

Town of Bedford

Zoning Board of Adjustment Minutes

May 16, 2023

A regular meeting of the Bedford Zoning Board was held on Tuesday, May 16, 2023, at the Town Meeting Room at BCTV, at 10 Meetinghouse Road. Present were John Morin (Chair), Neal Casale (Vice Chair), Sue Thomas (alternate member), Alex Kellermann (regular member), Daniel Heath (alternate member), Bob MacPherson (regular member), Rebecca Hebert (Planning Director), Kathleen Ports (Associate Planner). Absent was Dave Gilbert (regular member).

I. Call to Order and Roll Call

Chairman John Morin called the meeting to order at 7 p.m. and introduced members of the Board, appointing Ms. Thomas to vote.

Rules of Procedure: Chair Morin stated the following: Presentations by the applicant—we will do them in order of how they are listed on the agenda. Each applicant will make a presentation. After their presentation, there'll be questions from the Board, and then there'll be input from the public, either in favor or in opposition. We'll ask that there be no debate allowed between parties, and that all testimony is directed to the Board, please. If the applicant would like to do a summation after all that is done, they may. Again, all applicants will be heard in order of notice. If we need to take a recess or an executive session, we will do that by vote. We will go into a non-public input session for deliberation and vote after each of the items. You can wait for a vote tonight or call the Planning Office after 8:30 tomorrow to find out what happened. I'm going to ask everyone to please silence your cell phones. That way, we're not interrupted during the meeting.

For rehearings: any party has 30 days to request a rehearing from a decision of the ZBA. The Board has 30 days in which to respond to such requests, per RSA 677:3, tomorrow being day one. All requests must be in writing and must contain new evidence. Please point out any errors you believe the Board has made in its decision. For the criteria for granting a variance, I'm not going to go through all the five criteria at this time. We're going to ask each applicant to go through the application and address the five criteria as part of their presentation. For a motion to pass this evening, it must have 3 affirmative votes.

I'm going to ask anyone who is going to testify this evening to please stand. Honorable Council is exempt. But please stand if you even think you're going to talk. Please get up now because we don't want to have to stop and keep swearing in people. Raise your right hand, please. Do you swear that the testimony you'll give this evening during these hearings is the truth, the whole truth and nothing but the truth? Thank you. Alright, so we will go to our agenda at this point, and our first item is an internal issue and that's Election of Officers.

Election of Officers – Chair Morin said every year we elect new officers to this Board. I'll look to the Board for nominations. I'll make one right off the bat, Vice Chair, Mr. Casale.

MOTION by Mr. Morin to nominate Mr. Neal Casale as Vice Chair of the Board, seconded by Ms. Thomas. Vote was taken - all in favor. Mr. Casale abstains from the vote. Motion carries, Mr. Casale is elected Vice Chair.

MOTION by Mr. Kellermann to nominate Mr. John Morin as Chair of the Board, seconded by Ms. Thomas. Vote was taken - all in favor. Mr. Morin abstains from the vote. Motion carries, Mr. Morin is elected Chair.

Approval of Minutes: April 18, 2023.

MOTION to approve minutes for Zoning Board of Adjustment meeting, April 18, 2023, was made by Mr. Casale. Ms. Thomas seconded the motion. Vote was taken - all in favor. Mr. Morin, Mr. Kellermann, and Mr. MacPherson abstained. Motion carries, minutes are approved.

Chair Morin invited the first applicant to present their application.

II. Old Business & Continued Hearings:

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

Atty. Andy Prolman of Prunier and Prolman presents: Mr. Chairman, members of the Board, good evening. My name is Andy Prolman. I'm an attorney with the law firm of Prunier and Prolman of Nashua, and our full team is here with us tonight, Mr. Chairman: Joanne Dumas, property owner, Paul Scarpetti, our property manager, our engineer is with us at the table, Brent Cole, and Jeff Merritt from Granite Engineering. We also have Robert Duvall from TFMoran to address traffic concerns.

Mr. Chairman, we were here before you three months ago back in February, and the Board is very gracious to allow us this additional time to address some of your concerns. Miss Ports, I believe, did a very good job with her report to you, outlining really the two main issues that this Board had concerns about for this particular variance. We believe that we have addressed those, and we can address those with you tonight to address primarily safety concerns that the Board had with respect to access off the site with emergency and then the traffic concerns. And what we want to do, because it's been a few months, I was going to have Brent just do a brief representation of the plan, just bring everyone to speed and if anyone wasn't here back in February. Mr. Duval will speak to the traffic study that he and his office has prepared, and then I'll come back and to the extent that the Board wants to hear the variance case again, I'll walk the Board through that as well. With that my friend Brent Cole.

Mr. Brent Cole presents: Thank you, Andy. For the record, my name is Brent Cole. I'm an engineer with Granite Engineering. The Dumas family owns a considerable amount of land in between Bow Lane and Kennedy Drive. The plan depicted behind you shows how we kind of utilize that land. Between a series of lot mergers and a lot line adjustment, we're able to create 26.5 acres of land that is split-zoned between the Commercial District and the R&A or the Residential Agricultural Zoning District. We are proposing a 54-unit, 55 and older community that extends Bow Lane from the recently approved and in construction

apartment buildings that are off of Chestnut Drive to the north. The development is a loop road development with a series of fourplexes that will be 55 and older, so restricted to 55 and older. It is a 2,300 linear foot roadway, and it extends off Bow Lane where you start at the development with pickleball courts, a recreational area to the left, along with parking, mailbox and a gazebo for gathering. As you navigate through the property towards the end of the property, there is another community gathering area where we're proposing a community garden. There is a significant buffer to the south, buffering our development from the single-family homes of Presidential Estates. There is a significant buffer to the west with Riddle Brook and the requisite 100-foot buffer to the east and to the north to help buffer the school and the new apartment complexes. We do feel like this is a good transitional use. We have commercial development at Route 101. We have multifamily development with the new apartment complexes. This transitions to a townhouse style before we get to Presidential Estates, which is the single-family homes to the south of us.

At the last meeting, you guys recommended we meet with the Town departments to discuss their concerns with secondary means of egress and traffic, and we did such. Andy, myself, Bob behind me, met with Becky, her team, which involved the Police Department, the Fire Department, as well as DPW. And we came up with a way to address the secondary means of egress concerns as well as develop a traffic scope, which I'll allow Bob to get into. The secondary means of access is coming through our development and ending at Kennedy. The Town felt like that was a win-win because Kennedy gets a secondary means of access, which it doesn't have today, as well as our development and any future development or the apartment complexes at Chestnut. That emergency access road extends in through this area here and comes out to Kennedy Drive. It is a 20-foot-wide paved fire lane. It'll have gates on both sides with only the Fire Department or the Town officials having access to those gates. Public will not be allowed to use that. There'll be no interconnection between Presidential Estates and our development, except for emergency purposes. With that, I'm going to allow Bob, to kind of touch on the traffic study and the traffic scope that we developed with the Town.

Mr. Bob Duval presents: Good evening, members of the Board, my name is Bob Duval. I'm an engineer with TFMoran and I prepared a traffic study for you this evening. As suggested, I'll first go over the scope that we had agreed to for this study with your Town staff, and it included a description of existing conditions—that is how many trips are out there now, both at 101, at the Bedford Village Shops intersection and at Bow Lane itself. And then we did as we do for typical traffic studies. We did seasonal adjustments, and these days we are still doing COVID adjustments. Volumes are lower than they were pre COVID, which they were in this case. We then apply a growth factor and other developments. In this case, the other development would be the third building at Bow Lane, which is still under construction. So essentially what we did is we counted the traffic that's coming from the two open buildings, and we added half again to represent the third building once it's occupied. Then we take these proposed trips, we add them to the no build adjusted trips that we talked about, and we do a level of service analysis which looks at the capacity of the intersection, the amount the average delay at each intersection and the typical length of queue at each intersection. You're probably aware, in traffic studies level of service A is considered essentially no delay and level of service F, is considered significant delay. So, typically intersections will fall within that spectrum according to the amount of traffic that each movement has. After doing this queue analysis, we've summarized our results in a table. I'll go through that table with you briefly.

We also verified sight distance at each of these intersections to make sure it's adequate, and we also did a speed study. I'll observe travel speeds both on Chestnut and on New Hampshire 101 to see how that average speed was comparing to posted speed limits, which by the way is 40 mph on 101 and 30 mph on

Chestnut Drive. From that, I'm going to first talk about trip generation. The proposed development falls into a category known as senior adult housing, which is 55-plus housing. And it's a fairly well studied category across the country. Most of the New England states have all participated and the averages that are compiled by the ITE, which is the Institute of Traffic Engineers. It generates these typical averages that are used as a benchmark by Planning Boards all over the country, a routine matter of how trips are estimated for proposed developments. As a point of reference, the senior adult housing for 53 units would be, and it's based on actually an algebraic equation, but it's approximately a little less than half a trip per unit in the peak hour. Peak hours are typically 7:00 to 9:00 AM, the highest hour in that range. That's the AM peak and the PM peak. The typical peak for a roadway is in the highest hour in the 4:00 to 6:00 PM range. In this case, because of the school activity on Chestnut Drive, there's actually two peaks. There's a 2:15 to 3:15 peak, and then there's a 4:30 to 5:30 peak. We measured both of those, and to be conservative, we took the maximum trip generation and applied it at both of those PM peak hours just to make sure we had covered everything.

The 53 units that are being proposed here tonight would generate 24 AM trips and 27 PM trips. Again, that's based on an algorithm that's roughly a little less than 1/2 trip per unit during the peak hour. It doesn't mean that's all they generate during the day, but that's what the traffic is during the peak hour. And existing and projected traffic for the multifamily Bow Lane Apartments project is 53 in the AM peak hour and 50 in the PM peak hour. This correlates very well between the ITE prediction, and the actual observed adjusted for the third building that we just talked about. Also, a significant activity up on Chestnut Drive is school drop off in the morning and school pick up in the evening. That's actually a more significant activity than what we were just talking about. The total school activity in the morning is 170 trips and in the evening during the highest peak hour, which is the 2:15 hour, is 66 trips. So those are vehicles that are essentially going past all the other driveways along Chestnut Drive and past the Bow Lane driveway and going into the cul-de-sac for turning around and dropping off. As you can see, out of a total of about 250 trips, that represents 170 of that 250. The proposed Dumas development is roughly 10 percent of additional traffic on top of what's already out there between the school and the projected completion of Bow Lane Apartments.

What does this mean operationally? Well, all of the intersections at Bow Lane and at the Bedford Village Shops, and the driveways along the way, all operate at a level of service A&B—well within capacity with essentially no queuing. There's momentary queuing. Queuing, by the way, is measured at the 95th percentile. If I say there's a queue of three cars, for example, what that is saying is that that queue is exceeded only 5 percent of the time. That would be the 95th percentile queue is whatever the length would be. And these are during the peak hour, remember, so it's exceeded only 5 percent of the time during the peak hour, and the rest of the day would be less than that. So that's how a queue is defined. The queuing is essentially nil at all of the interior intersections, including Bow Lane, less than a single car length on average. However, 101 intersection at Chestnut, the Chestnut approach to 101, the queuing can get up to, or I should say the predicted queuing can get up to 10 cars in the AM exiting traffic, obviously, and 5 to 6 cars in the school peak, and then 2 cars in the normal 4:30 roadway peak hour. That's out in the no build condition. In the build condition, you're adding about 3 cars to that in the AM, 2 cars to that in the school peak, and 1 car to those lengths in the 4:30 peak.

The level of service is in the E&F range, as is stated in the report. The intersection today in the no build condition is approximately at capacity. That doesn't mean that when an intersection is at capacity that nobody else can get in and out of it. What it means is that after that limit, delays start increasing more rapidly, so we're already seeing that condition in existing conditions. That's a 10-car queue and roughly a

2-minute delay in the AM. That's increasing in the build condition, but not significantly because, again, we're only adding 10 percent traffic as a result of this development.

In summation, I would say that this development does not make a significant difference in existing conditions out there. The new traffic represents only 10 percent of existing traffic. Two thirds of the traffic at the site is school related—not related to any of the destinations. Not just the Bow Lane Apartments or the proposed Dumas development, but the other buildings on the site. It is related, therefore, to the school activity at that location. So that's a summary of our traffic report, and we'll be happy to answer any questions you might have.

Chair Morin said I just want to make sure I heard you right. You said two-thirds of the delays? Mr. Duval replied two-thirds of the traffic is school related.

Ms. Hebert said it may be worth noting, too, that the end of Chestnut Drive is posted no parking and the access drive that's seeing so much use is a gated emergency access way to the middle school/high school.

Mr. MacPherson said we have this letter from Daniel Doudi, Deputy Police Chief, and he talks about how much activity will be occurring when the third building is fully occupied, and the 55-plus development is in place on Bow Lane. What is the...and they're going to monitor it. Is there any, shall we say, conclusion? I mean, that this is kind of wishy-washy so to speak. And more specifically, asking how many accidents will occur is a question. And how many actual accidents have occurred in that 101/Chestnut area, especially when you have to take that left headway? Is there any facts on how many accidents have occurred recently or in the last three months or six months? And how many speeding tickets have occurred?

Chair Morin replied, my only comment to that is if there were issues, I would expect that to be in the e-mail. But there is no information, and they're the ones who keep track of it. The other piece, which I'm sure was brought up I'm guessing during the meetings, is that—and it was testified to this evening—is that two thirds of that traffic check is due to the school. My question to the department might be, what are they doing about it? Mr. MacPherson said good question. Chair Morin continued, because it's an emergency access to the school. It's not a drop off area, per se. But that's my own thinking of it. I don't know if anyone else has anything on that.

Mr. Casale said yes, let me add a couple questions that are gnawing at me a little bit. One thing, I appreciate the thoroughness of this report because it obviously bothered us. The one thing that I didn't like about the report is it seemed to insinuate, because I certainly didn't hint at this, that at least on my behalf, that we were concerned about traffic safety on Chestnut. I was more worried about 101. And on your introduction page, it states, 'how the project may affect traffic and pedestrian safety along Chestnut Drive from Bow Lane to 101.' I'm actually more worried about 101 and I think the other Board members were as well, as far as the increase in traffic. The fact that on 101, the speed is 40. You did have some average speeds in there which I was a little surprised at because I think that they travel faster than that. I'm not sure where these figures come from. I do have a question. It was a little confusing on, so maybe you can just generalize, the current statistics versus the future, whether most of the traffic, whether they turn left or right. So, they're heading towards Milford or heading towards Manchester. And the reason I ask that is that I don't think that that's a safe intersection to make a left. While there's indication in your report about the fact that—I don't know if you—I guess I saw the aerial, but you didn't provide one. There's an aerial that shows that there's sufficient room for a car to kind of hide between the two islands. It's not really safe, so there's a turn lane. And in a lot of places, they allow for, on the opposite side, some kind of an entryway. So, there's another lane and then you can merge into traffic. Well, there's no merge.

If you get into that lane, you're in the highball lane, and you're getting rear-ended. We've been talking about, this is a 55 and over community, and there's a reason why AARP has '55 and Alive' classes because being 60, I get it. We need drivers' education, I think, for various reasons. It's a hard intersection to navigate. So, can you comment about the stats about the left-turning cars versus the right, and the ratios, and maybe break that up trip generation wise from this community versus, say, the school traffic, if you can even differentiate that. And I'm more concerned about the left-turning traffic, because that's the tough one. Ms. Thomas added and that seemed to be Deputy Chief Doudi's concern, too, is turning left. His point number one is about turning left onto 101. Mr. Casale said yes, it's not so easy. One car can kind of hide, but you got to be really good, and your car has to be parallel to the road or you going to get whacked.

Mr. Duval replied sure. I can answer that. In fact, I'm going to try to catch all the questions that were just brought up. As far as crash data goes, we did ask the Police Department, and they haven't provided us crash data yet. I actually take that as somewhat of a good sign. Because if it was a high accident location, they would have been keeping statistics carefully, and we haven't seen that. I guess, in that case, no news is good news. As far as the safety aspect of the report, when we said Chestnut Drive, we meant all the intersections on Chestnut Drive. And obviously the one of most concern and the most traffic is the 101 intersection. So that is certainly part of our study, and it wasn't intended to mean Chestnut Drive as opposed to 101, but Chestnut Drive including the 101 intersection. And the specific answer to your question about percentages turning left and right... right now I'm going to talk in terms of build condition. In the projected condition with the third building... Ms. Ports said excuse me. Can you reference a Table or a page in the report? That would just be helpful.

Mr. Duval continued, on Page 16, it begins on 16. You'll see some stick diagrams. And that represents traffic movements at each of the intersections. Mr. Casale asked which page was that? Mr. Duval replied 16-24 of the report. And what that is showing is numbers of traffic moving in each direction. For example, in the upper left, right under the word New Hampshire 101, you see there's 1,786 cars moving eastbound, 964 cars on 101 moving westbound. There's 59 lefts into the development. There's 98 rights into the Chestnut Drive Development. But your specific question was about exiting traffic. How many are turning left? How many are turning right? That's the 42 and 72. So roughly one third of the traffic is turning left heading towards points west and two thirds of the traffic is turning right. Another thing of some note is that... Mr. Casale asked 42 out of 72? Mr. Duval clarified 42 out of 172. Ms. Hebert said 42 turn left, 72 turn right. Mr. Casale said I have 42 turning left and then 72 turning right? Mr. Duval says yes. Mr. Casale said right. But you said it was a third. Mr. Duval replied yes, the total volume is 114. Forty is roughly 1/3 of 114. Ms. Tomas said add the two of them together. Mr. Casale said oh, yes, sorry. I was an education major, but not math. Mr. Duval continued, and then if you turn the page to the right and look halfway down the page—because the top of the page is just the AM traffic again—the second stick figure shows 68 and 51, but we had 42-72, and that's saying in the afternoon school leaving hour. There's 68 vehicles turning left and 51 turning right. I'm not going to do the math in my head, but I'm going to say that's pretty close to 60/40 split of traffic going left. Ms. Thomas asked and, I'm sorry, that's in an hour's time? Mr. Duval replied that's in the school peak. Ms. Thomas asked in like a one-hour duration from like 2:15 to 3:15? Mr. Duval answered right. Approximately 1 car per minute turning left and a little less than that turning right. And then if you turn the page again, at the top of the page, you'll see that's the 4:30 PM peak hour. That's the typical—that's actually the highest hour of New Hampshire 101 traffic. You'll see 33-51. There's a little bit of school activity there, probably after school programs and some teachers and staff leaving late. But it's mostly the businesses and the existing residences in Bow Lane—existing and proposed residences on Bow Lane. So, 33-51. I'll leave it at that. I won't do the math this time, but most of the traffic in the AM and the PM, except during the school hour, is turning right as opposed to left.

Now, you'll note, and I started to mention this, the right turns into Bedford Village Shops is a fairly high number—more than you would expect if it was just people going shopping there or going to the bank or what have you. And that's due to cut through traffic. The reason for that cut through traffic is people making right turns will find it easier to go through the development rather than wait on Chestnut Drive where you might be behind somebody who's waiting to make a left turn. And it's easier to go through Bedford Village Shops to make that right turn. I think that traffic should probably be added to the right turn traffic because there may be a handful of people with business at the plaza, but by and large, most of those trips are right turns.

Mr. Casale asked in your experience and for planning, how amenable has the State been to changing signage or perhaps changing that intersection to make it a little safer for a project that expands a development such as this? Mr. Duval replied the way it works, Chestnut Drive, even though it's a public road, and for that matter, Nashua Road, Wallace Road—all of the Town roads are considered driveways from the state's point of view. They have their highways, and everything else is a driveway. So they issue driveway permits, whether it be to a single-family home or to a community for their public roads. Those driveway permits are regulated by the State. And as roads become busier or as site development happens, they'll take a look at the driveway permit and decide if it has to be updated or not. And if there's a significant change in traffic, even a public road, the state may decide that working with the community, that there have to be improvements made to that intersection. So that's the general policy or procedure for how that's done. I would say that in this context of what we're talking about here, adding 22 trips to a road is probably not enough to warrant the state taking a second look at it. Mr. Casale said Right. OK. Thank you. There were no further questions from the Board.

Atty. Prolman said Mr. Chairman, thank you, again. Just to briefly stick with Mr. Duval's report, his conclusions are on Page 24 of his report. While there's a school issue with the traffic in the afternoon, our project, in Bob's words, will have no significant safety impacts from our site, is his ultimate conclusion. And again, we offer Bob up for any other questions for the Board. But getting back to why we're here, we are seeking a variance to allow the density. And the issues that this Board was most concerned about last time was the safety issues that we've been talking about.

Just to briefly go back over the variance criteria for the Board, I think the Board understands our project. I won't go over the whole narrative again.

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:

With respect to public interest, we're proposing a greater density that the R&A District would allow on its own. But if you look at this site and the isolated nature of the site and the way it's buffered from all of our neighbors around, we don't see that we'll be altering the essential character of the neighborhood, and this is the concern from last time back in February.

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

Given the information that we, having met with the full Town staff, having the additional emergency access, and listening to Mr. Duvall, we don't see that we have any impact on the public health, safety or welfare given that we have such an insignificant addition to traffic from our project.

2. The spirit of the ordinance is observed because:

We believe the spirit of the ordinance is observed because a portion of your ordinance contemplates shifting densities. Remember, we have two districts here. We have the Commercial and the Residential and Agricultural. 275-33B contemplates shifting densities where the cluster residential development is located in more than one district. And we believe that rather than cramming all of our density into the Commercial District doesn't make sense. We believe that spreading out the 54 proposed units over the entire property is a good proposal that does not alter the character of the neighborhood or injure any public rights as a result of our proposed density as a result of our project.

3. Granting the variance would do substantial justice because:

We believe substantial justice is being done. In addition to what I have in our in our application, it was suggested to us that the conventional 14 lots that would be allowed just in the R and A District, along the way it was suggested that would be an underutilization of the 26 acres. And we agree with that. And if you take a second to step back and read the paper every day, every day we see more and more concerns and issues raised about the housing crisis we have in New Hampshire and every community really has to do its part. We believe we're helping add units, or I believe we're helping add units that are in demand, and frankly they will be eaten up very quickly. Anecdotally, I'm already getting calls about this project, and I know our engineers are getting calls from our realtors, so these units will go quickly. And finally, don't forget, I don't know how many neighbors are here. We had a strong showing from last time. There are many neighbors in support of this because accessing from Bow Lane and preventing any future connection down to Kennedy Drive was beneficial to the neighbors and we saw that was a substantial justice weighing in favor of the applicant with no impact to the Town.

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

The surrounding properties will not be adversely affected and if you look at our surrounding properties, we have the high school, we have Bow Lane to the north, and you have an e-mail from Mr. Anagnost saying he has no objection to this proposal. We have buffers all around. There's no contact with the Kennedy Drive homes, and so we don't see that the surrounding property values will be impacted with this proposal, especially given just the isolated nature and the buffer all around.

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:

And finally, we have a very unusual lot. We have a very isolated lot without any frontage. We have a split-zone lot, and the split-zone lot is unusual in that most zoning, where it goes from one zone to another... Brent, could I bring up that zoning map that we had. I want to show you your zoning map. I just want to make this point. If you look at your zoning map, most of the zoning in Town, especially on the eastern half of Town, most of the zoning follows lot lines, right? And that's good planning. You know, you don't want to divide—you don't want to have split zone lots. It's just a fundamental thought of zoning. If you look at all the CI the PZ, all your zones, they, for the most part, they all follow lot lines, right. However, our lot (it would be on the next page), our lot is in yellow, and this is a blow up of the zoning ordinance. We have just a split zone lot and the split zone was just an arbitrary 1,000 feet coming off of 101. And what that does is it has a tendency to screw up lots and makes a very unusual configuration for our Commercial Zone. And while we have an allowed density in the Commercial Zone, given that it's an unusual configuration, our main access is from Bow. That makes it very difficult to do anything with this lot, and so we have very unique circumstances with this particular lot that we think that we have a good proposal

to allow the density that would be allowed on the Commercial portion. That's, again, an odd configuration spread out over the entire lot. And seeing that proposal, we don't believe that there's a fair and substantial reason to prohibit that with the general purposes of the ordinance as applied to this particular proposal before you.

- (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:**

Finally, Mr. Chairman, we are surrounded by Residential uses. We are proposing Residential use. We believe we are proposing a reasonable use to the second criteria for the variance of the hardship portion.

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

Criteria not applicable, addressed in subparagraph (A).

And with that, I would be happy to answer any questions. And if you thought of other questions for Brent or Bob, please. So, thank you. Chair Morin said thank you.

Mr. MacPherson asked when was this study? Is it May 3rd, or was it, especially in relation to the speed. Mr. Duval asked, the traffic study? Mr. MacPherson said yes. As Mr. Casale pointed out, it seems like it gets pretty beyond 40 mph in there at times—it's like it's 50 or 55, whatever. Mr. Duval replied the speed study was conducted by the Bedford Police Department, by the way, and they measured on April 10th, a Monday, and on April 18th, Tuesday of the following week. And they're 24-hour studies. Vice Chair Casale asked, what was it? Twenty-four hours? And they averaged it? Mr. Duvall said yes, well the results look like this. They tabulate the speed and little buckets of five mile per hour increments from 1:00 to 5:00 up to 65 plus. And then for every hour they have total number of vehicles traveling at that speed. And then they report the average they represent. They report every individual reading, and then they report the 80th percentile, which is the number that's used in design of highways. Mr. MacPherson asked that study is just within 24 hours? Mr. Duval replied they measured traffic over a 24-hour period. They did it on two specific days, April 10 and April 18th of last month for 24 hours at a time. Mr. MacPherson said thank you.

Chair Morin said a question I have just so it's out there. Because I have the question, I'm sure some of the folks might have the question. The new proposed access, the emergency access: It's showing a proposed 20-foot paved access drive. What is your estimation about how wide of an area will get cleared for that 20-foot road? Because I'm sure some of these folks are wondering. OK, there's a big path going through the woods now, so at least they have an idea of what that is. So maybe that'll quell some questions about it. Mr. Cole replied sure. And we can try to limit that as much as possible. Unfortunately, it does change with grade. As you can imagine, the more fill we have, the more daylight slope we have. We would have to clear for that. But we're certainly willing to work with Presidential Estates to make sure that proper plantings are placed to provide any sort of screening if there are any gaps. For a 20-foot roadway, you're probably looking at maybe an additional 5 to 10 feet on both sides on average to get those daylight grading. You may have a curb on one side to direct storm water in the proper manner, but besides that, we try to limit it as much as possible and work with the neighbors during the Planning Board process to

make sure screening was provided. Ms. Thomas asked if you could go to the bottom of this so that on Kennedy Drive, or I guess it's on ... is that in between two lots? I'm just trying to understand what I'm seeing. So, it's coming right from Kennedy? OK. I didn't see enough of the road. Mr. Cole said I can show a blow up if you want. Ms. Thomas replied no, actually it says Kennedy Drive all the way at the bottom. I can see exact. So, you're just going to take Kennedy Drive and go straight up. Mr. Cole said just extend it and make sure we have gates so that we won't have any people that don't know the area driving out here. Ms. Thomas said OK. I couldn't tell what I was looking at. Thank you. Chair Morin clarified so, one gate would be at that probably just inside that property line at Kennedy, and then the other one would be at the inside. All the way in towards the road? Or further out? Or? Atty. Prolman said do you see there's a little parking lot right there? Chair Morin said yes. So, right on the other side of it, probably? Mr. Cole said yes, it would make sense and would hopefully use this area to allow people to walk to the community garden and stuff like that. Instead of doubling up with other trails that parallel with each other, this would act as kind of both.

Ms. Hebert asked would the Fire Department accept a gravel access drive? Mr. Cole replied it's a valid question. We certainly can ask them. It's a little bit more challenging to direct stormwater with gravel drives, but it's certainly something if they're willing, and it's better for the neighbors, better for the development, that we're not opposed to. Vice Chair Casale said then you have a problem maintaining it more during the winter, right, with run off and if a heavy truck has to go up. Ms. Thomas said because that road would have to remain plowed in the fall and the winter. Vice Chair Casale said yes, that's an issue. Chair Morin said I'm thinking from that perspective, that's probably more of a Planning Board piece. Mr. Thomas replied well, I know DPW is trying to get away from any dirt roads or gravel roads or paving everything. Chair Morin added plus, it wouldn't hurt probably either for possibly the community, if someone is handicapped and wants to get to that community garden, they've got a hard surface to be on that's flatter.

Vice Chair Casale said just a quick question. Are you going to have bike trails, will you have some paved area on either side of the gate so the people could use bicycles to traverse up. Atty. Prolman said like have bollards on either side of them? Vice Chair Casale said yes, you know, like rail trails. Mr. Cole said I think it's a great idea. It's kind of how we would work in the whole trail system with this roadway so that we weren't duplicating efforts. Mr. Casale said yes, OK, just curious. Mr. Cole added I think something like that would be good. There were no further questions from the Board.

PUBLIC INPUT:

Mr. Knute Klefos of 25 Kennedy Drive, Bedford, comments: Hi, my name is Knute Klefos, 25 Kennedy Drive. I'm the abutting property where the fire road would go. My question is, what assurances do we have that that's not going to turn into a thruway? That's one concern. Our neighborhood's been very adamant to fight against this increasing traffic through the neighborhood and so forth, and this kind of opens the door for through traffic coming through there. Is this going to be written in the bylaws of the development that that can't be converted into a throughway?

Chair Morin replied, they will be approved by what we give them for the approval. In actuality, this design right here and their testimony tonight will bind them to making sure that's gated. They'll also go to the Planning Board and I'm sure the same thing is going to happen there. But, you know, again, 15 years down the road, could they come back to a Board and ask for something? Sure, but that's where the public would be notified of those things. Anyone can do that. Mr. Klefos said I am for the project, but this is a detail

that I just don't want there to be a loophole that is established that could be a problem. Chair Morin said no, I fully understand.

Ms. Thomas said I live on Glen Road. And the end of Glen is actually the emergency access for The Mews. And that's been gated since the Mews has been built. I've never actually seen—I'm sure the emergency services has opened the gate, but that gate has never been open. There are signs, no trespassing. We're not even really supposed to walk into there because it's private property. And that's been 20 plus years now, probably, and it has remained. The gate has remained. I'm not sure if there's anything written anywhere and that would be something, I think, to just double check. Ms. Hebert said it's typically noted on the site plan, so it's considered as part of the Planning Board approval whether a road is private or public. And in this case, you'd have a private road extending Bow Lane in through the development and then the emergency access way would be considered private as well, more of like a driveway—an emergency access driveway. And the ownership is noted in the covenants, and it's noted in the Planning Board approval. Not to say that 20 years from now, a group of neighbors couldn't petition to have that changed. But the design of the emergency access way, especially, is nowhere near our design standards for a public road, and the Town, in general, at this point in time is getting away from accepting more roadway infrastructure because it's just more public roads that the community would have to maintain over time. Mr. Klefos replied OK. Thank you.

Ms. Jennifer Packard of 22 Kennedy Road, Bedford, comments: My name is Jennifer Packard, and I live at 22 Kennedy Drive. I'm in a unique position because I work at 188 Route 101. My comments aren't necessarily for or against the project. I just think I was coming here expecting some objective data. I was concerned, and it was brought up at the February meeting about the safety concerns with pulling out from Chestnut Drive onto 101 and making that left turn. And I thought we were going to have like X number of crashes like that, that sort of data. In my field, when you don't get information back, it means that somebody dropped the ball. I'm just concerned that nobody gave you data. Maybe it's state data because it's a state road and it's not something that Bedford Police are accountable for? That's not my area of expertise, but I'm just surprised that we don't have that objective data. I can give you subjective data from working at that corner and seeing accidents there. An elderly gentleman who was in the back, was very concerned about pulling out there. And then equally challenging is traveling westbound. It's half challenging and making the left turn onto Chestnut. So that's like half a challenge crossing 101 and then I would also say, it's understood, and it's posted in Town that the MPH is 30, but it's posted at Chestnut as 15, right as it makes the hairpin turn. I don't know if the assumption for the whole road is 15 mph. I don't know if that changes the algebraic equation of how you calculate all of your numbers. But you cited 30 mph, but it's actually 15 right at the hairpin turn before the Bow Lane cut off. These are just like numbers that I'm hearing that I haven't heard data, and it was my understanding that this was a safety presentation—the proposal of the road. Also, is there an overlay of like the wetlands? Because I know that was very close to the wetlands from some of the original proposals last summer.

Chair Morin said I don't think we have any issues with wetlands in this project. Did we even have any in the February meeting? I don't think so there were no wetland issues. Ms. Packard said the original plan did show the wetlands swamp area. It's right where the, I would say it's to the east, yes, in that area where the road is. I just didn't know if that was now not an issue anymore, although it was brought up back in, I believe it was July was the original meeting last summer. Chair Morin said not for this project. Atty. Prolman clarified not for this Board. We did have a conceptual with the Planning Board. Ms. Packard said, and I know that that's like out, but it's just—where's sort of like the overlay? I don't know if that's, you know, part of this meeting. I'm going to just cross check my notes. Ms. Ports said the new access road would require a wetland crossing, is that correct? Atty. Prolman said yes. Ms. Ports said and that wasn't

required before. But because we changed the access location, they will have to come back before the appropriate boards and get the right approvals for that. Ms. Packard said so that has to circle back in that process. Ms. Hebert said it's not a Zoning variance issue. It's a Planning Board issue. Ms. Packard said so that component will go back to Planning. Ms. Hebert said yes. Chair Morin asked does that also go to the state for approval? Ms. Hebert replied it does, yes. Ms. Packard continued, and then there's just been the comment that the school is responsible for a lot of the traffic. And my point is like, well, it doesn't really matter whose response... I mean, there's just traffic there. We can say, but traffic is traffic, and the Town has never done anything in the 10 years that I've worked at that corner. It's never been regulated by the Town. That's traffic. Those are my comments. Chair Morin said All right. Thank you. Vice Chair Casale said Ma'am, your question about the traffic, the problem with, I'm assuming, I don't work for Bedford Police, but I know a little bit about the traffic reports. The tough part is that a traffic accident can happen at a certain location. But the call doesn't come in at that accident, that precise accident location. If they moved to the store next door, that's where the report is generated. So, in actuality, it's the State of New Hampshire that would have a better log of where the actual accident happens. So really, Bedford Police will probably have an easier time going to the state, but that's kind of a nightmare too. So that's probably why they don't have it, you know, as quick as... I would like to see those statistics too, but it's not that easy to get. Because it's not very accurate. They could run the report again and get stuff in the area, but it's not going to tell them exactly where it happened easily. It just says where the officer went to, but it's not where it happened necessarily. Do you get that? So, in other words, they could have gone to the bridal shop, but the accident happened at the intersection down the road.

There were no further questions or comments from the public.

Mr. Duval said I'd like to answer some of the questions that were raised by the speaker. And to your point, Mr. Casale, one of my pet peeves as a traffic engineer is the difficulty it is getting crash data starting about 10 years ago. Crash data before that time was easy to obtain. You went to the Police Department, and you went to the state. They gave you their records. They would redact names and you had, you know, the cause of the accident. How many vehicles were involved, and all the information you need to make a proper safety analysis. Beginning about 10 years ago, with concerns about privacy, the state stopped offering that information. And for a while they were releasing it if you showed a legitimate public purpose. So, that was a kind of a hassle, but we had to fill out an application. It would take sometimes months to get this public purpose information. Then they stopped issuing it altogether, and they tell us to rely on the local departments. The local departments, like everyone else, are constrained to time. And they do what you say. They just aggregate accidents. You no longer know if it was... You don't even know if it's necessarily a 1 car or 2 car accident. And so, we do the best we can. Vice Chair Casale added, and every department is different. The department I work for gives the info out. I go to Bedford, they said, oh, sorry, we can't release that to you, and I was in the accident. They said, oh no, we can't give you the other operator's information. I said you're kidding me. I was in the accident. Mr. Duval said it is a pet peeve of mine, and we do the best we can with the data we can get. Vice Chair Casale said it's not easy. Mr. Duval said as far as the speed limit, the speed limit is—I guess there's two speed limits on the roadway. One is the regulatory speed limit, which on all local roads in Bedford is 30 miles an hour unless noted otherwise. And on the state highway, it could be 50, 55, 30, whatever. And then there are warning speeds. If you have a sharp curve, those are those yellow diagonal. And that tells you it's not regulatory. You couldn't get a ticket for going say 20 where the warning climbs at 15. But it's a warning to drivers to slow down because there's a sharp curve, or a blind driveway, a sharp crest and what have you. And it doesn't really enter into the analysis. The analysis is based on the number of cars at an intersection and which direction it's turning and that's how we determine our analysis. The speed is essentially immaterial because the turning traffic has to slow down to make it's turn anyway. And then lastly, in regard to westbound

movements on New Hampshire 101, we did analyze that. That's in our report, and although the through traffic runs free at all unsignalized intersections, the left turns have to stop and wait for an opening in the oncoming stream. And for the westbound left turns in the AM, that movement is a 29 second average delay, which is a level of service D and a queue of approximately 1 car—29 to 33 feet with 25 representing 1 car. I would say that's a favorable condition, especially considering the volume on the NH 101. It's not a significant delay, and no significant queuing. Chair Morin said thank you. Are there any questions concerning that data we just received?

Atty. Prolman said Mr. Chairman, that's all we have. We think we have a good project. We hope the Board agrees, and again, we're happy to answer any questions. That's all we had. Thank you for your time. Chair Morin said OK. Thank you. There were no further questions from the Board.

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

Chair Morin said this is for the density of the project.

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:

Vice Chair Casale said no. Chair Morin said I don't think so either. I think it's tucked in the middle of everything where it will probably be hidden by most things. And for density wise, it's, again, it's well put together in there, and I don't think that will be an issue. Vice Chair Casale said you have apartments right next to it.

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

Vice Chair Casale said I think that the applicants have done a good job of satisfying our concerns that we had last meeting. I know I was probably one of the ones that had the biggest concerns about that, particularly 101, and I'm satisfied that they've met those requirements. Chair Morin said I am too. Mr. MacPherson said I would only add that this is going to be a challenge for our Police Department having to deal with that additional left-hand turn. It is what it is. Chair Morin said no, I think we asked for a lot of information, and it's unusual because we deal with public safety issues not as specific as the Planning Board deals with traffic studies. For us, it's, I think, since I've been on the Board, the first time, we've actually requested a traffic study because of this specific issue. But I think it's well put out there and gives us the information we needed. And I think the emergency access is much better than that area that was put in the development way back when, but with one heck of a steep hill to get up and down through. So yes, I think that's worked out well.

2. The spirit of the ordinance is observed because:

Chair Morin said I can understand where this developer is coming from with this. It is an unusual piece of property tucked away. Thank goodness, another development helped give some access to it. And the nice part is the access is not through a neighborhood. It's through a business area. Personally, I think it's a good project for this area, and I think that capacity works. Vice Chair Casale said it's the best use for it.

3. Granting the variance would do substantial justice because:

Chair Morin said again, it gives them the opportunity to utilize, develop the property and do something that, as they say, the Town needs and they're able to work within the guidelines and give us what we needed.

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

Board agrees there is no evidence of this.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

A. Special conditions of the property distinguish it from other properties in the area because:

i. Denial of the variance would result in unnecessary hardship because:

ii. 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:

Chair Morin said they've spoken about the tucked away property, the dual zone, being able to utilize the best and there's a lot of coverage—a lot of buffering, per se, that's going to help keep this to itself and stay away from the residential areas. I think it's fair to move forward with it. That's my thinking, anyway.

B. The proposed use is a reasonable one because:

The Board agrees yes, it is.

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

Criteria not applicable, addressed in subparagraph (A).

MOTION Vice Chair Casale moves that the Board grant the variance from Article III, Section 275-21B(3)(c) and Article V, Section 275-33B to allow an Elderly Housing development (55+) with a density of 54 units, designed as a Cluster Residential Development, where 14 units would be allowed in the R&A Zone at 227 Wallace Road, County Road, and Bow Lane, Lots 20-26, 20-27, 20-28, 27-24, and 27-110, R&A and CO Zones.

The motion is supported by the following findings of facts:

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

Ms. Thomas duly seconded the motion. Vote taken – All in favor – Unanimous. 5-0 Motion Carries. The application is APPROVED.

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

Chair Morin said you're all set. Atty. Prolman said thank you all very much. Again, thank you for allowing the extra time to answer your questions. We appreciate it.

III. New Business:

1. **Jeffrey W. Healey and Kevin & Edith Clark** - Request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow a lot line adjustment between lot 43-8 at 385 Donald Street and lot 43-9-3 at 391 Donald Street that would reduce the existing non-conforming frontage at 385 Donald Street, Lot 43-8, from 104.29 feet to 98.20 feet where 120 feet is required at 385 Donald Street, Lot 43-9, and 391 Donald Street, Lot 43-9-3, Zoned GR.
2. **Jeffrey W. Healey and Kevin & Edith Clark** - Request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow a lot line adjustment between lot 43-8 at 385 Donald Street and lot 43-9-3 at 391 Donald Street that would reduce the existing non-conforming lot size at 385 Donald Street, lot 43-8, from 0.439 acre to 0.430 acre where 1 acre is required at 385 Donald Street, Lot 43-9, and 391 Donald Street, Lot 43-9-3, Zoned GR.

Mr. Robert Degan of S & H Land Services presented the application: My name is Robert Degan. I'm the applicant's surveyor with S & H Land Services. As summarized, we're looking to do a lot line adjustment here. The existing lot line between the two properties is this dashed line here. It extends the course of this line that comes down along the fence, barely misses the Clark's garage, comes out into the middle of their driveway, and then comes down to the street. So, a good portion of the driveway for the Clark's residence is on the Healy property. And what we're trying to do is simply adjust the lot line so that the Clark's driveway will be fully on their own lot and there's no encroachment issues. Unfortunately, this area of Town, there is no public sewer, and a lot of these lots are very small. The Healy lot is actually one of the largest in the neighborhood, and it's still not compliant with the Zoning Ordinance.

We can't give up this little sliver of land, which is only 410 square feet, without a variance. The requirement being, I believe it was 120 feet of frontage. It already doesn't quite have that, and I believe it's an acre and a half and we've got like .43 acres of land to work with.

Would you like me to go through the criteria? Chair Morin said yes, please.

1. **Granting the variance would not be contrary to the public interest because:**
 - (1) **Whether granting the variance would alter the essential character of the locality:**

Granting the variance would not be contrary to public interest. This would have no impact on the neighborhood, really at all. There's going to be no change to the neighborhood from a visual standpoint. The only thing that's going to happen is the lot line will now be between the driveways instead of in the middle of one. There's no problem for the public interest there.

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

And it will not impact public health, safety and welfare for the same reason. There's going to be no change.

2. The spirit of the ordinance is observed because:

The spirit of the ordinance is observed because it would allow for the lot line adjustment to correct the encroachments. Obviously, we like to have all our improvements on our own lots.

3. Granting the variance would do substantial justice because:

It would do substantial justice because it would resolve the conflict between the abutting properties amicably. And it, again, would not hurt the public.

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

Nothing is changing. The driveway is not being rebuilt or anything like that. It's just moving the lot line.

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:

It cannot be used in strict conformance with the ordinance because there's insufficient space on the Clark property to relocate the existing driveway in a way that would not encroach. So, that option is out to correct the situation. Therefore, relocating the lot line is the most reasonable way to do this. However, it cannot be done without variance.

(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:

Criteria not applicable, addressed in subparagraph (A).

There are no questions from the Board. There is no one from the public who wishes to comment or ask questions.

Chair Morin asked Mr. Degan is there anything else before we go into deliberation? Mr. Degan said no, Sir.

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

Chair Morin said the first one is for the frontage.

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:

The Board agrees, no. Nothing is changing.

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

The Board agrees, no. Nothing is changing.

2. The spirit of the ordinance is observed because:

Vice Chair Casale said it is the same. The spirit is for density and the density is not changing.

3. Granting the variance would do substantial justice because:

Chair Morin said it would help each of them, and they're doing it together, which is the nice part. It's not a battle.

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

The Board agrees they have not heard any evidence to this.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Special conditions of the property distinguish it from other properties in the area because:

A. Denial of the variance would result in unnecessary hardship because:

ii. 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:

Chair Morin said the lots are all small in the area.

i. 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:

Chair Morin said it is very reasonable to move the line over so they're separated.

MOTION Mr. Kellermann moves that the Zoning Board of Adjustment grant the variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow a lot line adjustment between Lot 43-8 at 385 Donald Street and Lot 43-9-3 at 391 Donald Street that would reduce the existing non-conforming frontage at 385 Donald Street, Lot 43-8, from 104.29 feet to 98.20 feet where 120 feet is required at 385 Donald Street, Lot 43-9, and 391 Donald Street, Lot 43-9-3, Zoned GR.

The motion is supported by the following findings of facts:

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

Vice Chair Casale duly seconded the motion. Vote taken – All in favor – Unanimous. Motion Carries. The application is APPROVED.

Chair Morin said the second one is for lot size.

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:

The Board agrees no. Nothing is changing.

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

The Board agrees no. They're not changing a thing.

2. The spirit of the ordinance is observed because:

The Board agrees, yes. They're not changing the spirit.

3. Granting the variance would do substantial justice because:

The Board agrees yes.

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

The Board agrees no they will not be diminished.

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 Board agrees it is reasonable.

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

Chair Morin said it is to straighten things out a little bit.

MOTION: Ms. Thomas moves that the Zoning Board of Adjustment grant the variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow a lot line adjustment between Lot 43-8 at 385 Donald Street and Lot 43-9-3 at 391 Donald Street that would reduce the existing non-conforming frontage at 385 Donald Street, Lot 43-8, from 104.29 feet to 98.20 feet where 120 feet is required at 385 Donald Street, Lot 43-9, and 391 Donald Street, Lot 43-9-3, Zoned GR.

The motion is supported by the following findings of facts:

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

Mr. Kellermann duly seconded the motion. Vote taken – All in favor – 5-0, Unanimous. Motion Carries.

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

Chair Morin said you're all set. Thank you.

- 3. Leslie & Della McDaniel (Owner) and Austin McDaniel (Applicant) - Request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow the subdivision of one lot into two lots with both lots having 75 feet of frontage where 150 feet is required at 12 Linwood Way, Lot 32-22-9, Zoned R&A.**

Attorney James Lombardi presented the application: Thank you, Mr. Chair, and members of the Board. My name is James Lombardi. I am the attorney for the applicant, Austin McDaniel, who is here, along with his girlfriend. Also here is Peter Howe, who prepared the plans in front of you and they'll each be coming before you to explain some things relative to this application.

We are here, of course, for a variance from the frontage requirement under the Bedford Zoning Ordinance, Article III, Section 275-22A, Table 1. That requirement is 150 feet in a Residential Agricultural District. The applicant is seeking a variance from that requirement so that he may create a separate lot out of the one his grandparents currently own and where they currently reside. That's at 12 Linwood Way. The two lots would both exceed the minimum lot size requirement, and all other requirements for setbacks, wetlands, soil, water and septic would be met. Additional approvals from the New Hampshire Department of Environmental Services may be needed, as noted on the plan itself. Subdivision approval, of course, from the Bedford Planning Board will be required.

You have in front of you the survey plan plus the topographic and soils plan for the property prepared by Meridian. At this time, I will let Peter Howell of Meridian talk about the plan and the technical aspects of the application. Austin McDaniel will talk about some of the physical features of the property associated with this proposed development, and then I will address the five criteria for the variance request. Peter, if you want to start.

Mr. Peter Howell of Meridian presents: Thank you for your time. I appreciate it. Usually when we get into this point, when we get to the calculations and whatnot, I see the Board's eyes glass over and your heads go down. I'm hoping that we can keep my comments brief so we can get right through it. I'm not keeping my comments brief because we haven't done our homework, or we haven't included all of the considerations that we need to have for the Board to make a decision tonight. The location of this lot is South of 101 and west of the main road here, Wallace. The purpose of the plan was first to identify the lot, identify the characteristics of the lot, and to put together a plan to subdivide the property into two pieces so we could possibly add an additional home. That was done. The soil characteristics were one element that we had to consider. The wetlands were identified, and we mapped the wetlands. We planned a driveway, which I'm not sure how well you can see this. Mr. Heath asked, the dotted line? Mr. Howell replied, it is. The dotted line that comes from what looks like the bulb on Linwood Way and comes down and then to the left. That's a possible track for the driveway that's suitable because we're coming into the lot between wetlands that we would like to conserve. And then we have the home. What we would consider a suitable-sized home to the left of that driveway end, where the asterisk is. The characteristics of the lot divide...it just makes the most sense to try to come into the lot in that fashion. Later, if you have questions about how we organize things, you certainly can ask those questions.

The setbacks of the lot, we observed all the setbacks which, for the purpose of the Zoning, is to keep the characteristics of the openness. This is a very open spaced area. The lots are fairly large. It's in the R&A District, so we want to conserve the characteristics in that form by the decisions that we've made to position things within the lot. The home is fairly centrally located and it's certainly far from the buffers for the wetlands and the edges of the property. I don't need to get into, hopefully, the sizes of the lots. Both lots will meet the requirements of the size restriction. The only limitation we have is the frontage. Because of the characteristics of the way Linwood Way was developed several years ago, prior to how we observed the Zoning today, we have a shortage of the ability by frontage only. The characteristics of the egress and positioning of the access through the road are fairly easy to do. There is a bit of steepness in Linwood Way. There is a bit of steepness in the lot, but the characteristics for the soil study and the steepness of the surrounding area was suitable to support the requirement for a second septic system, and they have another adequate home in the area. I think that's basically what I wanted to cover. If there's anything that you want me to attend to that has technical aspects to requirements, then I can certainly point those out. But I don't want to burden you with a lot of other information at this point. Chair Morin said thank you.

Mr. Austin McDaniel presents: Good evening, Mr. Chairman, Vice Chairman, ladies and gentlemen of the Board. I'm Austin McDaniel. My grandfather and my father are with us tonight in the back of the room. I have together with me, some pictures of the lot that we can either put up on the big screen or actually I have individual packets for everyone. Chair Morin said if you could put it on the big screen, that would be wonderful. Mr. McDaniel continued, so, for reference, this picture you see here before you is in reference, if you're standing on Wallace Road looking westbound, you'll be looking up Linwood Way, just for reference so you guys can at least see what Linwood Way looks like.

This is at the top of Linwood Way, facing 12 Linwood Way, which is my grandfather's property and the proposed property that we are looking for permission to subdivide. Off to the right here below the

transmission wires you can see would actually be the proposed driveway location. So, you would come off Linwood Way and then head, I guess you'd be westbound up towards that back, right tree line. Vice Chair Casale asked can you show with the pointer approximately where the driveway might be? Mr. McDaniel said roughly, hindsight 2020, I should have staked it out, so it was a lot easier to see in the pictures. But roughly, and Pete might be able to explain this a little bit better than I could being the professional. It would be roughly in this area where the mouse cursor would be. Vice Chair Casale asked is that accurate, you think? Mr. Howell said it might be a little more right of where he's pointing out because it's going to continue up the slope just to the top of the cursor. Yeah, right in there. So, it would come in and it would... Vice Chair Casale asked, curve to the left? Mr. Howell said yes, first effort is to curve to the left to go between the two wetlands. We can't really...the wetlands are hard to identify. But they're there. Mr. MacPherson said when you had the picture out there about all of the transmission wires, is your property going to be adjacent to some of these wires, or into the wires or...? Mr. McDaniel replied yes, Sir. So, the actual, if I can bring up the... Chair Morin said there's an easement for the property from the electrical company, so that's all. You can still go under them or do anything. It's still your property. Ms. Ports said it's their property. They have an easement. Mr. McDaniel said thank you. Yes. It's difficult to see, thank you. So right here, you can kind of see the dashed lines on either side of the proposed subdivision. That is, there's actually 2 Eversource 115 lines that run through that. I'm actually a contractor for Eversource. In regards to the easements, they're their own animal. It's typically on all the deeds to any property that has an easement through it. This one particularly, I believe, dates back to like 1926 is what we were able to find, and typically they state that you can't build a structure, fence, etcetera, stuff like that in the right-of-way because that affects Eversource's ability to maintain the wires that go through those. In regards to the right-of-way, it would just be a driveway that would go through. If Eversource owned the property in the right-of-way, this wouldn't be even able to happen. In this situation, my grandfather actually owns the property that the right-of-way travels through, and they just have the right-of-way to have access to that. So, in regards to that, I am not going to be able to block it by any means, so I can't put up a fence or I can't hinder their ability to applicate like upgrades to the power grid, et cetera.

Where I am going to be building will be on the backside of the actual right-of-way, and it won't be encroaching on the right-of-way itself. Does that answer your question, Sir? Mr. MacPherson replied, yes. Ms. Hebert said also, for the Board, Linwood Way is a private way. It's not currently to Town standards, and if they're successful in receiving a variance, Linwood Way may need improvements or upgrades depending on what the Planning Board decides is necessary during a subdivision review. When you look at the driveway, I would not focus on the Linwood Way right-of-way, because there may be improvements that are needed to the roadway, but the alignment, I guess, maybe as it's shown on your dashed line on the proposed plan. Mr. McDaniel said yes, you're talking about this line right here, ma'am? Ms. Hebert said yes. Mr. McDaniel said as in, you're talking about like upgrades to like the culverts, etcetera, for drainage. Ms. Hebert replied correct and creating a new lot on a private way requires a waiver from the Subdivision regulations, and the Town typically looks to see that emergency vehicles can turn around successfully at the end of the road, that there's adequate space for snow storage and in this case the attorney may know more information, but because it's a private way, it's not owned by the Town. It's not a right-of-way that's held by the Town, so that it's collectively owned by the folks on Linwood.

Mr. MacPherson said Ms. Hebert, just a quick question. Are there any plans to pave Linwood? Ms. Hebert replied, it's a private road, so the neighborhood may have plans to pave it. Ms. Thomas said the Town wouldn't pave it. Ms. Hebert reiterated the Town would not pave it. Mr. MacPherson said OK.

Atty. Lombardi said that may become a subject for discussion, you know, after we get through and hopefully successfully through this part of it. But we're prepared to have those discussions with the Town as well. Our understanding is that the Planning Board would be the proper venue for that. Mr. MacPherson said OK. I mean, it's just a difficult road, especially in the winter. I would think it's a difficult place to get in and out of. Atty. Lombardi replied well, it's been around for a long time. It's been travelled by the folks that have houses on this road. So, it's been used for close to 50 years now. Mr. MacPherson said it is fully used, yes.

Mr. McDaniel said if there are no further questions, I'll just continue with the pictures. Chair Morin said no, go ahead. Mr. McDaniel said for this perspective, you can actually see a little bit better the top of Linwood Way. You can kind of see where the existing wetlands or what is qualified as wetlands are, and just kind of give you like an overview looking down Linwood Way towards Wallace Road, just what it looks like in person.

This picture is standing on where, same thing, where it's looking down at Linwood Way, where the proposed driveway would be coming up. In relativity, it could be staked out. And I do apologize to the Board and its members that it is not, but just visual observation of what it will look as you're looking at it.

This picture right here is taken from where the test pits for the septic testing was taken. And, for reference, looking at the initial plan... so, your test pits were taken right in this area, right here if you can follow along with the cursor. It is facing this property and this corner off of Bartlett Way. For reference, it would be the southwestern property. It's the abutter off of Bartlett Way.

This is facing, I guess, the adjacent property abutter off of Bartlett Way, so it would be the northwestern property abutter. So that's from where the test pit and the proposed building site would be, facing that other property owner that abuts mine.

This picture is from the proposed building site facing back east towards the right-of-way. So, as you can see here, you're well within the tree line and the wooded area of the other upper portion of my grandfather's property that isn't near the right-of-way, in a sense. If this is a better picture to kind of answer your questions from earlier about encroaching on the right-of-way, etcetera. Mr. Heath asked, can you show that on the map where that is? Mr. McDaniel replied, yes. This picture right here is taken approximately dead center facing the right-of-way. So, the proposed building site—this picture was taken facing eastbound back towards Linwood Way and Wallace Road. Are there any questions I could help answer? These are the pictures I took just to kind of give you guys a visual depiction of what I'm trying to do to help, you know, rather than just looking at a plan all day long, it's easier to incorporate pictures. I'm a picture guy. But with that being said, if there are any questions for me, I'm glad to answer. If not, I'll defer to Mr. Lombardi.

Mr. MacPherson said I have a question. Have you had any feedback from the abutter and the neighbors? Mr. McDaniel replied yes, Sir. Before I'd even gone through with this, I went and attempted to make contact with the individual landowners that abutted this property, because I wanted to hear what they initially had to say before getting an official notice in the mail, per se. I was trying to do the right thing and go talk to them individually. I know I went and knocked on both doors for Bartlett Way. I spoke with the nanny of the southwestern property owner, and I explained what we were trying to do. I gave her some rough plans of what my ideas were, and I gave them my phone contact information if there were any concerns, to reach out to me and then we could kind of discuss it, you know, other than in an official capacity. And then the same thing with the northwestern abutter off of Bartlett Way. I gave him a copy of

what I was doing, and he didn't have any further questions than that. Everybody on Lynnwood Way is in favor of this. Their concerns were obviously drainage, road conditions, etcetera. But the way that they've looked at it is, it's a private road. They collectively have to finance and pay for it every year: plowing, maintenance in the spring and fall. And they look at it as it's, well, it's someone else to help ease that cost every year with how expensive everything is in today's world. It's unfortunate that they couldn't be with us here today, but I'm sure they would have. I wish they would have been here.

Chair Morin said and the biggest thing, too is they're all sent a letter. All the abutters, if they had concerns, I'm sure they'd be here. Mr. McDaniel asked, any other questions? I will defer to Mr. Lombardi for the legal jargon of how these things are.

Atty. Lombardi said thank you, Austin. If you folks would like me to go through the criteria, I could do that now. Chair Morin said please. Atty. Lombardi said OK. There are five as the Board is aware.

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:

The first is that the variance would not be contrary to the public. There are essentially two tests to determine whether granting the variance would be contrary to the public interest, and one is whether granting it would alter the essential character of the area. The second is whether granting the variance will threaten public health, safety or welfare. The essential character of the area would not be affected at all if this variance is granted. The property is in an RA Zone located on a cul-de-sac at the end of a private road. And the proposed location of the residence and driveway is far removed from other nearby homes, and the reduced frontage will not impact the area in any way.

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

Neither would granting the variance threaten public health, safety or welfare. The road is private, but it's fully accessible by fire and police personnel and their vehicles for current owners along Linwood Way. The proposed reduction in frontage to the McDaniel lots would not affect that access at all.

2. The spirit of the ordinance is observed because:

The second element that deals with the spirit of the ordinance and the spirit of the ordinance would be observed if the variance is granted. A primary purpose of frontage is to ensure that the distance between homes in the district will be adequate to ensure privacy. Due to the size of the underlying lot, which is nearly 4 acres, the proposed subdivision into two lots, both of which would exceed the districts lot size requirements by themselves, would not affect density in the area. The frontage by itself, though less than the standard, would certainly not affect it and therefore granting the requested variance would be in keeping with the spirit of the ordinance.

3. Granting the variance would do substantial justice because:

The third element granting the variance would do substantial justice. This is maybe the most nebulous of all the elements. A well-known land use lawyer and commentator has said about New Hampshire's variance elements—Peter Loughlin is the gentleman I'm referring to, he added, quote, 'it's not possible to set up rules that can measure or determine justice. Each case must be individually determined by Board members. Perhaps the only guiding rule is that any loss to the individual by not granting the variance that

is not outweighed by a gain to the general public in not granting the variance, is an injustice. In this case, the loss to the McDaniels, owners of 12 Linwood Way, would be the inability to convey a perfectly buildable lot to their grandson. A lot that by itself would equal or exceed all dimensional requirements except frontage and, in fact, would exceed the size of other lots on Linwood Way. Leaving a lot in its current state at almost 4 acres would not be a life-or-death quandary for the owners, but it would also not be of much use to anyone, especially in light of the utility easement that stretches across it. Granting the variance would benefit the owners because they could provide a lot to the applicant, where he could build a residence for himself and his future family. Such a benefit is significant in light of today's property values and prices that often present a barrier to new home ownership. Barriers to housing, of course, isn't often discussed topic these days, and it's been mentioned a few other times throughout the course of this evening, and this is one way to allow someone to overcome that barrier at little or no cost to the community. Density and safety would not be compromised as explained before, and therefore there would be no harm to the public.

On the other side of the equation, not granting the variance would result in little to no gain to the general public, and therefore granting the variance would do substantial justice.

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

The fourth element deals with the values of the surrounding properties. Granting the variance would not substantially diminish or diminish at all the values of those surrounding properties. We don't have an expert to testify to this point, but we did not believe it was necessary here. Board members, of course, are permitted to consider their own knowledge of conditions and circumstances arising from their familiarity with the areas involved in the proceedings before them. Because density and safety would not be affected, and because the proposed residence will be located up a hill connected by a driveway to a cul-de-sac at the end of a private road, a substantial distance from homes on both the private road and on Bartlett Drive. It makes sense that the values of surrounding properties would not be diminished by granting this variance, and in fact it probably makes more sense to conclude that granting the variance would allow construction of a new home that would raise property values rather than diminish them.

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:

And finally, we come to the hardship test. In this case, literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. The special conditions of the property that distinguish it. From other properties in the area arise from the fact that the underlying property at 12 Linwood Way lies on a cul-de-sac that extends only 150 feet along the property's boundary. The property itself measures nearly four acres altogether, extending about 500 feet east to west and 300 feet north to south. It is to say at the least, an odd configuration. The PSNH/Eversource right-of-way, perhaps figured into that configuration, where the road stops not even a third of the way along the property's northern boundary. Subdividing the property therefore necessitates reducing the frontage for both resulting lots. The property across the street has a similar configuration, but with substantially more frontage, so there is clearly a unique situation with the McDaniel's lot.

(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:

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. As we've discussed, the primary purpose of the frontage ordinance is to ensure adequate distance between homes to provide comfortable spacing and to enhance privacy. Due to the size of the underlying lot and the resulting lots, as well as the proposed configuration of the new residence and driveway, this purpose will not be undermined. Therefore, there is no fair and substantial relationship between the frontage requirement as it applies to this property and that purpose. The size of these lots more than compensates for any deficiency in frontage. If in fact frontage in this instance preserves spacing and privacy under these circumstances, the size of the lots and the location of the homes is a much more important factor in ensuring lower density and enhancing privacy required.

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

Finally, the proposed use is a reasonable one. Here the use is purely residential in all aspects, consistent with the uses allowed in an RA district in Bedford and will satisfy all other applicable land use and third-party requirements. What's missing is one thing, and that is simply a measurement along the property's front line that meets the standards set forth for all properties in an RA District. We're not questioning the reasoning for that measurement or the reasonableness of its application to most properties in the district, but there is a reason for the variance feature in Zoning Ordinances, and that's to accommodate those instances where the application of Zoning requirements is not needed, and in fact, may overreach in certain situations where the safeguards the ordinance is meant to uphold are maintained in other ways. As Peter Loughlin has also stated, variances are permitted by the terms of a Zoning Ordinance to prevent the ordinance from becoming confiscatory or unduly oppressive as applied to individual properties uniquely situated.

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

Criteria not applicable, addressed in subparagraph (A).

Atty. Lombardi continued, so, based on the above and the specific facts of this application, we believe this is a situation where a variance is warranted, and we respectfully ask that you grant it. We appreciate your time and we'd be glad to answer any questions that anybody would have about this proposal. Thank you.

Chair Morin said OK, Board, any questions? Mr. Heath said, Mr. Chairman, yes, I have a lot of questions. Most of them deal on the easement, and I know you've kind of dismissed it and said that there's really not a whole lot of requirements. Usually, the easement will have deed restrictions, and there's also going to be restrictions relative to fire and safety codes in the National Electric code. I don't see that the easement is plotted on your presentation, so I can't really determine where your driveway is. But my conversations with Eversource, I know that they don't allow longitudinal runs of driveways within the right-of-way. So that's a question. You mentioned also test pits, and I'm not sure what the test pits would be for. Are those within the utility right of way, I would ask? Mr. McDaniel replied, no, Sir, they are not. They are located, if you can see where the cursor is, it's actually going to be where my proposed building site would be. It's going to be—it's marked out here. It's kind of difficult to see. But it would be the southwestern corner.

There's like a little bulb with a black mark in it. That was where the first test pit was dug for where the proposed septic would go. And the second, because there wasn't a recordable test pit done on my grandfather's property back when it was initially built back in the 80s, it required a second one because of Bedford's requirements. And that one is going to be directly south of my grandfather's current residence. You can kind of see it. It's approximately in this bottom, like left corner outside of that right-of-way. I apologize for the small scale of the plan.

Mr. Heath said, No, that's fine. I also don't see the structures, the poles, bonnet, poles, or whether they're H frames, whatever they are, they're not shown on your plan here. Mr. McDaniel said it's a great question. So, you have the two 115 circuits that run through this property. The wires themselves do. There are actually no structures located on the property, because the spans of wire are so long. The actual structures themselves are on the adjoining properties. Mr. Heath said so, the structure that you showed in the one picture then was not a utility structure? Mr. McDaniel answered, no, it is a utility structure. It is not located on my grandfather's property. I can pull it up. Chair Morin said yes, because some of those spans are pretty big. Mr. McDaniel said I could be mistaken here. Mr. Heath said I understand there's a structure right in that area though, and it was depicted in one of the pictures, which is why I brought it up. Ms. Hebert said there's an arial photo. Ms. Ports said yes, there is a structure on the site, right in the middle. Mr. Heath said right there. Just to the left of your mouse. Right there. Ms. Hebert said it looks like, are there two lines? Mr. McDaniel replied yes. There are. There are two adjacent 115 structures there. There's a newer updated circuit which is the one that you see here with the steel pole. And I believe, you're right. I misspoke. There is one structure located on the property. I wasn't even focused on those ones, because the older structures are the ones I was more concerned about with Eversource, knowing with that new infrastructure bill that got passed. They're going through an update and everything and those structures located on the western portion of the property are the older style structures. And they are slowly moving towards the newer structures that you see that are approximately 120 feet. The structures you see in the back are actually not on my grandfather's property. They are on the abutter's property on either the north and south end. Mr. Heath said alright, but the monopole is on this property. Mr. McDaniel answered yes that monopole is currently on the property. Mr. Heath asked and then are these distribution lines then? Mr. McDaniel said transmission. Mr. Heath asked they're all transmission lines? Because the one that is really low so. Mr. McDaniel replied that's the older style, and that's why they're slowly going to the newer style and that's something that they're doing over time. Mr. Heath asked do you know the elevation of those lines? Mr. McDaniel replied off the top of my head, I do not. Mr. Heath said, OK. So, I would have some safety concerns passing under the lines whether there's proper clearance, vertical clearance, not just for a driveway crossing the easement, not a longitudinal, but a crossing of the easement. But also, during the construction period, because you have to get construction equipment, materials through there. Yeah, that may be an issue as well. Have you approached the utility about a joint use agreement? Mr. McDaniel replied I have not. Mr. Heath said OK. Mr. Chairman, I think one of my recommendations would be that the applicant approach Eversource for a joint use agreement and do a full engineering review on their plans for the easement area.

Chair Morin said is that something? Ms. Hebert replied sure, the joint use agreement would typically be something the Planning Board would require, either as part of their subdivision application or as a condition of approval. Mr. Heath asked is that a recommendation we can make as part of our process here? Ms. Hebert replied, you could. You could recommend that a joint use agreement be provided as part of the subdivision application. Mr. Heath said OK. I think it would be beneficial to both the applicant and the Town to make sure that everybody stays safe through this process. Thank you.

Vice Chair Casale asked can you explain to me a little bit more in depth the hardship piece on the prong 5, and why this 150 feet on a cul-de-sac is any different than if this were a straight line? So, almost 4 acres in a straight line versus 4 acres on a cul-de-sac, with 150 feet, and why that this would be any different? Because other than that, it's four acres and there's no special condition other than that, is that what you're saying? Atty. Lombardi said I'm sorry, other than? Vice Chair Casale explained, other than what you're saying that it happens to be in a cul-de-sac, and that it's 150 feet. Atty. Lombardi replied, well, that's the key right there is that it is in a cul-de-sac. If this road extended—we're not sure why it didn't. We suspect that it may have been because of the pre-existing PSNH easement, and it couldn't go through there. But the road extends only barely 1/4 of ... if Linwood Way extended all the way to Bartlett Drive, let's say, the portion that abuts Mr. McDaniel's lot, which is about 500 feet, give or take, is only about 1/4 of that. There's only...where Linwood way begins on Mr. McDaniel's lot and ends at the cul-de-sac, amounts to maybe 1/3 of the entire distance from the eastern lot line to the western. And so, we're saying that he was given very little frontage to begin with, but yet a whole big lot to deal with. And so, that by itself makes this configuration very unique and very odd because he's only has 150 feet of frontage. You might have a little bit more based on the fact that there is a cul-de-sac there, but I don't think it extends any more than 150 feet to much more than. But that's our argument is that because it is a cul-de-sac, that's what makes this condition unique. Vice Chair Casale said but that's the way it was, though. Otherwise, you're making assumptions. This is the way it is. It's the way he bought it, correct? Atty. Lombardi replied yes, but that doesn't mean it's not a unique situation. Mr. Casale said thank you.

PUBLIC INPUT:

Mr. Alex Gamble of 28 Bartlett Street, Bedford, comments: Alex Gamble, 28 Bartlett. I'm your abutter. I didn't get any message from our nanny, and my wife and I first became aware of this when we got the letter from the Town about this hearing. It would have been nice to talk to you. I'd like to know is this a home you're building for your... Chair Morin said you've got to speak to us, OK? Mr. Gamble said yes, I'm sorry. I'm trying to figure out if it's a home you're building that's being built for yourself and your family or if this is a development that they're looking to sell. Because this is right off my back porch. I guess the, I guess the issue is when you're saying it wouldn't affect the property values, it does affect my property value. It's a development. It's a new home, right in the woods, right in my backyard. It does affect my property value, but if this is a home that he's building for himself and his family, I don't really want to stand in the way of that either.

Ms. Hebert said I was just going to say that the subdivision, you know, it's a legal subdivision of the property. And so, there's no guarantee who's going to own and maintain those homes over time. The Town in no way could restrict a future house to be for family or a specific use.

Ms. Thomas said so where the house is proposed, it would meet all of the other necessary setbacks as far as all the lot lines? Chair Morin said if you look at the blueprint, it's right in the middle. Ms. Thomas continued, so except for the frontage, let's just say it was any lot in Bedford, it would actually be a legal lot except the only issue is just that piece of frontage. So, it wouldn't even need to go before Zoning if it wasn't for the frontage piece. Is that correct? Chair Morin said that's correct. Ms. Hebert said 150 feet of frontage has been a long-standing dimensional requirement. Ms. Thomas said oh, I understand that. No, I'm just saying that the subdivided piece, the only variance needed is for frontage, not for anything—we've dealt with setbacks. Ms. Hebert said we have not confirmed the lot sizing, but we've been told that it meets the minimum lot sizing requirement. Ms. Thomas said, and they'd have to be right back here if it didn't. Ms. Hebert replied yes.

Mr. Heath said one of the other questions, and sorry I forgot it earlier. The extension of the cul-de-sac there would run into what appears to be a drainage area. Is that correct? Mr. McDaniel said I can pull up that picture real quick for reference. And I think, Pete, you might be better off at explaining this. So right here, I think this is what you're talking about. This picture was actually taken last Friday after we got all that rain. My grandfather could probably speak to this. It's only wet in there a couple of times a year, typically after a lot of rain or after a really wet season. And I'm sure Pete can probably speak a lot better to the wetlands and the drainage etcetera, because they actually have a map. I will defer to his expertise on the matter.

Mr. Howell said I'm going to need to get back in that plan here. There is a wetland that exists. It's this darker line. I can try to bring this up here. The wetland that I'm talking about is here. It's connected by this long strand that goes along the edge of the road, and then there's a fairly sizable wetland that's also back here in the lot. I'm not sure exactly what the question is that I'm trying to answer here for you. If we did extend Linwood Way? It would, in fact, be restricted by this wetland as well, but there are other options as far as preparing a plan that would add to a paper street. This is in fact a paper street, so to create a plan is possible to create more frontage. So, the issue with the frontage, we could get around that by developing another way to make this subdivision happen by continuing Linwood Way in another way. Mr. Grady, when he did a subdivision, only planned it to go and meet with the existing 150-foot-wide easement that was already there. So, rather than to deal with all that then, he didn't. He left it with the bulbous style cul-de-sac that he thought was suitable for it to maybe get vehicles to turn around, but today we would plan a bigger cul-de-sac, or we could plan a hammerhead, or we could plan another type of configuration that would give the frontage that we need. That's not out of the question to be able to do that. The only thing we're asking is that we're able to cross from Lynnwood Way that exists now, into the property to be able to create another lot for a home to be built. And that's basically it, to that extent.

Mr. Heath said I don't have the answer to this. My observation was that what you currently have, the bulbous portion of the cul-de-sac is really not built out. The access that you're showing starts at the beginning of the bulbous area, and that's in a drainage area. You're supposed to have 150 foot of frontage access. I imagine for ingress and egress to the property, and currently I think you have 70 feet or something. Which, it looks like a large portion of that is in a drainage area, so it would be a concern whether there is adequate ingress and egress to the property—not just for the property owners, but for emergency services as well. So, that would be another concern. Chair Morin added, and I think a lot of that piece too, I think would transfer to the Planning Board, because with a lot line adjustment, or a subdivision, they're going to handle more of the details where more of the 3,000 foot looking down type thing where they are right above it, hitting all those little things. Plus, if there are wet areas there and stuff like that, they're going to have to get special approvals to be able to deal with that. Mr. MacPherson said the Conservation Committee would have to look at that. Ms. Thomas said well the State would have to deal with the wetlands. Chair Morin said but as of right now, it's just us looking at that frontage issue. But again, as you brought up about the joint use agreement, if they sit down with whoever and whoever says that line's a little low to be able to... then it's going to be awfully hard to put a driveway in. Mr. Heath said yes, that's true. Chair Morin said but, again, that's not our problem as to where the driveway goes. It's just if we decide to let this lot, per se, get created with that shorter frontage. Any other questions from the Board?

Mr. McDaniel said, Mr. Chairman, I would like to address my potential neighbor. Chair Morin said step right up to the mic and speak to us because the testimony is coming here. He's listening very closely. Mr. Gamble continued, OK. So first off, I want to say I completely apologize. There was obviously a large misunderstanding, and the ball was dropped to where I unintentionally offended a potential neighbor of

mine. That is not my intent, and if I was aware of that, I would have definitely addressed it because I'm an old school kind of guy. I'm not very old, but I have a strong understanding if you have an issue, you deal with it at the lowest level. I come out of the military. I looked at it. I tried to put myself in all the abutter's shoes, how I would feel if I had my house right there and it's like, OK, well, I'm going to lose some of my privacy now. Why didn't this person have the at least the respect or the decency to come speak to me personally about it? So that's how I am. I do apologize that it fell through the cracks, and they unfortunately found out about this through the letter that the Town sent out. That's on me. I should have followed up. I see that now. Hindsight is 20/20. I should have reached out and followed up before those had gone out. But with that being said, I was assured that the homeowners would be notified that my girlfriend and I went and spoke with them on this matter, and that if there were any concerns, it was expressed that they would reach out to me personally through my contact information that I had left behind. I'm not pointing fingers. It happens, and it's very unfortunate that this individual had to find out this way. I'm not trying to sneak anything over onto anybody, and this property would be for me and my girlfriend to start our life together, start our family together. It's not a rental property. It's not something we're trying to flip so that my grandfather can retire. He's already been retired for I feel like 100 years. But for reference, it would be our property for our current residence, and I am more than willing to sit down with this individual and let him be a part of it moving forward so that this doesn't happen again or that this doesn't happen to another abutter. Chair Morin said thank you.

Attorney Lombardi said Mr. Chair, can I just add something? We do understand that there would be additional approvals and requirements that would need to be met. If the Board grants the variance, and we hope it does, this is just the first step of certainly a few that have to be taken before any development can occur. And there may be some additional obstacles. Mr. McDaniel, Austin, has done quite a bit of homework on this and had this plan put together, and we feel it does meet the requirements of the Zoning Ordinance. But we're well aware that there would be additional steps that would be needed before anything could happen.

Chair Morin asked are there any other last items before we go into deliberation? Atty. Lombardi replied we're all set, Mr. Chair, thank you.

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

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

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

Chair Morin said I don't think it's going to alter anything. Vice Chair Casale said no. Mr. MacPherson said not in that location, no.

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

Chair Morin said I don't think, again, that the change is going to affect the public. I don't see an issue with that piece. Anybody else? Mr. Kellermann said I think there are things for the Planning Board to probably look at that may touch on that, but I don't see the variance for frontage affecting that.

2. The spirit of the ordinance is observed because:

Vice Chair Casale said I struggle with this one because it's not a bad location for this, but I do worry about the cumulative effect. It's 150 feet, despite what the attorney states it being a cul-de-sac, we have plenty of cul-de-sacs in our Town. There are plenty of lots that have 3 acres. I have 3 1/2 acres. I think I have 150 feet. I could subdivide my property, 75 feet, stick a house behind my house, and I'm not even on a cul-de-sac. And again, there's plenty of cul-de-sacs, even in this area. So, when you look at cumulative effect, it should be like in the surrounding area—plenty of cul-de-sacs in this area, and I worry about the cumulative effect. In this particular instance, I'm not as concerned about the density, but I think the potential effect could be greater. So, I would be against it for this prong in and of itself. That's my feeling on that. Chair Morin said I agree with you on some of it. My piece is that looking at the specific plans and the location, and you brought it up a little bit is that, you know, dealing with the specific issue, I think, I'm good with the way it's set up. It's not a public road. If it was a public road, I might think a little differently because you'd have some different things to the road and stuff too. But being the way it's set up, and again, Planning Board is going to have a fun time being a private road and telling these people, hey, there's got to be some upgrade of this, that and the other thing. I'm comfortable with this the way it is. Vice Chair Casale said but there is case law, and I don't have it right in front of me, but like a house on a lake. That one individual house that will cause very little harm if you allow them to do the one thing, but then you stack up 10, 20 more houses on that lake. Then you allow them to do the same thing. Then you have an issue. And it's kind of the same thing. And like you, I don't think that this one house is a huge deal of density, but we have a lot of cul-de-sacs in Bedford. And again, we're supposed to deal with every case on its own merits, but everybody comes in here and says the same thing. Well, last week it was OK, and it's always used against us. And I do worry about the cumulative effect, and particularly here, I don't think the cul-de-sac, and that's another prong on the hardship and is it special enough? I don't think so. Lots of cul-de-sacs. Again, just my bit.

Mr. Kellermann said I will say how many of those cul-de-sacs have a four-acre piece of property that just touches on one side? It seems like that may be a unique situation where... Vice Chair Casale said well I don't know. Chair Morin said and I think the design of it was set up by that developer because of the power lines. They could only go so far. Ms. Thomas agrees. Chair Morin continued because those power lines were there, and before that newer poll was there, it was probably lower lines. But the thing is I think that's what stopped them. I live with the same issue of 150 feet of power lines behind my house. It's like, yes, I can't build under them, but I still utilize my property the way I want to use it, per se. Vice Chair Casale said well there's a lot of assumptions. We don't have a lot of the facts, but Bedford has a lot of land. I have 3 1/2 acres, and I'm not the only one. Chair Morin said I'm very big on the issue of every application is its own thing, and when we used to have that come out about, well, we're setting a precedent. No, we're not. Each decision is made on that piece of paper that's in front of us, not because something else happened two years ago, or something happened last week. Vice Chair Casale said right, and I agree. Right, and I'm all for that, but again, there's also case law that says we can take into consideration the cumulative effect of our decision. And to me, this fits right in; plenty of cul-de-sacs, plenty of people that would love to be able to cut their 150 feet down to 75 and put in another lot and make some nice money. So, again, I'll lend it at that. Chair Morin asked anybody else on this piece? Seeing none, let's move to the next one.

3. Granting the variance would do substantial justice because:

Chair Morin said it's that substantial justice. It's the scales of justice-type thing. You know, one side for the applicant on the way they use their property, and the other piece is for is it going against the

residents of the Town if this gets approved. Who's getting that—which way does it go? How does it affect? Is this going to affect the rest of the Town that much in this application compared to what they're having possibly an opportunity to do with their property. Mr. MacPherson said this is a unique application. Chair Morin said it is, and so yeah, the application is unique also. Mr. MacPherson said I understand, but I'm OK with that. Chair Morin said those are the hard parts that we have to make those decisions—us highly-paid people. Oh, I mean no pay. All right let's move on.

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

The Board agrees there is no evidence of this. Chair Morin said we've heard no evidence from any experts 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:

(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:

Chair Morin said there is some hardship when you're looking at the property itself. When you're limited by a large section. And you brought this up, Neil, from your perspective, that you don't think it's as much of a hardship, per se. But I don't know. I think there is some here, especially when you're looking at a piece of property that you're limited on frontage. You can't use probably maybe 1/3 to 1/4 of your property because you've got power lines. It makes it rather challenging, especially when you look at the aerial photo, and the back of the property is probably the largest part of the property that's usable. Originally, yes, the house was put way up front, but I do see a hardship. But that's me. You guys will have to make that decision when we vote. Any other comments? Mr. MacPherson said I wouldn't buy that property. Chair Morin said well but everyone makes choices. Mr. MacPherson said that's right.

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

Chair Morin asked is it reasonable, to be able to subdivide it to use the property? Ms. Thomas said the use is reasonable.

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

Criteria not applicable, addressed in subparagraph (A).

MOTION Ms. Thomas moves that the Board grant the variance from Article III, Section 275-22A. Table 1. Table of Dimensional regulations to allow the subdivision of one lot into two lots with both lots having 75 feet of frontage where 150 feet is required at 12 Linwood Way, Lot 32-22-9.

The motion is supported by the following findings of facts:

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

Mr. Kellermann duly seconded the motion. Vote taken – 4 to 1 in favor – Vice Chair Casale opposed. Motion Carries. The application is APPROVED.

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

Chair Morin said you're all set. Thank you. Atty. Lombardi said thank you. We appreciate your time.

Chair Morin asked ladies, do we have anything else this evening? There was nothing further on the agenda.

III. Adjournment:

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

Meeting adjourned at 9:27 pm.

The next meeting will take place on June 20, 2023.

Respectfully submitted,
Sue Forcier