right off the deck. It would be within 25-feet of the property line, and the 15-foot fence within 15-feet of the stone wall. The area where they are proposing to put the pool is already a cleared yard that the builder put in, so they are really not looking to encroach on any wetlands, cutting down trees affecting pretty much any way the lot currently looks.

He showed a photograph of the yard with a swing set and indicated the area where they would like to put the pool. Any of the neighbor's homes are all screened. The closest neighbor's home is 200-feet away and it is all screened in through wooded land between the Radins and them.

Mr. Radin 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:

Mr. Radin feels granting the variance is not contrary to the public interest because the lot is a 2.2-acre lot so it is greater than the 1-1/2-acre minimum lot size that is required for a conventional subdivision. He feels it does meet the 25-foot rear setback of a conventional lot. The pool would be located about 200-feet from the nearest home and the pool will not cause any additional expenses for the town for essential services or anything like that. The area being disturbed is devoid of trees, it's already been cleared, and it's not going to block any scenic view or disturb any wildlife habitat. It's not close to any wetlands that are in the front of the house. It won't contribute to any pollution of surface or groundwater.

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

Mr. Radin said the location of the pool will not alter the safety, welfare or health of the community due to the fact that it is going to be completely hidden behind the back of the home. He said they are really looking to enhance the ability to enjoy their backyard especially since this year we are unsure if the town pool will even be opened due to everything that is going on, so they are really trying to find ways to improve the use of the land they have.

2. The spirit of the ordinance is observed because:

Mr. Radin said the construction of the pool will allow the family to enjoy the backyard. The loss to the family outweighs the gain to the general public by allowing the reduction of this perimeter buffer. It is currently void of vegetation. There would be an increase in property taxes to the town and in general, it will also increase the value of the home, as well, and thus increase the value of homes in the neighborhood. A denial would result in unnecessary hardship because they feel there is no fair and substantial relationship that exists between the general public purpose of this ordinance provision and the specific application of that provision to the property in the sense that the purpose of the buffer is to screen homes that is created by cluster provision by the ordinance from lots created in a conventional subdivision, and as you can see, this isn't a conventional subdivision, and we are actually set back away from the rest of the subdivision. We are sort of on our own little island. The parcel is 2.2-acres in size which is greater than the 1.5-acre size that is required for a conventional lot. The buffer encompasses 3-sides of the parcel with a wetland on the 4th (which requires a 50-foot setback).

Mr. Radin reviewed a map of the subdivision (The Preserve at West Bedford). The homes across the street on Pulpit haven't been built yet, so the Radins are on their own little island. If you allow this variance the pool doesn't allow a decrease in the ability for the lot to be screened. We are not going to be taking down any trees. It's still fully surrounded by woods so it would still be completely screened.

3. Granting the variance would do substantial justice because:

Not addressed at this point in the meeting.

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

Not addressed at this point in the meeting.

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:

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

The Radins feel it is a reasonable request in order to provide them recreation capabilities

(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:

Not addressed at this point in the meeting.

Chairman Morin asked Ms. Elmer for a synopsis about the 50-foot setback when it comes to this type of development.

As stated in the Staff Report, Ms. Elmer said cluster subdivisions are designed to allow a developer some flexibility when they are developing a large piece of property. It gives them reduced lot sizes in exchange for providing open space. What happens in a lot of subdivisions (not necessarily this one) is that the lots are very small and concentrated so they require a buffer to go around the outside for the benefit of the surrounding neighborhoods which have standard lot sizes. It's a give and take: Smaller lots means that the developer doesn't have to spend as much money developing each lot, and in return they give the town the buffer that goes around the outside.

Q: Chairman Morin asked Mr. Radin if the stone wall in the back yard is the lot line.

A: Mr. Radin said it is the property line.

Q: Chairman Morin asked if the fence would be 15-feet from the property line and the pool will be 25-feet?

A: Mr. Radin said that is correct.

Chairman Morin opened the floor for questions from the board.

Mr. Duhaime had none.

Q: Ms. Stevens asked if there was any other spot on the property that was considered for the pool.

A: Mr. Radin said there was. The only other spot that fits within the 50-foot buffer is to the right of the house, but that is where their well is located. In order to place the pool there, they would have to move the well. The cost to move the well didn't necessarily justify putting the pool there because of the cost of completely moving the well and then having to re-dig everything. He also believes that they cannot put it within 5 or 10-feet of the well to begin with.

Mr. Green had no questions.

Q: Mr. Casale asked if Mr. Radin had moved in this past July.

A: Mr. Radin said that is correct.

Q: Mr. Casale said what's missing for him (amongst other things) is what size the pool and deck are.

A: Mr. Radin says there is a 4-foot concrete walkway deck around the pool, and the pool is 18x22.

Q: Mr. Casale asked if he was stating that there's a 4-foot walkway and the pool cannot fit where to the right side of the house at all?

A: Mr. Radin said they would have to dig up the well. The pipe from the well goes right underneath by the A/C unit. We tried to squeeze it in there, but it just wouldn't fit.

Q: Mr. Gilbert asked if the Conservation Commission has to go through this?

A: Ms. Elmer said it is not a wetland setback, it's a planning board buffer so the Conservation Commission does not have to review it.

Q: Mr. Duhaime asked Ms. Elmer if we are saying this property buffer, in theory, wouldn't have regular grass, or is grass acceptable?

A: Ms. Elmer says normally it has to be a non-disturbance buffer, in other words, when this subdivision went in because there have been issues from time to time with this type of development a few years ago, after this subdivision was approved, we required the developer to actually mark that 50-foot setback along everybody's property so they know it is a non-disturbance buffer - so the contractor doesn't go in with his bulldozers, there's no lawn put there (unless it's an open meadow to begin with). Normally the developers aren't allowed to touch trees or anything - it's a non-disturbance buffer. In this particular case, that requirement wasn't in effect yet, so it appears that when the builder built the original house he cleared all the way around the house without keeping that non-disturbance buffer.

In looking at the plan Chairman Morin stated the non-disturbance buffer looked like it would go right up to their deck. Mr. Radin said it does - Chairman Morin is exactly right. He was initially surprised that there was this 50-foot buffer because the whole yard had been cleared and was completely open to the stone wall.

Q: Chairman Morin asked Ms. Elmer if there were any other of these developments that have homes "on an island by themselves" as Mr. Radin is saying? The way this is set up is that there is a little circle at the top of the development with 3 lots and the rest of the development is way down the road.

A: Ms. Elmer thought this might be a good question for Ms. Hebert. Ms. Elmer is not aware of any other developments like that. Ms. Hebert said the preserve is a large cluster subdivision and these lots are separated from the main part of that development. She doesn't know of any other cluster developments that have this.

Q: Chairman Morin asked if the next house going past Mr. Radin's house is part of the preserve at all? If you look at the overhead Google picture it looks like there is a house built after this, but it looks like by the preserve map that house is not even part of the preserve.

A: Ms. Hebert said that is correct. It is not part of the preserve.

Q: Just to be clear, Mr. Casale said that on the map although it looks like there is nothing between his house and the main subdivision, as the applicant alluded to, basically that whole street from his house to the main subdivision there are a bunch of lots for sale right now.

A: Ms. Hebert said they were subdivided at a later date and they were subdivided under a conventional standard, so they are not part of the cluster.

Chairman Morin asked if there was anyone from the public on the phone or who had emailed concerning this application.

Ms. Hebert said she does not have any emails; but she has two people in our waiting room, and she is not sure if they are here for this application, or another one. She asked the person in the waiting room with a phone number ending in the digits 08451 to unmute themselves and state if they have comments on the application under review. They did not respond, so they may have been there for the next application. She asked the person trying to connect under the name "Owner" that their audio does not appear to be working and she suggested they hang up and retry the connection. There was no activity, so she moved them back in the waiting room and said they could email planning@bedfordnh.org if they have an issue or a reason to join the meeting.

Chairman Morin asked if Mr. Radin had anything else to present to the board.

Mr. Radin said that they moved here in July and they have a young family, so they are planning on living here for the next 25-years. They really enjoy Bedford and just want to add a little value to their home

Q: Chairman Morin asked Ms. Elmer if she had any additional documents that came in on this with the file?

A: Ms. Elmer stated she does not.

MOTION by Ms. Stevens to move into deliberations on this variance application. Mr. Green duly seconded the motion. Vote taken – Chairman Morin, Mr. Duhaime, Ms. Stevens, Mr. Green, Mr. Casale all in favor. Motion carried 5-0.

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 said in looking at this it does not seem that it will alter the essential character of the locality. The pool is behind the house and it doesn't appear that you'd be able to see it from the road. Mr. Green said it appears the buffer was clear cut before the ordinance apparently went into effect, so it's already there as clear cut disturbed so he doesn't see much difference between putting a pool or grass in. Ms. Elmer corrected Mr. Green's statement and said that it wasn't before the ordinance went into effect it was before the ordinance that required the marking of the buffer went into effect.

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

Ms. Stevens said we haven't seen anything to that effect. Chairman Morin agreed.

2. The spirit of the ordinance is observed because:

Chairman Morin said the spirit of the ordinance is due to this type of development a large untouched buffer to block areas because of the smaller lots. Personally, he sees this lot as being detached from the main area, although it is part of it. It is a lot bigger than what the development is planned for; and where the pool is going tends to be hidden in the back. Yes, it is going to encroach, but he sees this as one of those situations we are here for as a Zoning Board, and he feels it does meet the spirit.

Mr. Casale is a little concerned with diluting the purpose of the ordinance in the first place. That is his big problem with this, in that it opens up the floodgates. The purpose of this is so the developer could maximize his profit, basically, in building this subdivision with smaller lots, and as part of that you have to have this 50-foot buffer all around the property. Mr. Casale's concern is what does it do for the future, not only of other developments but other property owners in this subdivision if we o.k. this. If you look at the other properties some have small backyards, so there are probably other neighbors who have the same problem and would love to clear cut trees within the 50-foot buffer so that they can maximize their space. He is a little concerned about the future dilution of this ordinance.

Ms. Stevens would agree, but she believes what set this property apart is that it is not a smaller lot size, and we are dealing with a lot of wetlands too, so the buildable envelope that we are looking at is small. It wasn't as though the house was set back from the property for aesthetic reasons, it was the only place perhaps that they could put it, so she thinks there are some unique identifiers here with this particular property.

3. Granting the variance would do substantial justice because:

Chairman Morin sees it doing substantial justice. We take every application as a separate piece. We don't make one decision on one piece and it goes through everybody else in the town. Every decision is unique. He thinks this lot - how it is, where it is set up - and going off of what Ms. Stevens just said it is actually surrounded on 3 sides by this buffer. Nothing else in the development has that type of scenario if you look at the development picture. It is the outer edge of the development, not just their lots. So, Chairman Morin thinks this would do substantial justice for the applicant.

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

Chairman Morin does not think we've heard any expert testimony 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 because:

Mr. Green said that if Mr. Radin moved it and then had to re-drill a well that could open up a question nobody wants to answer. There's no guarantee if you drill a new well that you are going to hit water, so he thinks this is the only place you can have it.

Chairman Morin added that when you talk about hardship and the property itself just the way it is configured and with this border around it there is no other parcel in this area that has to conform to the same - to this one individual property; so, he thinks it is a hardship and he thinks it meets the criteria for this piece.

(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 thinks a lot of things have already been brought up on this. As a past member used to say, it's that scale and you're trying to weigh each side of the scale for the individual applicant and the other townspeople. He really thinks there's enough in this application to say, "Yes." It does meet, for Chairman Morin, the purpose of the variance.

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

Chairman Morin said it would be reasonable to put a pool in.

(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:

MOTION by Mr. Green that the request by Jeffrey Radin for a variance from Article V, Section 275-43.F(2)a in order to construct a pool 25 feet from the edge of a property line and within the 50 foot non-disturbance buffer at 7 Pulpit Road, Lot 16-17-6, Zoned R&A be approved per our deliberations. Ms. Stevens duly seconded the motion. Vote taken - Chairman Morin, Mr. Duhaime, Ms. Stevens, and Mr. Green all in favor; Mr. Casale not in favor. Motion carried 4-1.

MOTION by Chairman Morin to move out of deliberations on this variance application. Mr. Duhaime duly seconded the motion. Chairman Morin, Mr. Duhaime, Ms. Stevens, Mr. Green, Mr. Casale all in favor. Motion carried 5-0.

3. Daniel & Amanda Casey – Request for a variance from Article IV, Section 275-28 in order to construct an in-ground pool 34 feet from the edge of a wetland where 50 feet is required at 42 Settlers Court, Lot 15-14-19, Zoned R&A.

John Cronin, an attorney with Cronin, Bisson and Zilinski introduced himself to the board. He is representing the Casey's this evening in their efforts to build an in-ground pool to benefit their family to have some home time and recreation time. They've been looking at this pool opportunity for some time and they have looked at a number of different options with the side yard, and looked at a preferred location directly behind the home. Certainly all the views that they had of it were sensitive to the wetland in the back. It is a low-functioning wetland - something they believe was created by approved development in that area (something that has been enhanced by that, as well). The site on which the house sits is supported with some fill to establish that lot. It went through the Planning Board process, and it was approved. There is a 3-teir retaining wall out back that functions as a protection to the wetland. There is a substantial

elevation change between the leveled off area that serves as their current backyard and the wetlands, so the Casey's engaged wetland scientists Keach and Nordstrom to take a look at it and their recommendation was to push the pool more behind the garage than behind the house so that it would be further distant from the wetland and remove the entire pool from the wetland buffer where only a partial sits. You can see on the drawings that there is certainly an encroachment on one corner, but the bulk of the pool sits outside the buffer. When we looked at it, we also looked at the side yard (a lot of that sits in proximity to the wetland itself and there's a buffer). Placing it in the side yard is not something that was amendable to neighbors due to noise and visibility. Folks prefer that it be screened in part by the home. So, that is why we are here today looking for variance relief from a wetland buffer.

As you see in the application, we believe that it is in the spirit and interest of the community. It is common in Bedford for single family homes to have amenities such as in-ground swimming pools, certainly it is not contrary to a single family residence for that type of use. With respect to the drafters and looking at the character of the neighborhood we also believe it would fit with the essential character of this neighborhood. In the immediate neighborhood there are a number of properties with pools, and certainly properties of this type and kind would also have in-ground pools for family recreation and benefit.

If you look at the substantial justice prong we believe that the size of the pool and the movement of it to minimize the impact on the wetland buffer - when you look at the balancing test - is helpful. The harm to the Casey's if this were denied is that they would go without because there is not much they can do to improve this.

One of the things we did talk about was reducing the size by a few feet. You see 38x18 - they could make it 36x16 and pick up a few extra feet if that was the board's pleasure and they would be willing to take a condition to that affect. The designer of the pool came up with the one that is proposed. The benefit to the public - we don't see the pool as designed and as proposed with the safeguards that they're proposing will do anything to hamper or diminish the wetlands. When you look at the wetland ordinance - the function of it, and the goals of it - we believe that they will still be satisfied in their entirety. One of the provisions that we believe is important in the wetland ordinance is the final subsection that talks about making sure the people that own these properties are not unduly restricted. They really want to make sure that people who have these properties are not unfairly penalized.

When you look at the hardship prong, this has unique characteristics and special conditions due to the elevation and grade change and the existence of the wetlands and the retaining walls which does limit the area. When you look at the fair and substantial relationship of the ordinance, it will be met by what the Casey's are proposing.

They are also willing, and have contemplated in accordance with Keach and Nordstrom to do some work between the edge of the pool and the retaining wall to get some more water absorption in there.

As far as the use - we believe that the use is reasonable and that it satisfies the objectives of the drafters and that it does not diminish the function of the wetlands. There are no vernal pools and no high-functioning wetlands that we are concerned about.

It was suggested that the Casey's meet with their neighbors to make sure they were on board because they would be the people that were most impacted by it. Universally the abutters are in

support and Attorney Cronin believes most, if not all, submitted their requirements in favor and their intentions in favor of this particular proposal.

We also retained Bill Weidacher of Keller Williams, one of the largest, well-known brokers that does a ton of business in Bedford. Not only does he know Bedford and the surrounding area, he is a former resident. He has drafted a letter that should be on the record, and he supined that if the variance is granted it will not diminish the value of the surrounding properties.

Based on the information that has been submitted, the support of the abutters, and the opinion of Mr. Weidacher we ask that you look upon this variance request favorably and allow the Casey's to move forward - hopefully this season - where they've been homebound for so long, like the rest of us, that they can start activating plans to get back to normal and build their pool.

Attorney Cronin asked if he could entertain any questions.

Q: Chairman Morin asked if the existing fence is staying.

A: Attorney Cronin believes that it is.

Q: Chairman Morin asked if everything is going to fit within that fence.

A: Attorney Cronin believes under your ordinance they would have to have it fenced, so if not that particular fence, another fence would be installed.

Chairman Morin indicated he is trying to determine size.

Chairman Morin opened the floor for questions from the board.

Mr. Duhaime, Ms. Stevens, and Mr. Green had no questions.

Q: Mr. Casale said on the left side of the pool there looks to be a considerable area width-wise as opposed to the other side of the pool. Is there any reason that you can't shrink the pool, as you'd suggested, and cut down on that area that you have behind the garage as opposed to having the width that you have there which does not match the right side of the pool.

A: Attorney Cronin stated he is at a little bit of a disadvantage tonight because he is on audio only, but he thinks the Casey's would be willing to diminish the dimensions as we'd discussed (2-foot in length and width) . As far as moving it, one thing that we have learned in this process is for safety you really want to have the pool in sight lines, especially with young children directly behind the house especially when there is access in and out for bathrooms and various things. Moving it directly behind the garage is not what we believe is a safe option and we don't believe that it would enhance any of the wetland functions any greater than what we are proposing.

Q: Mr. Casale said it would keep it further away, though. He is not sure of the precise figure as far as distance from the wetlands and what corner of the pool it is.

A: Attorney Cronin said there is a 36-foot buffer at the bottom of the plan where you can see where the proposed is. Chairman Morin noted that it looked like 35-1/2.

Q: Chairman Morin asked if the family thought about going the other way, further behind the house?

A: Attorney Cronin said they did, but that created a further encroachment and didn't give you the space that you wanted. He doesn't know if it was based on the flagging being a little bit closer on that side, but that would have been the preferred location to move it back further closer to the house, but the wetland folks from Keach and Nordstrom said that the site where they placed it was the optimum to maximize the distance from the wetland and maintain as much of the buffer as possible.

Q: Another piece Chairman Cronin is a little hesitant on when it comes to this applications is normally when we have a wetlands issue the Conservation Commission gives us a report and a recommendation and that recommendation usually has some great information as in issues concerning those wetlands and how to diminish any effect to them. He hates missing that piece of the puzzle.

A: Attorney Cronin can say that from our perspective it's not something that we attempted to avoid - we were teed up to go, and he knows everybody's life has changed and their schedules have changed. He appreciates the wetlands issue and deal with it all the time and in preparing for the hearing when he went back and looked through your ordinance and what the intent really is for septic, and various things in protection of the wetlands, he thinks that this clearly satisfies all of those intentions. It's not really a close call, if you will, where you have a vernal pool and a situation where it is going to encroach on a septic field or something like that. We don't have well radiuses, or septic radius issues. We do have an elevation change that is pretty substantial, although you can't measure it from that perspective, it does provide certain delineation and definition to define the pool area from the wetlands.

Chairman Morin noted that we also have the issue, as Attorney Cronin brought up, of the elevation change which is going towards the wetlands and when you are back flushing or doing any type of issues like that with chlorinated water, or whatever type of water, he would still like to have some input from the Conservation Commission to maybe come up with some alternatives on how that could be dealt with.

Attorney Cronin said from his position as an advocate he hates to see the Casey's penalized; but certainly that is the board's prerogative to do as they see fit, and he is not going to debate that issue with you, he just thinks whatever recommendations they provide.....they are not opposed to going to meet with the Conservation Commission after the variance is granted, if you see fit to do that, because of timing for construction and planning. Mr. and Mrs. Casey have said they are open to doing some enhancements to this distance between the pool and the wetlands (some rain guard, some trenches, and some other things) to address your concerns with respect to any of those details. If you wish, and if it is required he supposes we could go to the Conservation Commission and take their input and try best to meet their concerns.

Chairman Morin said his thinking is that once we give the approval we are stuck, so if we have the Conservation Commission's recommendations prior we can actually make it part of the variance and then it's there.

Chairman Morin asked if there were any other additional concerns from other board members.

In line with Chairman Morin's concerns Mr. Duhaime asked if it was possible to vote with the condition that they still go to the Conservation Commission to address the rain guards, drainage and all those sorts of things. Is that allowed or is there a process preventing us from doing that? Chairman Morin said that if we give approval, he knows we can give caveats, but we can't be

very specific when it comes to that type of thing when we're just saying, "add whatever the Conservation Commission decides".

Attorney Cronin said they would be happy to go to the Conservation Commission and any suggestion within reason would be considered, but if they say, "build a million dollar ditch" the Casey's would say that is not in our budget. If it were reasonable recommendations like they would typically make he doesn't think there's any issue with that.

Ms. Elmer clarified that the Zoning Board can add any conditions they want to the variance approval . If you were so inclined to want to approve it but you also want them to go to the Conservation Commission you could make it contingent upon them not receiving a building permit until they meet with the Conservation Commission, but there's still no guarantee that they're going to meet the standards that you want them to meet.

Ms. Stevens had no further concerns to discuss.

Mr. Green said he would be happier if it were deferred for a month and they go in to the Conservation Commission before we do anything.

Mr. Casale said he would rather hear from the Conservation Commission first.

Mr. Gilbert agrees 100% that they should go to Conservation Commission first.

Chairman Morin asked Attorney Cronin if he would be willing to table until after going to the Conservation Commission.

Attorney Cronin had to get off the Zoom call to attend another meeting, so Daniel Casey indicated that if that is what the Zoning Board suggests and that's the only option, then he thinks they would be willing to do that if it is the only option.

Chairman Morin said we could go forward with deliberation and a vote, but he thinks everybody has pretty much said that they are very interested in what the Conservation Commission has to say; so if we voted and it was a "no" then you couldn't bring back this design/this application, so it probably isn't good.

Mr. Casey asked if we know when the Conservation Commission is scheduled to meet again. Mr. Elmer said they would meet again on May 26th. Chairman Morin said that after the meeting with the Conservation Commission on May 26th, the Casey's would meet again with the Zoning Board on June 16th.

Mr. Casey said he wished that John was still on the call to advise. Mr. Casey is concerned about putting it off until June and missing our window. Ms. Elmer just wanted to let Mr. Casey know that if the Zoning Board denies the application that is not a reason for them to grant a rehearing, so if they deny it, that stands unless you make a significant change to the actual plan and then they would have to vote on whether they feel the change to your plan is significant enough to reopen the case.

Mr. Casey said they would defer to the Conservation Commission.

Chairman Morin said this would serve as notice to the public that this is being tabled until the June 16th meeting and that the Casey's will be #1 on the agenda for that meeting.

MOTION by Ms. Stevens to table this application until June 16th. Mr. Green duly seconded the motion. Vote taken – Chairman Morin, Mr. Duhaime, Mr. Green, Ms. Casale, and Ms. Stevens all in favor. Motion carried 5-0.

Ms. Elmer let Mr. Casey know that she would be in touch with Attorney Cronin to go through all of the information he needs to be on the Conservation Commission agenda. She has all of your application materials already and can coordinate everything with him.

Chairman Morin asked when the new Zoning Board members, if we have any, would be on board. Ms. Hebert believes new member appointments are being made May 13th at your following meeting. Mr. Gilbert said it would be on May 13th, and the meeting after that (which is two weeks later) will be the actual appointments, so for our purposes on this Board it would be June.

Ms. Elmer asked if there was anyone on the phone for this case. Ms. Hebert said there was no one on the phone. We do have that same individual with the name "Owner" and they tried to join the meeting, but the audio didn't connect and she instructed them to email Planning and that is also posted on the banner that runs across the screen for the BCTV broadcast. She hasn't received any information that anyone is having technical problems, so at this point she is not comfortable opening up the meeting to an individual that is not reaching out to resolve those technical issues. Chairman Morin said that sounds fair.

The next meeting will take place on May 19, 2020.

V. Adjournment

Motion by Chairman Morin to adjourn the meeting at 8:28p.m. Mr. Gilbert duly seconded the motion. Vote taken – Chairman Morin, Mr. Duhaime, Ms. Stevens, Mr. Casale, and Mr. Green all in favor. Motion carried 5-0.

Respectfully submitted,
Tiffany Lewis