

TOWN OF BEDFORD
May 15, 2018
ZONING BOARD OF ADJUSTMENT
MINUTES

A regular meeting of the Bedford Zoning Board of Adjustment was held on Tuesday, May 15, 2018 at 7:00 PM in the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: John Morin (Chairman), Sharon Stirling, Melissa Stevens, 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. Regular members Gigi Georges and Kevin Duhaime and alternate Len Green were absent. Mr. Casale and Mr. Gilbert were appointed to vote.

Approval of Minutes:

MOTION by Mr. Casale to approve the minutes of the April 17, 2018 meeting of the Zoning Board of Adjustment as submitted. Mr. Gilbert duly seconded the motion. Vote taken – all in favor. Motion carried

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

Applications:

- 1. Thomas Hamel (Owner) – Request for a variance from Article IV, Section 275-28 in order to construct an in-ground pool 22 feet from the edge of a wetland at its nearest point where 50 feet is required at 201 Campbell Road., Lot 16-8-7, Zoned R&A.**
- 2. Thomas Hamel (Owner) – Request for an Equitable Waiver from Article IV, Section 275-28 in order to keep a previously constructed shed 2 feet from the edge of a wetland where 50 feet is required at 201 Campbell Road., Lot 16-8-7, Zoned R&A.**

Thomas Hamel, 201 Campbell Road, was present to address both of the applications for a variance and Equitable Waiver.

Mr. Hamel stated I have been living at this address since 1999. The reason for the Equitable Waiver is that when I purchased the house the shed was already built there. I was the third owner in five years, so I am not quite sure who built the shed there. The

first time I heard that a permit hadn't been pulled for the shed is when I applied for a variance to put in an in-ground swimming pool. It has been located where it is for at least 19 years; the location is a dry location, I wasn't aware that it was on the wetland when I bought the piece of property, it is built on concrete blocks, it is not on a poured foundation, and since it has been there the ground is stable, it is still level, and I have had no issues with the shed nor any complaints or concerns from my abutting neighbors.

Chairman Morin stated please go over the criteria for the Equitable Waiver as it will be helpful.

Mr. Hamel proceeded to review the criteria for his Equitable Waiver application.

Facts Supporting This Request:

(a) The violation was not discovered by any owner, former owner, owner's agent or municipal official until after the structure had been substantially completed:

The violation of being built closer than the 50-foot setback from the wetlands wasn't discovered by myself or I can't speak for the previous owners, their knowledge of the Building Code as well as who actually built the shed. There was no record with the Town of any building permit that was requested so someone had put it in but I have no insight into who the person was or when it was done. The home was built in 1995, so somewhere within four years someone had put the shed in.

(b) The violation was not caused by ignorance of the law, misrepresentation or bad faith, but was instead a good faith error in measurement:

The violation was probably not caused by ignorance, it was more of putting it in a location that would be easy and accessible to be used for what it was being used for, which is a storage shed for lawnmowers and snow blowers. The dimension of the shed is approximately 12 feet x 20 feet and it is abutting the wetland and after I was notified by the Town that it wasn't built in a proper location or without a variance. There is not much more that I can add.

(c) The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property:

Where the shed is located it is not in public, no people have access to it other than ourselves, it is built right along the treeline also, as well as where the delineation of the wetlands has not decreased it wouldn't have any negative impact on adjoining properties for the value, nor have any issues or safety for anyone in the neighborhood or who would be on my property. It has been in the same location for over 20 years, and I have had no concern from neighbors that it was obtrusive nor impinging upon any of their properties or have any negative impact and would have no negative impact on the property values of the abutting neighbors.

(d) Due to the degree of past construction or investment made, the cost of correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected:

Ms. Stirling asked can you address the section that talks about investment that you would have to make to move it. If it is on blocks, how easily could it be moved and have you investigated that? Mr. Hamel replied it would be pretty difficult to be moved because the front of the shed is the backyard and the shed and backyard are right next to each other or the ground is abutting it and it is going to be difficult. I am more concerned since it has been there for

20 years if it is not pressure treated there is a concern if you tried to pick it up to move it that it would be destroyed. Plus, the location of where it is there is no easy access to be able to get to the shed to move it. On the front of my property is my septic system and leach field, going around as shown is the irrigation, there is a well, electrical wiring that is done here, the shed has no power or water or anything to it, but there was for the previous nanny. They actually brought out cable TV, electrical and Internet so she could mind the kids when they were in the back yard playing. But to go through the backyard the concern is the irrigation lines, the electrical lines, all the plumbing, the lines feeding to the irrigation potentially would be damaged and once we got to it, there would be no guarantee that the shed could be picked up without being ruined.

Mr. Casale asked how would the underground utilities be an issue with moving the shed that is on blocks currently and you can put it on blocks elsewhere? Mr. Hamel replied it is to actually move the shed. It is going to have to be either picked up on a truck or some type of a crane. To get access to it they would have to go through my backyard where I do have electrical power running through there right in this area shown. There are electrical lines that are in there, the irrigation lines are going across the entire backyard. I also have two wells on my property and the one closest to the shed located over here is used for irrigation, not for drinking water, it is a second well, and the concern talking with people is that if you bring in a heavy piece of equipment, more than likely you may cave in your well and I would lose it. Mr. Casale stated when you said you spoke with several people, did you speak to shed businesses. Mr. Hamel replied no I did not.

Chairman Morin stated you say there are electrical lines that go behind the house. Where do they go to? Mr. Hamel replied if you are coming from the back of the house exiting the back, right corner and it is going underground to approximately here, they are set about 25 – 30 feet back, they are underground; it was telephone, cable and Internet. Chairman Morin asked what is there now? A small box or something above the ground? Mr. Hamel replied yes; the previous owners had two children, they had a playground back there and they had the nanny that would spend the time in the backyard, so they brought the telephone and the power and Internet out so the nanny could use it while she was watching the children.

(e) OR, In lieu of the findings in (a) and (b) above, the owner may demonstrate that the violation has existed for 10 years or more, and that no enforcement action has been commenced against the violation by the municipality or any person directly affected: There was no testimony from the applicant on this part of the Equitable Waiver criteria.

Chairman Morin stated please go through the criteria for the variance application now.

Mr. Hamel stated per the request of the Conservation Commission I had a new plot plan done where it also marked the delineation of the wetland from the first meeting with the Conservation Commission, and they were hoping that maybe the wetland had moved in my favor further away from where I wanted to put it in but it doesn't appear to be. It is in

the same location. Because of my property there is no other location on the property that would allow me to put in an in-ground pool that would not require a variance for wetland setback. The front of my yard is where the leach field is, my driveway, the wetlands are down over here as shown on the posted plan, with my driveway going through, and putting a pool in which first wouldn't be up to the neighborhood standards of putting a swimming pool in your front yard. It would actually be closer to the wetland setback as well as trying to locate it any place. With the civil engineer we tried to locate the pool anywhere possible to maximize the amount of pool that would be in compliance with the setback regulation. The closest that we wound up doing is what is showing on the screen is that setting the pool back there were a few considerations that the location of the pool, location of major stones that are probably the size of cars that are out there, there would be extensive work and also trying to minimize what the impact was. I tried with the pool design flipping it over, turning it 90 degrees, turning it in every feasible direction to maximize what I could do, and this is the best that I could do was 22 feet from the setback on the wetlands to the furthest point over on one side and I think it was 59 feet on this side shown.

Mr. Hamel continued when I did meet with the Conservation Commission they asked me if I can go back and look at a different layout to see if I could bring it closer to the house. I did have that done, and I have a revised plot plan that will now put the pool closer to the house, moving it about 10 feet closer to the back of the house. It will allow the clearance for the pool, the edge of the pool to this set of the wetland delineation would go to what I think is 30 feet, 9 inches and then 32 feet, 7 inches. So it would move it in about 8 extra feet and moving it any closer the concern is where my deck is located it extends 10 feet out from the back of the house and to put the pool anywhere in here, to bring in an excavator, dump trucks and heavy equipment, they need at the bare minimum a 14-foot clearance completely around the pool, so that is putting me at the very, very closest would be 24 feet. I do have some drawings on a thumb drive and I can show you were it is.

Ms. Stirling stated I am a little confused. In your application you are requesting it 22 feet. Are you giving this as a secondary location? Mr. Hamel replied when I first went to the Conservation Commission and applied for my variance, it was for 22 feet, and then I went back and had conversations with the Commission members to see if there was any way possible to bring it closer to the back of the house. Ms. Stirling asked and this is what you came up with? Mr. Hamel replied and this is an alternate, what I am showing there with the very first one. What I am showing now on the screen is this is bringing the pool in approximately 10 feet closer to the back of the house and it is going to give me approximately maybe about 18 feet of clearance from my deck to the edge of the pool where I am proposing it is going to be.

Mr. Casale asked can you explain this 14-foot perimeter for the heavy equipment? Why can't they just go to one side? Mr. Hamel replied because they have to dig all the way around to be able to put the pool in, to be able to pour the concrete to support the pool, and the truck width to bring them in, they need 14 feet clearance. Chairman Morin asked which way are they going to come onto your property to get back there? Mr.

Hamel replied they are coming in from the road, coming down close to the line here, through here, which they just make, and then over to do the installation. Mr. Casale asked they said they can't do it from one side? It doesn't make sense that they can't dig and pour concrete from one side of it. In other words, you don't have to fit a truck between the pool that you are proposing in that area and your house. If it were abutting up against the deck and the house, they should be able to get it from three sides and not be right up against your house. Mr. Hamel responded I had the pool installers out, I got it from three different companies and they are basically telling me they need access completely around. Ms. Elmer stated there are numerous pools in town that are 5 feet from the foundation. Mr. Casale stated that is what I am confused about because I know several people that have them right up against the house. Ms. Stirling stated I am confused because it seems like a contradiction. If you are going to be bringing the equipment in that way, then it is going to be in the same area that we talked about if you move the shed and you said that equipment couldn't get to move the shed because of all of the lines. Chairman Morin stated no, they are going on the other side, on the right side of the plan as we look at it, is which way the trucks will go. Mr. Gilbert stated you see the W by the deck on the plan, which is his well, and that is what you are trying to protect. Ms. Stirling asked but all of the underground wiring when they are excavating for the pool. Mr. Hamel stated the underground wiring is over here. If I had to move the shed, they probably wouldn't get access there; it depends on where I would have to put it, even if it was on a crane. If they came in that way, but they still pick up the shed and move it to a new location without causing damage to the shed itself. Ms. Stirling asked so the truck that you are bringing in for excavation of the pool is not going to be upsetting anything underground? Mr. Hamel replied I am going to have to do that. When I originally proposed putting the pool setback further but there was only a 22-foot setback from the wetlands, they wouldn't have to get into where I have electrical or any of the irrigation lines there because they would be able to go straight down the side of the yard, go down right along here, and then get access to it. But by bringing it closer, now they are going to need to get access to get to this side of the pool, they need access and they tell me 14 feet just to get their equipment in for removing whatever soil or rocks or anything that is there as well as to bring in clean fill and pouring the concrete. Ms. Stirling stated okay; thank you.

Mr. Hamel proceeded to review the criteria for his 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:** I am requesting a variance to build the pool in the location that will be less than the 50-foot setback from wetlands. It is in a dry location and there is no other physical place to put a pool on my lot because most of it is wetland. **(2) Whether granting the variance would threaten public health, safety and welfare:** It is not going to cause any concerns for public health nor safety. Wherever I locate the pool I will put in per the State standards as far as putting in fencing around the pool. Where I am asking for the variance is the most reasonable area that I could put it without causing potential damage of losing a well that is sitting in the back of the property. **2. The spirit of the ordinance is observed:** I believe what I am asking the Board for is that I will be encroaching on the wetlands in an area that is consistently dry. It is less than the 50-foot setback from where the pool

would be and the other concerns would be bringing the power that is already there, the waterlines that are there, electrical lines for the well, I am not sure where those lines are but they are in the back of the property. The reason I am requesting a variance is that I could potentially have significant cost if I have to relocate or drill another well because of potential caving in of the well with heavy equipment that is going to be very close to it. On my property there is actually one well that is located in my backyard, it is about a 400-foot deep well, I am only using it for irrigation and not for drinking water, and my other well is located over here, which is used for drinking water within the house. The concern is by bringing it in too close it could potentially cave in that well that is there. That is based upon conversations that I have had with the people that drilled the well. They couldn't give me a probability of the occurrence of it, but they said there is a risk of doing that.

3. Granting the variance would do substantial justice: The type of pool that I am planning on putting in if I am granted the variance will be equal to the neighborhood standards for the pools, as well as for the finish of the property. By granting me the variance that I am looking for and the setbacks, it would allow me to be able to install the pool without incurring some major additional expenses, it would have no impact on the land where it is going to be located and it is going to be comparable to the neighborhood standards.

4. The values of the surrounding properties will not be diminished for the following reasons: It would enhance the value of my property as well as the neighbors' property and it would be in line with two out of three abutting neighbors that have pools that are located fairly close to their house and be in line with the quality, the size and the construction of it. The values will be enhanced, my property will actually be more in line with my abutting neighbors that have pools, so it would have no negative impact at all on values. It will not drop the value of any home in the area because of putting in a pool. It is an enhancement, which would increase the value of my property and 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:

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:

ii. The proposed use is a reasonable one: As I previously mentioned, because of the lot that I have, the location, the amount of wetland that is on the property, this is the only feasible location to be able to put the pool in. I am more than willing to move it up an extra 10 feet per the second plot plan that I have. That would bring it further than 30 feet away and it would also minimize the amount of work I would have to do as far as ripping up irrigation lines and potentially damaging my second well that is located there. Without doing it there is no other feasible way for me to do it and I would lose the usefulness of the property that I do have.

Ms. Stevens stated the outline that we are seeing of where the pool is, is that just the pool itself or does that include any sort of fencing or patio that you will be putting around the pool. Mr. Hamel replied that is just the swimming pool because putting a patio around you are not going to be digging into the ground putting in a fence, what I believe has no impact on wetland setbacks. Please correct me if I am wrong. That is my understanding. What I would be doing is putting a 3-foot concrete collar going around

the pool also, but that still would not violate codes, as far as I am aware. Ms. Stevens asked Ms. Elmer, is that right? Ms. Elmer replied yes.

Ms. Stevens asked have you considered minimizing the size of the pool to be able to reach some of the setbacks to be a little bit closer to what they should be? I apologize because I know you went over some of this with the Conservation Commission but I just kind of need to hear your reasoning again. Mr. Hamel replied the pool is a custom shape, it is not a rectangle, it is 26 feet x 40 feet. If I put in even a rectangular pool it is pretty much going to be in the exact same location. If I went to something smaller, the concern I have is because I have a large family and I have a number of people who are going to be there, I have a lot of grandkids that come over there, and putting in a smaller pool would basically defeat the purpose of having it because of the number of people that would show up. The pool size would not be adequate.

Chairman Morin asked do you know how you are going to treat the water for the pool? Mr. Hamel replied we are going to be putting in a salt system, and the reason for putting in a salt system is that it actually uses less chlorine, it is also reusable because it uses the salt over and over again like a water softener system, and the concentration of the chlorine is actually significantly smaller than if you are just treating with either chlorine or bromine. It would be the least amount of a chemical, whether it was chlorine or bromine, to have any negative impact if there were a leak in the pool.

Chairman Morin stated my other question is, and it probably came up at the Conservation Commission meeting, but I want to bring it up here. Looking at the photo on the screen, why not turn it lengthwise and have it to about where the line behind the 38 feet is, a little closer to your house and turned up and down instead of horizontal, so that way it is more out of the wetland area, it still meets setbacks, yes it is closer, but you actually mentioned where they are going to put it is because of the 14 extra feet you have to do around it, that you are probably losing that electrical line anyway. So why not turn it and bring it a little closer in? That would probably get you very close to very minimal setbacks. Mr. Hamel replied the plot plan that is posted now you will notice I brought the pool in approximately 10 feet closer onto the property, so it would have more of the pool located actually beyond the 50-foot setback. The locations have now gone from 22 to 32.4 feet, so it gave an extra 10+ feet by locating it there and it still gives it sufficient clearance here to get the pool in. This is approximately 24 feet to here, this deck is extending 10 feet from the back of the house, the extra 14 feet will put it over in this area for bringing in excavation equipment. So I have thought of that. Chairman Morin stated from where it is right now on this proposal, why not bring it right into that open envelope. Mr. Hamel replied to get in there it is going to require extensive removal of trees and rocks that are there and that would be starting to get much closer where the 25-foot setback from sideline clearance. Ms. Stirling stated Chairman Morin, I thought what you were saying was to spin the pool the other way. Chairman Morin responded spin it sideways and bring it to the right a little bit. Ms. Elmer stated so you want to twist it a little bit and pull it this way. Chairman Morin stated right, behind the right side of the house in that open envelope. Mr. Hamel responded part of the reason was by moving it over to somewhere around this area, it is

going to limit having trucks being able to get in there. Right along the side of my property it is heavily wooded, so I would have to take down a ton of trees to be able to get a truck that is going to be able to get in and still have access all the way around the pool. Mr. Casale asked why can't they come in through the driveway? Mr. Hamel replied because there is a hill at the end of my driveway. Mr. Hamel supplied the Board with photos of his backyard. The top is the actual layout template for the pool. If you look at coming from the end of the driveway, it drops down, without going through the landscaping that is there and that is also where my second well is located, and if I went down the driveway and go around by the shed, there is physically no area to bring a truck in. So I am limited to access to the back of the property coming on the right-hand side of my lot as you are facing the house. Mr. Casale asked what you are showing us is this the second version? Mr. Hamel replied yes, Sir. Mr. Casale stated either way, even if you abut the pool right up against the house, there is still room for trucks to get on the right side of the property if you are looking at it. Is that correct? You are just saying that they are telling you that they need access all the way around? Mr. Hamel responded I was told that from two different installers. Mr. Casale stated maybe to keep it less expensive.

Mr. Casale stated how about reducing the size. As was mentioned before and you had mentioned about the size of your family, I just did a quick search because I didn't know the size of the pool until you had said it. This is a large pool, like larger than the average, according to what I am reading. Mr. Hamel responded the overall dimensions it is but because of the design, they are taking the max dimensions on the width, even though where it is bowing in and it is cut in circular, they are taking the max dimensions off the side so it is like if you had a rectangular 26 foot x 40 foot, it would be significantly bigger than this just because a rectangular pool would be all pool. Mr. Casale responded right, but the 26 foot x 40 foot just from a quick read, is pretty large, and so if it is rectangular and we can reduce it and make it a little smaller to fit and make it a little more acceptable, that is my question. Because you are talking about in line with what your neighbors have and I don't know what your neighbors have and what you really mean by that. Mr. Hamel responded if I go by adjacent neighbors, the people right behind have a pool that is significantly bigger than that but they didn't have the restrictions of the wetland setback on it. The house next to me I believe it was for their wetlands, they physically had to put it right at the back of their house. They had no other location to be able to put it because of the property lines and the wetlands. Mr. Casale stated so it can be done. Mr. Hamel responded they did but it is not right up to it. It is probably still a good 10 feet from the back of the house. I wasn't there when they constructed it so I don't know how they did it, and I am not an engineer or a pool installer to question when somebody tells me that is what they need to be able to do the job. Ms. Stirling stated but I think Mr. Casale to your point, I have heard about a 16 foot x 32 foot rectangular. Mr. Casale stated it is big on the average. Mr. Hamel stated and it is actually smaller than the other pools I have put in at my other homes. I have put in a 28 x 44 rectangular and at another home it was a 22 foot x 44 foot Roman end pool, so it is actually a smaller pool, the largest small pool that I could put in that would meet having a lot of kids jumping into a pool and still give something that was in line with what neighbors are using or comparable sizes.

Chairman Morin stated we received one email from Karen Wu, 44 Golden Drive, who is in support of this application. A copy of this email will be included with the file.

Mr. Hamel stated the last time I met with the Conservation Commission, the Chairman couldn't attend the second hearing and she submitted an email to say that she couldn't support my request for the variance but the only thing that she had seen was my very, very first plot plan, which was at 22 feet. She wasn't attending and did not see the proposed plot plan setting it out over 30 feet. In addition, both the Conservation Commission and the Zoning Board have granted variances to within 30 feet of the wetlands, and with my second proposal I am further away than what has been previously granted so I believe a precedence has been set by both the Conservation Commission and the Zoning Board that it has been done. Chairman Morin stated just to clarify; the Conservation Commission does not vote on variances, they just vote on a recommendation how they feel through what their expertise is. Secondly, the Zoning Board does not create precedence. We deal with every application as an individual application. We don't compare it to any other applications we have done in the past or any that we would do in the future, so every application is judged on its individual merits. Mr. Hamel replied thank you for clarifying that.

Chairman Morin asked do you have anything else before we go into non-public input deliberations? Mr. Hamel replied I don't believe so. No, Sir.

MOTION by Ms. Stirling to move into deliberations on both the variance application and the Equitable Waiver application. Mr. Casale duly seconded the motion. Vote taken – all in favor. Motion carried.

Chairman Morin stated we will start with deliberations on the Equitable Waiver application. We will go directly to (e) of the criteria.

(e) In lieu of the findings in (a) and (b) above, the owner may demonstrate that the violation has existed for 10 years or more, and that no enforcement action has been commenced against the violation by the municipality or any person directly affected: Chairman Morin stated we have pretty much heard evidence that it has been there for over the 10-year period so we can bypass (a) and (b) of the criteria.

(a) The violation was not discovered by any owner, former owner, owner's agent or municipal official until after the structure had been substantially completed:

(b) The violation was not caused by ignorance of the law, misrepresentation or bad faith, but was instead a good faith error in measurement:

(c) The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property: Chairman Morin stated I don't see that it does any of those. Ms. Stevens stated we

don't have any neighbors making any sort of complaints, so it hasn't been shown to be a nuisance.

(d) Due to the degree of past construction or investment made, the cost of correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected: Chairman Morin stated we did receive testimony that it is anywhere from 15 – 20 years old and trying to pick that up probably would ruin it pretty badly. I would guess that. Mr. Gilbert stated I would guess that too. Chairman Morin stated I think it meets these criteria also.

Chairman Morin stated that is all the criteria for the Equitable Waiver. Someone could make a motion if they so choose.

MOTION by Mr. Casale that the Zoning Board grant the request submitted by Thomas Hamel requesting an Equitable Waiver from Article IV, Section 275-28 in order to keep a previously constructed shed 2 feet from the edge of a wetland where 50 feet is required at 201 Campbell Road, Lot 16-8-7, Zoned R&A. Mr. Gilbert duly seconded the motion. Vote taken - all in favor. Motion carried.

Chairman Morin stated now we will deliberate on the 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: Ms. Stirling stated I don't think it would do that. Mr. Gilbert stated I don't think it would. Chairman Morin stated I don't think so either. **(2) Whether granting the variance would threaten public health, safety and welfare:** Chairman Morin stated again, I don't think it affects any of that. Ms. Stirling stated the same on this.

Ms. Stevens stated Mr. Chairman; I just want to be clear if we are looking at these with the intention of going with one plan over the other because I feel like we have two different plans. Chairman Morin responded we should be a little more specific on that. His recommendation was the one with the 50-foot right side and the 32 and 30-foot left side setbacks. Mr. Casale stated it actually wasn't 50; it was like 34 on the right side. Chairman Morin stated there was another one that he had showed. Mr. Gilbert stated it was something like 51 feet; 40 and a 38.8 on the other. Chairman Morin stated the one posted is the one that we are dealing with, the second plot plan submitted. Ms. Stirling stated when someone makes a motion, just disregard the 22 feet and slip in 38.8 feet. Chairman Morin responded that is right, depending on which way it goes. What is the date on that plan? We have to have an idea of what we are dealing with. The date is May 8, 2018 on the posted plan.

2. The spirit of the ordinance is observed: Chairman Morin stated the spirit is that there is a barrier between wetlands and a structure, with this structure being a pool. Do we feel that this distance is enough for a pool when it comes to runoff or waste or

whatever it might be because that is what it is going to come down to when we are talking about the spirit of the ordinance? A regular building would have rainwater coming off from it and going down. It is different than a pool, which is my only concern when it comes to this type of thing. Ms. Stirling stated I just go back to the Commission's report and I am unclear and perhaps you can look at your notes. It looks like they only reviewed the 22 feet. Ms. Elmer stated they looked at both. Chairman Morin stated they looked at multiple plans. Mr. Casale stated they didn't recommend either one. Ms. Stirling stated I think clearly this is where the conflict comes in and trying to balance that because we generally defer to them to give us the recommendations and it sounds like they denied both. And it sounds like maybe McQuade Brook was maybe the issue because it is close to McQuade Brook. Chairman Morin stated I think that was brought up in there somewhere. Are there any other comments on this piece? Ms. Stevens stated I am struggling with this as well because it is a pool and we are not talking about a building so there is some difference there, but going back to the Conservation Commission and the notes from their meetings, it just seems like they really did try to see if this could be placed somewhere else or it could be made smaller and when you are talking about ensuring that we are keeping with the spirit of this, it seemed like there were all of these other issues on the side that were keeping this from being something that could possibly be within the setback, so the spirit of what we are trying to keep here was not perhaps being looked at. There just seemed to be all of these other issues. Mr. Casale stated and I always fall back to even though we don't look at precedence everybody brings up precedence, and if it is approved, now we have another kind of metric that people after this are going to say well you did it here and where do we draw the line. It is 50 feet for a reason; it is for not having an impervious or for having an impervious area the water can't filter down to the natural water and it is there for a reason. I think the Conservation Commission mentioned that it is 50 feet for a reason. Mr. Gilbert stated but as you say, we don't consider precedence but there is a precedence. Mr. Casale stated always, everybody brings it up, right. You guys on May 15th okayed it and it was 38 feet from 50 feet and then it just kind of dilutes what the purpose of that is. Ms. Elmer stated the thing is you don't know what those other applications were. They may have asked for a different chemical to be used or some berms to put in or treatment. That is the hard part when you don't have those other files in front of you as you don't know why those other ones were granted and why the other ones were denied. Chairman Morin stated I will tell you from my time here, and I am just going back to Conservation Commission recommendations, I can't remember but there have been very few that the Conservation Commission denies and normally when they do deny something, it is for a good reason. I am having a hard time remembering one that I have seen that has been denied that we have followed through without a recommendation. I am just going back on history that I can think of. They are somewhat of our local expert looking at some of these things when it comes to wetlands. That is just my thought. **3. Granting the variance would do substantial justice:** Ms. Stirling stated this is the balancing piece that I tie it with substantial justice and unnecessary hardship. In this particular lot there are a lot of limitations, so that is kind of what I am balancing here. It is true, Chairman Morin, I don't ever remember us going contrary to the Conservation Commission's recommendation to us. There are limitations, but, again, some of it is his own choosing

just because of risks to this or risks to that and size, I need this size for my family. That is where I am struggling because it is like on the one hand I would like to give relief a little bit because it is a smaller envelope but it is still, I think, protecting the wetlands potentially significant enough, but I also feel like the lot does have some challenges and is the applicant being as flexible as he could be. I don't know, and so that is what I am struggling with because I think the spirit is probably pretty clear and I like kind of sticking with what we have been given as the ordinance as opposed to willy nilly, as I think I mentioned at last meeting about the approving of the RV's. It is not a precedent but there is a spirit around, well I don't know what the difference is so I like to be pretty clear and be pretty strict in terms of compliance to the ordinance. I am really struggling between the spirit and then the hardship. Ms. Stevens stated I would agree with that too because I do understand that there isn't a lot of wiggle room with this spot, but then again, where there is wiggle room, I feel like we are given a lot of reasons as to why that just for some reason isn't feasible but the reality of it is that it is feasible. The pool could be made a little bit smaller, it could be shifted over a few more feet, and there is some give in there and so that is why I am struggling with whether or not the spirit is really being looked at in this case. Ms. Stirling stated that is well said. **4. The values of the surrounding properties will not be diminished for the following reasons:** Chairman Morin stated we haven't heard anything on that. Ms. Stirling stated I don't think that would be the case. **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:** Chairman Morin stated just on the general purposes, I don't see much of a distinguishing difference from other places in the area. **A. Denial of the variance would result in unnecessary hardship:**

- i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:** Chairman Morin stated personally going to what you said earlier Ms. Stirling, I am having a hard time seeing a hardship. Mr. Casale stated I agree. Chairman Morin stated I am not seeing a hardship to the property for a pool with what we have been given. I think the Conservation Commission and this Board tried to give some suggestions on movement but the sprinklers were in the way or that electrical line was in the way or something was in the way to keep it to almost where it had been originally. I am not seeing a hardship when that has been submitted. Ms. Stirling stated I agree.
- ii. The proposed use is a reasonable one:** Chairman Morin stated it probably would be if it was not within as much of a setback of wetlands because a pool is reasonable, but unfortunately due to the location, I am having a hard time that it is reasonable. Are there any other comments on that? If not, I will ask for a motion.

MOTION by Mr. Casale that the Zoning Board of Adjustment deny the request submitted by Thomas Hamel (Owner) requesting a variance from Article IV, Section 275-28 in order to construct an in-ground pool 38.8 feet from the edge of a wetland at its nearest point where 50 feet is required at 201 Campbell Road, Lot 16-8-7, Zoned R&A. Ms. Stirling duly seconded the motion. Vote taken; motion carried with Mr. Gilbert voting in opposition.

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

Old Business: None

New Business: None

Adjournment:

Motion by Mr. Casale to adjourn the meeting at 8:00 p.m. Ms. Stevens duly seconded the motion. Vote taken – all in favor. Motion carried.

Respectfully submitted by
Valerie J. Emmons