

Town of Bedford  
May 19, 2020  
Zoning Board of Adjustment  
Minutes

A regular meeting of the Bedford Zoning Board was held on Tuesday, May 19, 2020 via the Zoom Meeting platform.

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

Absent: Sharon Stirling

Chairman Morin called the meeting to order at 7:00 p.m. and members of the Board introduced themselves. He appointed Mr. Casale and Mr. Gilbert as voting members this evening. In accordance with the right to know laws all members present were alone in the room while on this Zoom call. Ms. Stevens indicated members of her family were likely to walk through the room she was in while on the call.

Ms. Elmer read a statement:

- *Due to the Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Planning Board is authorized to meet electronically.*
- *This meeting is being conducted using the Zoom platform. All members of the Board have the ability to communicate with each other during the meeting, and the public has access to listen and participate by dialing 929-205-6099 and entering the Meeting ID # 575-119-201 and the meeting Password 715565. Instructions regarding remote access to the meeting have been published in advance and are available on the ZBA agenda, which is posted on the Town website.*
- *There is no physical location for the meeting, which is permissible pursuant to the Governor's Emergency Order. Town of Bedford is providing public access to the Zoom meeting by telephone, and the meeting will also be broadcast live on BCTV's Channel 22.*
- *Members of the public may email staff at planning@bedfordnh.org to ask questions during the meeting or notify us of technical issues. If you have joined the meeting using Zoom, you may also ask questions when the Chair opens the hearing for public comment through your phone connection.*
- *All votes will be taken as a roll call vote.*

- *If there are technological issues during the meeting, the Chair will recess the meeting and we will try to correct the problem. If the issue continues, the application will be postponed, and the meeting will be adjourned.*

Ms. Elmer read the agenda for the evening.

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

Chairman Morin said this will serve as notice that those participating and may wish to speak that you are required to tell the truth, the whole truth, and nothing but the truth. He reminded that 3 votes are needed to approve a motion by the Board.

1. **Approval of Minutes: April 21, 2020**

**MOTION by Mr. Gilbert to approve the minutes of the April 21, 2020 meeting of the Bedford Zoning Board of Adjustment as written. Mr. Duhaime duly seconded the motion. Vote taken - all in favor. Motion carried 6-0.**

2. **Applications:**

Before starting, Chairman Morin said that the Planning Department suggested that Ms. Finer's third request this evening be heard as an equitable waiver, rather than a variance and asked if Ms. Finer had an issue with that. Ms. Finer indicated she did not have an issue with it. By the end of the meeting the Board decided to treat it as a variance as originally intended.

1. **Jacqueline B. Finer** – Request for an equitable waiver from Article III, Section 275-22.A & Table 1 in order to keep a 10 ft. x 14 ft. deck 18 ft. from the side property line where 25 feet is required at 24 Constance St., Lot 42-60-14, Zoned GR.

Jacqueline Finer of 24 Constance Street, Bedford, NH introduced herself. She is currently seeking three equitable waivers. An equitable waiver of a physical layout or dimensional requirement of Article III, Section 275-22.A of the Zoning Board Ordinance has occurred as follows: The violation of the Zoning Board ordinance occurred when a 10x14 deck was built behind the existing property at 24 Constance Street, a setback of approximately 30-feet instead of 25-feet as required.

Facts supporting this request:

- (a) The violation was not discovered by any owner, former owner, owner's agent or municipal official until after the structure had been substantially completed: Ms. Finer said, "The approximate 10x14 deck base structure was not discovered by me, of course, until I took ownership of the home. I then took what was down, which was a big side board on the side of the house – I took it down and later reconstructed that deck."
- (b) The violation was not caused by ignorance of the law, misrepresentation or bad faith, but was instead a good faith error in measurement: Ms. Finer said, "The violation was not caused by ignorance of the law, misrepresentation or bad faith, it was the understanding

in good faith that all existing structures had appropriate approvals prior to me taking ownership. That is an assumption I will never make again.”

- (c) The physical or dimensional violation does not constitute a public or private nuisance , nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of such property: Ms. Finer said, “The 10x14 deck does not constitute a public or private nuisance, nor does it diminish the value surrounding the property in this area, nor will it interfere with or adversely affect any present or permissible future uses of any such property.
  - (d) Due to the degree of past construction or investment made, the cost of correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected: Ms. Finer said, “Due to the completion of the deck, the cost to remove the deck outweighs the cost of correction. Removing the deck would adversely affect the aesthetics of the neighborhood, as well. Leaving the deck causes no disruption and maintains the integrity and beauty of the surrounding area.
  - (e) **Or** in lieu of the findings in (a) and (b) above the owner may demonstrate that the violation has existed for 10 years or more, and that no enforcement action has been commenced against the violation by the municipality or any person directly affected: Ms. Finer said, “The house was purchased in February 2007. Since then, no enforcement action has been commenced against the violation by the municipality or any person directly affected.”
2. **Jacqueline B. Finer** – Request for an equitable waiver from Article III, Section 275-22.A & Table 1 in order to keep a uniquely shaped deck, 12 ft. x 12 ft. at its widest points, 23 ft. from the side property line where 25 feet is required at 24 Constance St., Lot 42-60-14, Zoned GR.

Facts supporting this request:

- (a) The violation was not discovered by any owner, former owner, owner’s agent or municipal official until after the structure had been substantially completed: Ms. Finer said, “ The approximately 12x12 deck base structure was not discovered by me, the owner, until I took ownership of the home. It was then removed and reconstructed.”
- (b) The violation was not caused by ignorance of the law, misrepresentation or bad faith, but was instead a good faith error in measurement: Ms. Finer said, “The violation was not caused by ignorance of the law, misrepresentation or bad faith, it was understanding in good faith that all existing structures had the appropriate approvals prior to taking ownership.”
- (c) The physical or dimensional violation does not constitute a public or private nuisance , nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of such property: Ms. Finer said, “The 12x12 deck area does not constitute a public or private nuisance nor diminish the value of surrounding property in the area, nor will it interfere or adversely affect any present or permissible future uses of such property.”

- (d) Due to the degree of past construction or investment made, the cost of correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected: Ms. Finer said, “Due to the completion of the deck, the cost to remove the deck outweighs the cost of correction. Removing the deck would adversely affect the aesthetics of the neighborhood, as well. Leaving the deck causes no disruption and maintains the integrity and beauty of the surrounding area.
- (e) **Or** in lieu of the findings in (a) and (b) above the owner may demonstrate that the violation has existed for 10 years or more, and that no enforcement action has been commenced against the violation by the municipality or any person directly affected: Ms. Finer said, “The house was purchased in February 2007, since then no enforcement action has been commenced by the municipality or any person directly affected.”
3. **Jacqueline B. Finer** – Request for a variance from Article III, Section 275-22.A & Table 1 in order to build a 10 ft. x 10 ft. screen porch 10 ft. from the side property line where 25 feet is required at 24 Constance St., Lot 42-60-14, Zoned GR.

Facts supporting this request:

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

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

Ms. Finer said, “The 10x10 screened in area will not alter the character of the locality and was constructed in a quality and tasteful manner in order to be in line with the existing character.

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

Ms. Finer said, “There are no conditions in the proposed screening that would be a threat to public health or welfare.”

**2. The spirit of the ordinance is observed because:**

Ms. Finer said, “The existing home is located in the General Residence District. The neighborhood was established in the 1950’s, and the proposed 10x10 screened in area will be harmonious with the intent and character of the GR District. The future screened in area will not encroach on any neighbor’s property.”

**3. Granting the variance would do substantial justice because:**

Ms. Finer said, “Due to the nature of the GR District, which was created in the 1950’s, a variance would be required to improve the property in any capacity, thus granting the variance would be required to improve the property adding value to the entire neighborhood.”

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

Ms. Finer said, “The proposed 10x10 screened in area will be tasteful, improve quality, and is harmonious with the existing neighborhood. It will not encroach further to any lot that already exists. Due to harmonious and careful attention to detail the surrounding properties will be positively affected.”

**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:** Ms. Finer said, “ The subject is located within the GR District and the rules and regulations were created in the 1950’s. The hardship exists that since the existing property already encroaches beyond the setbacks, a variance is the only option.”

**(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:**

Ms. Finer said, “The minor impact of a 10x10 screened in area will not create hardship. The additional future 10x10 screened in area sits on top of a pre-existing deck. See the waiver for that. Verbal communication directly from the neighbors who have expressed support of the project. They all really like it.

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

Ms. Finer said, “The use is residential in nature and improves the value of the neighboring properties. Care and discretion will be used to create a quality improvement in keeping with existing character.”

**(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:**

Ms. Finer said, “A pre-existing non-conforming hardship exists. The lot is very small; therefore, it would be difficult to improve the structure without a variance.”

Chairman Morin opened the floor for questions from Board members:

Q: Mr. Green asked if these are the lots that are very small and similar to those in West Manchester?

A: Ms. Finer said yes.

Mr. Green said no matter what you do, you will be abutting the boundary line. It is what it is.

Mr. Gilbert, Mr. Casale, Ms. Stevens and Mr. Duhaime did not have any questions.

Q: Chairman Morin asked when the 12’x12’ deck on the back of the house was replaced.

A: Ms. Finer said it was replaced last year – in summer (June).

Q: Chairman Morin asked when the deck behind the garage was reconstructed.

A: Ms. Finer said the deck was never reconstructed. The deck was there when she bought the house and it was never taken down. It’s been there.

Q: Chairman Morin asked if the screen house was there when she bought the house also.

A: Ms. Finer said she put the screen house on in 2015.

As the group was looking at the plans, there was an area of yellow noted (where an inside addition was to take place) - Ms. Finer noted that she is not doing the addition that she previously received Zoning Board approval for. As it turns out, she is not doing any work inside the house.

Chairman Morin opened the floor for questions from the public. Ms. Hebert indicated there were no questions from the public via the Zoom call or via email.

**MOTION by Mr. Gilbert to move into deliberations on this equitable waiver application. Mr. Casale duly seconded the motion. Vote taken – all in favor. Motion carried 5-0.**

Chairman Morin reviewed the facts supporting the first request on the 10' x14' deck behind the house:

- (a) The violation was not discovered by any owner, former owner, owner's agent or municipal official until after the structure had been substantially completed: Chairman Morin said, yes it was replaced last year, and yes she should have gotten a permit, but did not; but it is completed. A 25-foot setback is required, and it is 18-feet. Chairman Morin that (a) seems to be met in his opinion.
- (b) The violation was not caused by ignorance of the law, misrepresentation, or bad faith, but was instead a good faith error in measurement: Chairman Morin said there is, per se, no error in measurement; it was a reconstructed deck. Mr. Duhaime agrees with what Chairman Morin is saying – it was probably a reasonable assumption that the deck was there prior; she took it down and didn't get a permit; but there was a reasonable assumption that it met setbacks when she bought the house, not knowing any better. Mr. Casale is not in disagreement with the fact that there was an error where she rebuilt the deck assuming it was o.k. the first time; but how do you get around that fact that in essence, what we are talking about in (b) is a strict interpretation that it was due to ignorance; and therefore, she does not satisfy this prong. Chairman Morin said that is an interpretation. Mr. Casale said that he looked over several court cases that related to this that basically say that unless you say it was an error in measurement or an error on the side of a city official, then this prong is not met; so, in his eyes this prong is not met. Mr. Casale said, again, we understand why the applicant was ignorant of it because it was already there and then rebuilt; it still does not satisfy this prong as far as he is concerned.

Chairman Morin asked for feedback from Ms. Elmer and Ms. Hebert because if you look at (b) it talks about “not caused by ignorance of the law, misrepresentation or bad faith, but was instead a good faith error in measurement”. No feedback was provided. Chairman Morin said he see's where Mr. Casale is coming from. Mr. Casale said he doesn't see how we can dance around this; otherwise, we are diluting what this says. Again, he said he understands where she is coming from about what led to the ignorance, but the bottom line is that it was ignorance and not due to these

other two issues. If it was, she would satisfy this prong, but she doesn't satisfy the prong.

Mr. Green asked if the deck was ever inspected after it was built. Ms. Elmer said it was not. Mr. Green asked if it needs to be inspected. Ms. Elmer said that was her recommendation – if the Board approves these - that Ms. Finer would apply for after-the-fact building permits so they could be inspected to make sure they were built properly and up to code. If we approve it, Mr. Green said he thinks that would have to be put into any approval. He said the other question is “ignorance or assumption”. If something is there, is there a presumption that it has a right to be there; and therefore, you weren't ignorant, you were making a valid assumption. He knows you can break down an assumption, but he would think that most homeowners would assume if they went to a house with a deck, or they went to a house with an inground pool it was legitimate and legal to put it there. You can parse everything as to the fine points of the wording, but what is the reality of the individual homeowner and what he/she is to do. He thinks that's a question of why you come to the Zoning Board.

- (c) The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of such property: Chairman Morin said his reading of this – we don't have any issues with this prong at all. Ms. Stevens agrees.
- (d) Due to the degree of past construction or investment made, the cost of correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected: Chairman Morin thinks it probably meets this prong. We are not talking a big deck, but still the cost of the deck, and as Mr. Green brought up previously with this area and the small lots – there happened to be a small deck and she replaced it. He thinks this prong is met in his interpretation.
- (e) **Or** in lieu of the findings in (a) and (b) above the owner may demonstrate that the violation has existed for 10 years or more, and that no enforcement action has been commenced against the violation by the municipality or any person directly affected: Since the deck was replaced last year, Chairman Morin didn't get into this prong.

**MOTION by Mr. Gilbert that the Zoning Board of Adjustment grant the equitable waiver concerning Lot 42-60-14 for the existing 10 ft. x 14 ft. deck, 18 ft. from the side property line where 25 feet is required at 24 Constance St. and the Planning and Building Department would have to approve the permit after an inspection. Ms. Stevens duly seconded the motion. Vote taken - all in favor except Mr. Casale. Motion carried 4-1.**

Chairman Morin reviewed the facts supporting the second request on the 12' x12' existing deck behind the garage, and went directly to prong (e):

e) **Or** in lieu of the findings in (a) and (b) above the owner may demonstrate that the violation has existed for 10 years or more, and that no enforcement action has been commenced against the violation by the municipality or any person directly affected: Chairman Morin said that Ms. Finer had stated in her testimony that this deck was already on the back of the garage when she purchased the house in 2007, so that would meet the 10-year standard. There were no other comments from the Board.

**MOTION by Mr. Casale that the Zoning Board of Adjustment grant the equitable waiver requested from Article III, Section 275-22.A & Table 1 in order to keep a uniquely shaped deck, 12 ft. x 12 ft. at its widest points, 23 ft. from the side property line where 25 feet is required at 24 Constance St., Lot 42-60-14, Zoned GR as per our discussions. Mr. Gilbert duly seconded the motion. Vote taken - all in favor. Motion carried 5-0.**

Chairman Morin reviewed the criteria for the third request, a variance on the screen porch behind the garage 10 ft. from the side property line where 25 feet is required.

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

**(1) Whether granting the variance would alter the essential character of the locality:** Mr. Casale said we don't have any evidence of that.

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

Chairman Morin does not see that. It has been there; you can't even see it; people don't know that it's there, and he doesn't see how a screen porch is going to be a public risk.

**2. The spirit of the ordinance is observed because:**

Chairman Morin said, again, we get into the small lot issue. It is actually even with the garage, so it is not going any further over to the property line.

**3. Granting the variance would do substantial justice because:**

Mr. Gilbert agrees that it would.

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

Chairman Morin said we've heard no expert testimony that they would. This has been there.

**5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area because:**

Chairman Morin said we are looking at an old neighborhood, small little lots, and again, this is well hidden behind the garage, so it doesn't seem like we would have any issues with it.

**(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:**

Ms. Stevens said we are looking at a small lot here and it doesn't seem fair that we would not allow people on lots that were formed before we made some of these regulations to participate in regular homeownership upgrades.

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

Chairman Morin said it was reasonable to have a screened porch in your back yard.

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

**MOTION by Mr. Duhaime that the Zoning Board of Adjustment approve the application by Jacqueline Finer on her request for a variance from Article III, Section 275-22.A & Table 1 in order to build a 10 ft. x 10 ft. screen porch 10 ft. from the side property line where 25 feet is required at 24 Constance St., Lot 42-60-14, Zoned GR per our deliberations contingent that applicant files for an application with the Building Department for an after-the-fact permit to insure all construction meets current building codes. Mr. Gilbert duly seconded the motion. Vote taken - all in favor. Motion carried 5-0.**

### **3. Discussion**

Discussion regarding the removal of Section 8.2, Paragraph 2, of the Zoning Board Rules of Procedure relative to application submission deadlines.

Ms. Elmer stated that in our rules of procedure right now, and for many years, we've put the exact days and times people were required to submit applications in order to make specific agendas. What has happened over the years is different newspapers that we've been using (the local newspapers) have been going out of business and every time we switch to another newspaper they have another deadline that's different from the previous newspaper; so we end up having to re-do our rules of procedure every time that happens. None of the other Boards have that requirement – it's just the Zoning Board that has it in their Rules of Procedure; so what we'd like to do is take it out of the Rules of Procedure because when a newspaper goes out of business it doesn't always fall on our schedule, so we end up getting in a lurch because we can't make the deadlines that everyone has submitted their applications for already. This way, it will enable us to react much quicker, keep the applicants more up to date, and keep everything flowing smoothly instead of having to throw wrenches into things whenever a newspaper goes belly-up. Basically, if you approve the request we would make it a full public hearing for the June meeting. Tonight, is the discussion on whether you would agree with her proposed amendment changes.

Chairman Morin opened the floor for questions from the Board. There were none. Mr. Duhaime said it seems reasonable.

**Motion by Mr. Duhaime that we approve to proceed with a public meeting on the recommendation of the removal of Section 8.2, Paragraph 2 of the Zoning Board Rules of Procedure relevant to the application submission deadlines per our deliberation. Mr. Casale duly seconded the motion. Vote taken – all in favor. Motion carried 6-0.**

The next meeting will take place on June 16, 2020.

**4. Adjournment**

**Motion by Chairman Morin to adjourn the meeting at 7:47 p.m. Ms. Stevens duly seconded the motion. Vote taken – all in favor. Motion carried 6-0.**

Respectfully submitted,  
Tiffany Lewis