

Town of Bedford
June 15, 2021
Zoning Board of Adjustment Minutes

A regular meeting of the Bedford Zoning Board was held on Tuesday, June 15, 2021 at the BCTV Meeting Room, at 10 Meetinghouse Road.

Present: John Morin (Chair), David Gilbert (regular member), Neal Casale (regular member), Sue Thomas (alternate member), Bill Greiner (alternate member), Kathleen Ports (Associate Planner), Rebecca Hebert (Planning Director).

Absent: Len Green (regular member) and Elizabeth Jude (regular member).

I. Call to Order and Roll Call:

Chairman Morin called the meeting to order at 7:00 p.m. and introduced members of the Board.

Mr. Morin: All right, I'd like to call to order the Town of Bedford Zoning Board of Adjustment Meeting for June 15th, 2021. We'll start with the introductions of the Board. I'll start from my right, we have Sue Thomas, who will be a voting member this evening.

Ms. Thomas: Good evening.

Mr. Morin: Mr. Dave Gilbert.

Mr. Gilbert: Good evening.

Mr. Morin: Mr. Neal Casale, our Vice-Chair.

Mr. Casale: Hello.

Mr. Morin: I am Mr. John Morin, the chair. We have Mr. Bill Greiner, who will also be voting this evening.

Mr. Greiner: Thanks, John.

Mr. Morin: Our new appointment from the town to the Board is Ms. Kathleen Ports, our Associate Planner with the town.

Ms. Ports: Hello.

Mr. Morin: We have Ms. Becky Hebert, the planning director for the town.

Ms. Hebert: Good evening.

II. Minutes:

Mr. Morin: What I'll do is-- Well, actually, let's go through the minutes of last month first. With that, did anyone have any changes, deletions additions? Seeing none from anybody. I'll take a motion to accept the minutes.

MOTION: by Mr. Gilbert: Motion to approve.

Ms. Thomas: Second.

Mr. Morin: By Mr. Gilbert, Ms. Thomas with a second. All those in favor say aye.

Speakers: Aye. (Mr. Casale, Mr. Morin, Mr. Gilbert, Ms. Thomas).

Mr. Greiner: I'm going to abstain since I was not here.

Board Vote: 4 Aye, 1 abstention. MOTION APPROVED.

Mr. Morin: Yes. It's 4 - 1, so that's approved.

Mr. Morin: Let me go over the procedures of how we'll be working the meeting. It's been a while since we've been live, so we'll go through everything. Rules of procedure, we'll have a presentation by the applicant, we'll have public input for those in favor and in opposition. I'll ask that there's no debate between the parties. All testimony given during this hearing will be testimony to the Board. After all questions by the Board and any questions from the public, we'll give the applicant a chance for a summation. For our schedule, all applications will be heard in order of notice. If the Board needs to take a recess, we will. After we hear the application, the Board will go into a non-public input session for deliberation. You can wait for a vote tonight or you can call the planning office after 8:30 tomorrow. If you have a cell phone in the building, please put it on silent.

Notice for rehearing, 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. I'm not going to go through the five criteria now, I'm going to ask the applicant to go through the criteria as part of their application, and so that everybody knows for a motion to pass, you must have three affirmative votes. I will ask anybody out in the public who thinks they're going to speak to stand to be sworn in for this evening. If you even ponder, you're going to speak please stand up and get one and now so we don't have to stop, that'll make it easy. Do you swear the testimony you're going to give during this hearing is the truth, the whole truth, and nothing but the truth?

Mr. Wichert: Yes, sir.

III. Old Business & Continued Hearings: None.

IV. New Business:

- 1. Paul and Sara Stanton—Request for a variance from Article IV, Section 275-28 to build a two-story enclosed porch and deck within the 50-foot wetland setback, at 42 Oak Drive, Lot 12-74-22, Zoned GR.**
- 2. Paul and Sara Stanton—Request for a variance from Article IV, Section 275-28 to build an in-ground pool within the 50-foot wetland setback, at 42 Oak Drive, Lot 12-74-22, Zoned GR.**
- 3. Paul and Sara Stanton—Request for a variance from Article III, Section 275-22.A and Table 1 to construct an in-ground pool 15 feet from the side property boundary where 25 feet is required, at 42 Oak Drive, Lot 12-74-22, Zoned GR.**

Mr. Morin: Thank you very much. You might as well step right up to the table. I'll call the first item on the agenda. Well, we have three items, but they're all one applicant. There will be Mr. Paul and Ms. Sara Stanton. Item number one is a request for a variance from Article IV Section 275-28 to build a two-story enclosed porch and deck within 50 feet of a wetland setback at 42 Oak Drive, Lot 12-74-22, Zoned GR. The second item is a request for a variance from Article IV Section 275-28 to build an in-ground pool within 50-foot wetland setback at 42 Oak Drive, Lot 12-74-22, Zoned GR. The third item is a request for a variance from Article 3 Section 275-22A Table 1 to construct an in-ground pool 15 feet from the side property boundary or 25 feet is required at 42 Oak Drive, Lot 12-74-22, Zoned GR. Please introduce yourself sir and go ahead.

Mr. Wichert: Good evening, Mr. Chairman. I'm Mr. Joe Wichert, and I'm a surveyor out of Manchester, and I'm working with Mr. Paul and Ms. Sara Stanton, who are the owners of the subject property. The reason we're here tonight like you mentioned is we have three counts, but they're all related to one project. We'll give you a little overview, and then we can get into the specific counts. The Stanton's own Lot 74 - 22 on Tax Map 12. It's 42 Oak Drive. It's about a two and a half-acre parcel, and currently the existing house is to the middle of the lot, and this lot was created by a 1985 subdivision plan that received Planning Board approval. One of the unique features about this lot is Bowman Brook basically runs through the center of it, and when this house was built in '86, the house was situated prior to any wetland ordinance being in place, but the house is basically situated to the border the Brook, and it's one of the amenities to the property, and that's how it's been used. Currently, at the end of the-- Hard to see on the screen, but there's a fainter dashed line, there's a series of decks, there's an upper deck and a lower deck that come off the north end or gable end of the house, and then there's a grassy area.

In the photos-- Let me see, this would be looking at the photo at the right, that's the existing deck complex, you have the upper deck, the lower deck, and then there's a step-down deck. Then what happens is this area in between the house and the

brook is sort of to maintain lawn, and then as you get further away from it, when you look at this picture on the left, upper left, where the silt fences or silt sock is, that's the limit of the lawn, which I hate going back and forth, but that's in this area here. The Stanton's would like to remove the deck, replace the deck with a two-story porch and then build an in-ground pool complex in that area. We have had the wetlands delineated, - My office has done the plot plan for the boundary. We've used some ground topo, we're showing the limits of the 100-year floodplain, and we have gone through two or three iterations to find a pool complex and everything that would fit the best as we can. Currently, with the 50-foot wetland setback, that setback runs through here, so basically, all of the rear of the house is currently non-complying grandfather, but non-complying under the current ordinance.

The landscape architect and the pool company when we gave them the information that they had, they designed a pool, they rounded the edges to eliminate the corners being closer to the wetlands, they put a couple of little bubbles in it to try to soften things up, and then there is going to be a shorter retaining wall right here on the backside of that pool. The hope is or the intent is we're going to build, should the ZBA approve it and the applicant will move forward with the building permit, we're going to remove the deck, replace it with a two-story porch, build the in-ground pool with the retaining wall. When Becky had mentioned the process, you'd like to do things individually, so I think that's an overview. I don't know if you want me to go through the individual counts now sir, or if you want me to.

Mr. Morin: No, that'd be fine.

Mr. Wichert: Yes. The first count that we have is Article IV Section 275-28A, which is a wetland setback to a porch of 20.5 feet where 50 is required. This darker shaded area is the proposed porch. If you can see, it is slightly larger at this corner. The existing deck is this 23.5-foot dimension off the wetlands, and where the entryway for the porches were 20.5 feet. However, we pulled back the stairs and we're actually eliminating this section here. This one area is more noncomplying but the rest of it, we feel is a little bit better than what currently exists. Basically, why we're asking for this relief is that the location of the house is already fixed. It predates the ordinance and there's really no spot on here. We can add a porch on this that's going to be complying to the wetland setback. We have tried to minimize that to the best we can and it is 20.5 on that one side. On the other side, we are complying to the side yard setback of 27 feet. I'm not quite sure where we're going to bring it up but I will mention-- This is involving wetland setback. We have met with your Conservation Commission. We went through our plans with them.

Generally, they were supportive of the application.

The intent would be this area around the pool will be a patio hardscape and this wall is going to be-- I think they were envisioning three to four feet here. Currently, the water sheet flows down, comes down the driveway, runs into here, runs into the brook, go sideways, and runs into the brook and it runs off the house and goes into the brook. What we were thinking was what's going to happen here? This retaining wall on the pool complex is basically going to eliminate some of the sheet flow that currently happens. They'll be a little bit of an internal drain system for the wall and we're going to discharge that to the middle of the wall. The wetland scientist has

drawn up a preliminary plan that calls for a treatment area right here at the outlet. When that water comes out of there, rather than going sheet flowing across the brook. It's going to run through a little treatment area and there would be some treatment prior to the brook which is more than what we have now. Also in regards to trying to reduce the roof runoff, what we've done is we've called for this corner. This corner of the porch, we're calling for gutter drains and driveways. That should also hopefully reduce some of the sheet flow into there.

I don't want to just read everything but certainly what we believe is the spirit of the ordinance is to promote efficient development of property and prevent overcrowding the slots already developed. Unfortunately, it's a non-complying grandfathered and we're trying to fit it in best as we can. We believe that with the proposal and the improvements that we're showing that we're trying to comply with the ordinance in the spirit of the ordinance is the intent. The proposed addition of both the porch and the pool complex will certainly add to the value of the subject property. Therefore, we don't believe there would be any diminution of value in the surrounding areas. Then, in regards to the special conditions of the property that distinguished from other properties of the area. The property cannot be reasonably used in strict conformance with the ordinance in a variance. Therefore, necessary to enable a reasonable use of it. The property predates. This house was built prior to the wetlands ordinance in the 50-foot step back. Under today's rules, it wouldn't be allowed where it is.

We believe that a porch and a pool are reasonable amenities for a house, and we have tried to make it as complying as possible.

That would be our argument on the first count, which would be the porch needing wetland setback relief. If you want me to go on to the next one or we're going to do questions?

Mr. Morin: Sure.

Mr. Wichert: We have wetlands. The next count would be Article IV of Section 275-28A again. Wetland set back to the pool of 25 feet where 50 is required. Much the same argument is what we've made on the last time. What we have tried to do is there is an existing retaining wall that runs here. If you look at the property photos, that's this wall. This wall complex here. What happens is they're going to tie the new wall system at this low spot of the yard. It's going to wrap into here and then this area would be the new pool improvements. Then the remainder would have the treatment area and they'll just be a vegetated back, sort of like this area is. There's vegetation there. It's certainly not a pristine buffer, but it's a residential area. That's what they've maintained it as. In regards to the pool setback of 25 feet, again, we believe it's not contrary to the public interest because we have an existing non-conforming location, and we are trying to hold to half of the required. The current required distance 25 feet, instead of the 50.

I think that it's not contrary to the spirit of the ordinance because we are trying to make a good faith effort to fit the improvements into this area and minimize any non-compliance. The substantial justice argument would be relative to—

The reason we're asking for the relief is that the location of the existing house. Should the application be denied? That would be a hardship to the owners who would like to have this amenity on their property that other neighbors certainly have. Again, the proposed improvements are going to increase the value of the surrounding home, so I don't believe there's going to be any reduction in value of the neighboring properties. Again, the hardship that we have is just the location of the existing house. I'm going to go on to the third one, Sir.

Mr. Morin: Please.

Mr. Wichert: The last one we have is we do have a side yard setback. What we're asking for is in this location, we have the pool only 15 feet off of the lot line where 25 feet is required. We went back and forth on this one because we could have avoided it. The general theory is we should try to request as few variants as possible. However, we tried to balance the location of the pool into the wetland buffer because that was the more restrictive feature. If you look here, we have 26 feet off of these wetlands which is actually not on the subject property but it's on the abutting property and we have 25-feet off of these wetlands. We could have taken this pool and shifted it subtly to maintain 25 but what it would have done is it would have reduced the wetland setback to 15-feet off of the brook. We went through and went back and forth with the landscape architect and the pool company. We settled on centering the improvement on the house, and we felt it would look better. The abutting house is up here to the north, quite a distance away. We felt that asking for the additional count for the 10-foot of relief to the side yard setback was reasonable to maintain a greater buffer all around for the wetland setback.

Again, similar arguments to the last two. We don't believe that granting the variance would be contrary to the public interest due to the location of the existing house. In this case, our mitigating factors, we're trying to balance the other two counts out with this one. The lot's already developed, so I don't think it's-- We're just trying to get a dimensional relief to build a pool complex, and we don't think that would be contrary to the spirit of the zoning ordinance. The substantial justice is it would allow the applicant to build the new in-ground pool on the lot of record with a 15-foot side yard where 25 is required. We are asking for this relief which in theory we could avoid. However, to avoid this one would increase on the other one. We felt that this was a good balance. There would be no reduction in the surrounding property values as we've mentioned before. The hardship we have is obviously or special conditions of the property that is distinguished from other properties is the location of the existing house.

We did have our wetland scientist. He came up with a drainage improvement plan. That was just one other request from the Conservation Commission. That's what you have in front of you. There's the house. There's the patio and deck area where a porch is built into that. Here's the pool. There's the retaining wall and the solid drain pipe. It's got a perforated drain and it's got the drainage and a planting bed. What will happen is the water will come off of here and be treated through here and then will flow back to where it normally goes. I think that was consistent with what the conservation commission was looking for, and I did talk with Becky briefly before the meeting. I think they were favorable at this point. Having said that I'll be happy to answer any questions the board may have.

File name: 10331-1 Zoning Board of Adjustment meeting 6-15-21.mp4

Mr. Morin: All right. Thank you. Sue, do you have any?

Ms. Thomas: Not right now. I actually live in the neighborhood. I went by to get a sense of the effect of the 15' waiver from the adjacent property. The two houses are quite a bit away from each. That was the one thing I wanted to check. I'd like to hear still learning this stuff. I want to hear some other questions first before I jump in too much.

Mr. Morin: Sure. Dave, do you have any?

Mr. Gilbert: After reading the Conservation Commission report I think you've done a good job in their mind of mitigating any issues with runoff. My question is the retaining wall, is that four-foot retaining wall from the ground up to the deck itself where the pool is, or is it above that?

Mr. Wichert: I think the four would be the height of the wall. I don't know specifically but I would imagine the wall is going to be slightly higher than the decking on the poolside.

Mr. Gilbert: I would think so. Do you have the picture? Can you go back to that picture? I just want to make sure I understand. One on the right. Basically, right where your hand is there, that's where that pool is going to be and you're going to do a lot of fill to prop it up because you're going to work it out from the house.

Mr. Wichert: Combination. The porch is here, there will be a step down to the patio. I think they'll have the first deck, a patio, the pool and then I think there's going to be a lower level on the backside by the wall. It's not going to be a fill up to here but certainly, this area would be under fill, yes.

Mr. Gilbert: Right, and you're going to just extend that brick wall that's already there and go around more.

Mr. Wichert: Right, the new wall would tie into here and run like this, in a circular fashion.

Mr. Gilbert: All right. I don't think I have anything else right now. Thank you.

Mr. Morin: Neal?

Mr. Casale: I might have several. Regarding the porch itself, what's the need for the dimension going three feet further into a buffer than what is currently there? I understand they're taking out the stairway, you had mentioned a bubble on the north side which really doesn't have any bearing on intrusion into the wetlands because that's on the opposite side. What's the need of the three feet?

Mr. Wichert: This is the schematic the contractor has. Here is the low porch, here's the upper porch. This area in here is where the bump is. If you look at the roof fill this area here is where we're sticking out more. I think what they're trying to do is tie in the roofline. When you look back to this one. This you're going to have a pick line here. This is like a hip roof because it'll come down flat. Here we're looking at we've run gutters to here. Then on this side, we run gutters to here with the dry wells here

File name: 10331-1 Zoning Board of Adjustment meeting 6-15-21.mp4

and here. I think they felt that it would function better and it would create an entry way. That's what they were looking for.

Mr. Casale: Regarding the pool, it sounds like I don't know whether you can answer this. It's fairly close to the wetlands. Are they going to be able to construct this in a way that there's no destruction or any significant damage to the wetlands because it's so close?

Mr. Wichert: It's going to be up to the person constructing the pool but the standard practice would be you'd put all your drainage improvements, the existing retaining wall, run it five or 10 feet off of the proposed retaining wall. That's where the new silt fence or silt control whatever it is they're going to use. That would be put there. As long as those are there and they maintain them and they inspect them after a rainy event or whatever and replace them as needed. There shouldn't be any issues with water quality. We're not going to be running silt or anything into the pool, they should all be picked up by the erosion control.

Ms. Thomas: Neal, you're talking about during construction?

Mr. Casale: Yes, during.

Ms. Thomas: That's what I thought. During construction.

Mr. Casale: Contractors, because you're talking about building a wall. You're talking about all the drainage that's needed. It's really close to the brook.

Mr. Wichert: If we said the wall is going to come on this tow of slope that's here, right? The new wall is going to come into this area and tie into this one. They're going to put probably similar where the screen silt tract is where they're just going to leave that area. They're going to beef that up to allow. Right now it's a lawn so you have a rain event, it may sheet flow but you're not going to have any erosion. Once they start construction they're probably going to beef this up in the similar location and they're going to place the wall. Once they place that wall there should be limited construction on the backside of the wall short of the drainage feature. This area, once that is done, this is where Aaron was calling for this blue, I don't know what that line is but blue line here. That's where he was looking at the erosion control being. If they stay into here this area would not change. When you go to the photo that's going to be for our practical purposes. The intent will be to have all the improvements stop at the lawn. Where this area is where it's more tree cover that's not going to be impacted. That will stay as is. Any water it should come off is going to run through there as it currently goes.

Mr. Casale: Right, but my concern because if the project is approved, we're approving the ability of the contractor to be able build all of this and I get the run-off. What I'm concern about is construction vehicles which it sound like it's not really your expertise because you're not the one building it. What I'm concerned about is you said well after the wall is put up then everything is going to take place. One word about when they put the wall, there's a very short stipple land and they've got to get stuff down there. That's my concern out of several.

Mr. Wichert: There probably going to have a small backup excavator or main excavator or whatever that will be back there. I don't necessarily think you're going to need a bigger piece of equipment for that. It's going to be a block type of retaining wall. It's not going to be poured concrete or something like that or we're going to have to build forms or bring in a concrete truck.

Mr. Casale: We have to fill in the area?

Mr. Wichert: Right but you're going to fill the backside, not the front side.

Mr. Casale: I don't know, that's why I'm asking.

Mr. Wichert: No, I mean this is the backside which should be the critical side because it's up against the wetlands. This area is not going to be filled. That's going to be the wall and that's the reason why the wall zeros the whole back of the fill. Once this wall is here, any fill that's going to be placed is going to be placed on this side of the wall which shows the wall is going to prohibit or prevent any silt or erosion getting into the brook. You've got the wall as check one, you've got the erosion control shown on Aaron's plan. This blue line is check two. Then you're going to have the green silt track that the Stanton's have there now. That's going to be the third line of defense for lack of a better term.

Mr. Morin: Neal, I don't know if this helps or if it's even possible. If they had to stage it in such a way that that was done last does that lay any concern you might have? I hear where you're coming from. Once we do it, it's out of our hands and out of his hands. Is there a way that it can be staged and required such a way that eliminates it?

Mr. Wichert: In the past, we've done other projects where the ZBA could approve it with stipulations to use standard best management practices relative to erosion control, and drainage issues.

Mr. Casale: I'm not worried about that. I'm worried about the building of the wall and the filling of the material behind the wall. I don't know what that entails as far as heavy equipment. That's all. Again, if we approve it, then we're approving any work that has to be done that could damage the wetlands.

Mr. Wichert: The thing I guess, I'm not quite understanding is when they build this wall, this pool won't be here, right? They're going to build a wall first because you're going to use that wall to build the field to grade up on.

Mr. Casale: Right, I just don't know if they need to get on the backside, that's all

Mr. Wichert: Right. I'm saying they're probably going to have to build, bring a mini excavator or something in here to do this part. When they set this wall, there's going to be some backfilling of the footing here, so there's definitely going to be a machine back there. I think it's going to be a smaller machine, it's not going to be a large one. If there is a large one, what generally tends to happen, but again I'm not the one doing this project. I certainly can't guarantee it. If you're going to have a large machine, you're going to have the machine come in from the backside and reach over as opposed to going the other way. Then looking at the picture I would have

File name: 10331-1 Zoning Board of Adjustment meeting 6-15-21.mp4

more concern, like Neal's talking about if there was actually a lot more of a hill, but it looks like where the wall's going to go, is almost grade already. They might have to take out a little to put a base in. Where the walls going to go, we're not talking about a lot of I'm going to guess in this is just me guessing. That's about the lowest part of the property.

Mr. Casale: Right. If you look at that picture, the concern is, imagine a tractor being on the other side of that silt fence, having to bring blocks in. They could bring it the other way, but that looks like it's pretty steep. Again, I don't know, that's why I'm asking.

Mr. Wichert: If you look at this picture, which is taken from the deck looking towards the point of the brook. This one here on the left. Here's the silt fence that runs around. When you get on the backside of that this tree area is for lack of a better term, the only undisturbed area in the yard. The lawn wasn't there originally existing. The lawn's a feature. What they've done over the years is this is maintained, and then they let this point stay as it is. If you go back to this picture, this is the fence, this is still the lawn. We're saying the wall is going to be somewhere in here. Will there be equipment in here? Yes. Do I see equipment being out past the silt fence? No. Certainly, we can put a stipulation if it makes you feel better, they can put a stipulation that equipment must stay on the lawn, something to that effect. What our thought process was, is the lawn is already manipulated. The value of having a water sheet flow over a lawn, or a concrete patio. If you're going to bring the drainage, it shouldn't make a lot of difference. What we, I think, we're all in agreement on is this area here. We don't want to see any intrusion in that because that's really the only true buffer they have. Similar to this, we don't want to see our new wall get any closer to the brook than this, which already exists.

If you look at the plan, we're tying into it here. Then we go away from it. We actually get further away from the brook than what the existing one is.

Mr. Casale: I think a piece of it too, is looking at existing deck picture. It almost looks like the water goes that way but it actually goes this way.

Mr. Wichert: If they're building the wall here, it's-

Mr. Casale: Right. They're starting in here and going away.

Mr. Wichert: Okay, well, could you go back to that picture?

Ms. Hebert: Neal, when we go out and inspect erosion control measures, typically the erosion control measures mark the limit of work. When I'm working with someone who has a sensitive area, sometimes we suggest that orange construction fencing be installed, which provides more of a vertical limit and identifies that limit of work.

Mr. Casale: Okay. Thank you.

Mr. Wichert: We'd be willing to stipulate that-- Aaron from Aspen who did this drainage plan, he can write in a couple of reports to the town. Go out and inspect it a couple of times to make sure that they're staying within the limits.

Mr. Casale: Could you go to the ZBA plan that you have there. Two questions regarding positioning of the pool, why can't it be turned so that it's parallel, basically, along the same line as the house, which at least by this appearance, looks like that would keep it from the property setback, as well as maybe the brook. Two, why can't it go where the irrigation control valve is that side? Basically, the backside of the house.

Mr. Wichert: You're saying put the pool here?

Mr. Casale: Yes or turn the pool.

Mr. Wichert: Right now we've run this axis of the pool and it is parallel to the gable end of the house. It's an odd-shaped pool, but we started off with a box, and then they filleted the curves and made it whatever, prettier, softer to look that way. The intent was this, this pool runs parallel to the gable end of the house. The reason why we can't put it here is the distance from this edge of wet to the house is substantially less here than what we have from here to here. We would actually be closer to the wetlands if we put the pool here.

Mr. Casale: Any further east, though? East of the control valve. You've mentioned you've looked at a bunch of scenarios, but I don't know what those scenarios are, you just presented this.

Mr. Wichert: This house line runs this way. The pool runs this way. For exaggeration, they come together.

Mr. Casale: No but if you go to the left more. If you go left to the irrigation so westerly, why can't it be-- I understand there's a well there. Irrigation control valve is nothing to move. Why can't it be in there?

Mr. Wichert: I think one of the reasons why in here, was we were going to end up needing the same relief off of the setback. The way the house lays out is, this is where you'd come out of the deck, and it fit better with the house plan. You're asking, and I'm trying to answer. I think no matter where we put this-- From this edge of wet to here, this is 50 feet, I don't have dual skills. The distance from that wet flag to the house is only about 33 feet. Where we are now, the distance from the edge of the deck to the wetlands, the existing edge of the deck to the wetlands is almost 80 feet. It's almost three times, we have three times as much more room at this point than we did on the other side. That's why we looked at it that this was the better fit.

Mr. Casale: It looks like the setback line goes right through the middle of the house.

Mr. Wichert: Right. This line right here is the 50-foot setback. We only have from the edge of wet here to the house is 33 feet. If we put a pool in here-- If you went from this little I think it's a Jacuzzi to this outside bubble, that is about 24 feet or 26 feet. If we tried to fit that 26-foot wide pool in this distance we would have been within five, eight feet of the wetlands.

Mr. Casale: Okay, and how about turning it?

Mr. Wichert: You're saying run the pool this way?

File name: 10331-1 Zoning Board of Adjustment meeting 6-15-21.mp4

Mr. Casale: No, no, no, where you currently have it.

Mr. Wichert: Oh, turn it 90 degrees?

Mr. Casale: Yes. So that you're avoiding because you're asking for a variance for the setback. It would seem like that may alleviate that.

Mr. Wichert: I agree with you, I think it would eliminate the 15-foot side yard setback count. I think what it's going to do is by the time we push into here, it's going to take-- where this wall would come to end this complex is actually going to be closer to this point of the brook. What we were trying to do is we're trying to fit everything in this area that's lined, and so if we turn it 90 degrees and come out this way, we're going to be further out here, which is going to push us closer to this tree line that we're trying to save.

Mr. Greiner: Right, but it looks like you're further from the wetland though.

Mr. Wichert: I think you would be. You would be further from the wetlands. You're going to be a little further from the wetlands here, you're going to be a little closer here. No matter how we spin it. We might be 22 versus 28, but we tried to-- This is what the owner was asking for and we thought it fit in the best we could make it.

Ms. Thomas: Could you put the drain plan picture back up?

Mr. Wichert: Sure.

Ms. Thomas: If the pool was turned, it would push everything back?

Mr. Wichert: Yes.

Ms. Thomas: Okay.

Mr. Wichert: Right. Basically, what you would do is you'd hold this point, turn it 90 degrees, so it's going to stick out to here, and then the improvements would come further into here. I think this area at the toe of the slope, that's where the area of the pines are.

Mr. Casale: Okay, thank you.

Mr. Greiner: All set?

Ms. Thomas: Yes.

Mr. Greiner: Just to stay on that for one minute, if you were to flip it, it seems like you'd be encroaching on the back wetland, and you might actually encroach on the neighbor's wetland a little more than you would be now, so you might have encroaching more that way. The only question I have for you is, at this point, would they still build the deck if they weren't given the variance for the pool? I know there's the three separate tasks, but do you have a sense that it's all or nothing for the homeowner?

Mr. Wichert: I believe the project was designed as an all or nothing, that the porches were like an accessory to the pool.

Mr. Casale: I'm okay, for now, John.

Mr. Morin: I have none at this point. Anybody else?

Ms. Thomas: No, I'm good.

Mr. Morin: Should I open it to the public? I'm going to open it to the public even though there's only a few people here. I don't see anybody moving. Anything else before we go to deliberation? Board members, anything before we go? Anything before we go? No?

Mr. Wichert: No, unless you have questions for me, sir, if I can go. Thanks very much.

Mr. Morin: Thank you. Appreciate it. I'll take a motion that we go into nonpublic input for deliberation.

MOTION: Mr. Gilbert moved that the Board go into nonpublic for deliberation:

Mr. Morin: We have Dave with a motion.

Ms. Thomas: Second.

Mr. Morin: Sue with a second. All those in favor say aye.

All: Aye.

ALL IN FAVOR. MOTION CARRIES.

Mr. Morin: All right, we are in deliberation. We'll do them one at a time. The first one we'll deal with is the porch, which is a setback of 20.5 feet where 50 is required. This is the porch only. Our first item is granting the variance would not be contrary to the public interest. First piece whether granting the variance would alter the essential character of the locality.

Mr. Casale: No.

Mr. Morin: I don't see that either. Number two, whether granting the variance would threaten public health, safety, or welfare? Again, I don't. I'm not seeing that.

Mr. Casale: I've got an extra three feet.

Mr. Morin: The spirit of the ordinance is observed. The spirit of the ordinance is to have enough distance between wetlands. I'm sure this is going to come up in later questions as to hardship and those types of things, but looking at the property, how it was set up back prior to some of this stuff. They're stuck with what they have and with what is where on the property. I think that this piece, and again, right now there are decks there and basically the porch is replacing the decks except for one little extra cut-out piece.

Mr. Casale: Aside from the fact that it's grandfathered, the purpose of the setback is to protect the wetlands. Again, aside from the fact that they're adding three feet, it's

basically the same. They satisfy the Conservation Commission and as far as the improvements, they're going to meet to mitigate any issues.

Mr. Morin: Right, the gutters, and putting into dry wells and stuff like that. They're actually cutting back on some of that rainwater getting down to the brook. Where was I? Granting the variance would do substantial justice. Again, it's giving him the opportunity to replace a couple of decks with a porch, pretty much again, the same footprint except for a little extra, and actually mitigating some water issues. The values of the surrounding properties would not be diminished. We haven't heard any extra testimony with that. Literal enforcement of the provision in the ordinance would result in unnecessary hardship. Special conditions to the property distinguish it from others in the area. Just looking at that, you look at the map we were given of the area, and the other properties in there. Looking at this general area, this is the only piece of land that looks like is cut in half by the brook, everybody else is off to a side or the back of the property, the property lines. It's got that special condition, that's for sure.

Denial of the variance would result in unnecessary hardship because, you've got the first piece, 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.

Mr. Casale: There's much change in their improving.

Mr. Morin: Right. Then the last piece is, is the use a reasonable one, which it is reasonable for what they're looking to do. On that piece, I'll accept the motion.

Mr. Casale: I'll make a motion.

Mr. Morin: Go ahead, sir.

MOTION by Mr. Casale: I move that the zoning board grant the request for a variance from article 4, section 275-28 to build a two-story enclosed porch and deck within the 50-foot wetland setback of 42 Oak Drive Lot 12-74-22, zoned GR per our deliberations.

Mr. Gilbert: I'll second that.

Mr. Morin: We have a second. Any further discussion? All those in favor say aye.

All: Aye

ALL IN FAVOR. MOTION CARRIES.

Mr. Morin: Opposed? 5-0, that's approved. All right. Let's go to the next one.

Mr. Morin: For our next piece, is the pool from the wetland setback which would be 25 feet where 50 feet is required. Again, let's go through all the different items. Granting the variance would not be contrary to the public interest, whether granting the variance would alter the essential character of the locality. Anybody? No?

Mr. Gilbert: No.

Mr. Morin: I don't see it. Then whether granting the variance would threaten public health, safety, or welfare.

File name: 10331-1 Zoning Board of Adjustment meeting 6-15-21.mp4

All: No.

Mr. Morin: I don't see that either. Number two, the spirit of the ordinance is observed. Again, as we said the first time, it's about having that separation from a wetland to protect the wetland.

Mr. Casale: This is the yard site.

Mr. Morin: No, this is the wetland setback, or number two. You skipped. You flipped one too many.

Mr. Casale: It's okay, I'm sorry.

Mr. Morin: I understand Neal's concerns about construction. I think there are ways that that can get mitigated. After the construction by the plan that we're looking at on our screens, it looks like it's going to do a better job than what's happening now especially if we had that rain like we had this afternoon. I'm sure a lot of that rain would have went directly into the brook.

Mr. Gilbert: Untreated.

Mr. Morin: Untreated, correct. If a majority of it can get treated, that will definitely help things.

Mr. Greiner: I think it's also valuable that Conservation Commission vetted this and weighed in.

Mr. Morin: Yes, and they weighed in pretty heavily, too. They discussed it pretty precisely and came up with some items. They did a good job with that. The spirit of the ordinance-- Oh, I hit that one, right? Granting the variance would do substantial justice. It's giving them the option of having a pool.

Ms. Thomas: On their property.

Mr. Morin: On their property. Again, mitigating some of the water issues that flow directly into the brook. Personally, I feel it works. It gets through. We'll see where we get to. The values of the surrounding properties will not be diminished. Again, we haven't got any testimony on that. Literal enforcement of the provisions of the ordinance result in unnecessary hardship. Again, we talked about the property itself but talking about the pool where it's at. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property. Again, it's that teeter-totter or scales of justice thing, what's good for the town per se as in the ordinance and what's good for the landowner utilizing that property. I think, again, it works. It's been vetted. I don't think it's going to be an issue. That's, again, me talking, not the Board-- Everyone's got their own voice in it.

Mr. Gilbert: I think they've done a really good job of cookie-cutting in where they can to be the least intrusive of the wetlands with the setback that was not there when they built the place. I just don't see them having any other option.

Mr. Morin: The proposed use is a reasonable one. It is reasonable to have a pool. It's just a matter of mitigating what you need to do to have the pool there. With that, I will take a motion.

MOTION by Mr. Gilbert: I'll make a motion. The Zoning Board of Adjustment approve the request for a variance from Article IV, Section 275-28A to build an in-ground pool within the 50-foot wetland setback at 42 Oak Drive Lot 12-74-22 zoned GR per our deliberations.

Ms. Thomas: Second.

Mr. Morin: We have a second. Any further discussion? All those in favor say "Aye."

Speakers: Aye.

ALL IN FAVOR. MOTION CARRIES.

Mr. Morin: Opposed? 5-0, approved.

Mr. Morin: Item number three, which is the side setback of the pool, where, let's see, a setback of 15 feet to where 25 feet is required, so the side setback. Again, granting the variance would not be contrary to the public interest. Whether granting the variance would alter the essential character of the locality. I don't see that. A positive piece, too, is the neighbor's not here. I'm guessing that they're approving of the proposed application because otherwise, they'd be here telling us. Looking at the map and seeing where the house is, there is plenty of distance.

Ms. Thomas: There is.

Mr. Morin: As you said, there's plenty of distance in there. Number two, whether granting the variance would threaten public health safety or welfare. Don't see that in here. Next item. The spirit of the ordinance is observed. Again, we've brought it up in the last two, probably. Granting the variance would do substantial justice. Again, it gives them the opportunity for the pool and with mitigating issues, and again, without the neighbor here to say, "No, it looks fine where it's going." The values of the surrounding properties will not be diminished. We haven't heard any testimony on that piece. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship. Special conditions of the property distinguish it from others in the area, which we've talked about. Denial of the variance would result in unnecessary hardship 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. That's a long sentence. Which, again, we've talked about multiple times in these applications. The proposed use is a reasonable one, which, it is reasonable. I'll take a motion on that one, please.

MOTION by Mr. Greiner: Mr. Chairman, I would make a motion that the Zoning Board of Adjustment approve the request for a variance from Article III, Section 275-22A and Table 1 to construct an in-ground pool 15 feet from the side property boundary where 25 feet is required at 42 Oak Drive Lot 12-74-22 zoned General Residential per our deliberation.

Mr. Morin: And a second?

Ms. Thomas: Second.

Mr. Morin: And a second. Any further discussion? All those in favor say "Aye."

Speakers: Aye.

ALL IN FAVOR. MOTION CARRIES.

Mr. Morin: Opposed? Approved 5-0. I'll take a motion to go back into public input.

MOTION by Mr. Casale: So moved to go back into public input.

Mr. Morin: We'll go with Neal and Dave for the second.

Mr. Casale: second.

Mr. Morin: All those in favor say "Aye".

Speakers: Aye.

ALL IN FAVOR. MOTION CARRIES.

Mr. Morin: We are back in public input. You are all set, sir. Thank you. Kathleen or Becky, do we have anything else for this evening?

Ms. Ports: I don't have any additional correspondence for you tonight.

Mr. Morin: That makes it easy. One last motion needed.

V. Adjournment:

MOTION by Mr. Casale: Motion to adjourn.

Mr. Morin: Second. And we have a second. All those in favor say "Aye."

Speakers: Aye.

ALL IN FAVOR. MOTION CARRIES.

Mr. Morin: We are adjourned. Thank you.

Mr. Casale: Thank you.

The meeting adjourned at 7:56 p.m.

The next meeting of the Bedford Zoning Board will be July 20, 2021.

Respectfully submitted,

GoTranscript &
Edits: Christine Szostak