

Town of Bedford
Zoning Board of Adjustment Minutes
July 18, 2023

A regular meeting of the Bedford Zoning Board was held on Tuesday, July 18, 2023, at the Town Meeting Room at BCTV, at 10 Meetinghouse Road. Present were Neal Casale (Vice Chair), Daniel Heath (alternate), Bob MacPherson (member), Dave Gilbert (member), Rebecca Hebert (Planning Director), Kathleen Ports (Associate Planner). Absent: John Morin (Chair), Sue Thomas (alternate), Alex Kellermann (member).

I. Call to Order and Roll Call

Vice Chair Casale called the meeting to order at 7 pm, introduced members of the Board, and appointed Mr. Heath to vote this evening.

II. Approval of Minutes: June 20, 2023.

MOTION to approve minutes for the May 16, 2023 meeting was made by Mr. Gilbert. Mr. MacPherson duly seconded the motion. Vice Chair Casale abstained from the vote. Vote was taken - all in favor. Motion carries.

Rules of Procedure: Vice Chair Casale stated the following: Please silence all phones. We'll have a presentation from each applicant this evening. There's only one applicant. They will introduce themselves to the Board and present their application, including the five criteria necessary for a variance. Board members may then ask questions of the applicant. We'll have public input after with those in favor, and then those opposed to the variance giving comments or asking questions direct to the Board. If you do speak, we ask that you give your name and address first. I ask that there be no debate between the parties. After public input for or in opposition to the variance, we will give the applicant a chance for rebuttal and summation. All applicants will be heard in order of notice. The Board will go into nonpublic input to deliberate and vote after each application. You can wait for the vote tonight, or you can call the Planning Office after 8:30 tomorrow to find out the result. If we do need to take a recess, we will by vote. We will hear our last agenda item before 10:00 p.m. Any items we have not started before 10:00 p.m. will be deferred to our next meeting. Regarding rehearings, any party has 30 days to request a rehearing from a decision of the Zoning Board of Adjustment. The Board has 30 days in which to respond to such request 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 made in its decision.

The criteria for granting a variance: concerning the variances that we have in front of the Board this evening; I will not go through the five criteria at this time. We're going to ask each applicant to go through their application and address the criteria as part of their presentation. That way we have it recorded. For a motion to pass this evening, there must be at least three affirmative votes. So that the sole applicant is aware, this evening we only have four voting members, so you have to be aware that in the event of a tie the variance would not pass. So, if you choose to continue with your variance request, in the event of a tie, 2-2, it would not pass. Just so you're aware. You do have the right to withdraw for when we have a

full quorum. If you are going to speak this evening, I'm going to ask that you stand and take an oath, please, at this time. Do you swear or affirm that the testimony you're about to give in these hearings will be the truth, the whole truth, and nothing but the truth? Thank you. You may be seated.

III. Old Business & Continued Hearings:

1. **Bow Lane Next Gen, LLC and 206 NH Route 101, LLC** – Request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow the construction of a retaining wall greater than 6 feet in height, within 0 to 20 feet of the front setback where 60 feet is required, at 206 NH Route 101, Lots 20-22-14 and 20-22-14-1, Zoned CO. [*Continued from the June 20, 2023 ZBA meeting.*]
2. **Bow Lane Next Gen, LLC and 206 NH Route 101, LLC** - Request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations to allow the construction of a retaining wall greater than 6 feet in height, within 9 feet of the rear setback where 30 feet is required, at 206 NH Route 101, Lots 20-22-14 and 20-22-14-1, Zoned CO. [*Continued from the June 20, 2023 ZBA meeting.*] [**Withdrawn.**]
3. **Bow Lane Next Gen, LLC and 206 NH Route 101, LLC** - Request for a variance from Article IV, Section 275-28A to allow the construction of a retaining wall greater than 6 feet in height within 2 to 20 feet of the edge of Wetland #2 and construction of an underground vault within 20 feet of the edge of Wetland #2 where 50 feet is required, at 206 NH Route 101, Lots 20-22-14 and 20-22-14-1, Zoned CO. [*Continued from the June 20, 2023 ZBA meeting.*]
4. **Bow Lane Next Gen, LLC and 206 NH Route 101, LLC** - Request for a variance from Article IV, Section 275-28A to allow the construction of a retaining wall greater than 6 feet in height within 26 to 40 feet of the edge of Wetland #1 (Riddle Brook) and construction of an underground vault within the 10 feet of the edge of Wetland #1 where 50 feet is required, at 206 NH Route 101, Lots 20-22-14 and 20-22-14-1, Zoned CO. [*Continued from the June 20, 2023 ZBA meeting.*]

IV. New Business: None

III. Old Business & Continued Hearings:

Vice Chair Casale said so for Old Business, we did have four variance requests. My understanding is Number 2 has been withdrawn. These are all from Bow Lane Next Gen. If you could come up to the table, please and identify yourselves. Afterwards, if you could confirm you're withdrawing item Number 2 on the agenda.

Mr. Joseph Maynard of Benchmark, LLC presents: So, good evening. My name is Joseph Maynard. I'm with Benchmark LLC. Beside me is Alain Sfeir, who is the property owner. As you read, Variance 2 dealt with the variance to the wall height up against the abutter to the south of our property. We reworked our grades so were able to get the wall heights under the six feet, so they're no longer considered a structure up against that side of the property. So, that portion of the variance request, we're looking to withdraw. Vice Chair Casale replied OK. And just for clarification and for people that may be listening around the audience, is this specifically referring to the abutter that spoke at the last meeting and also submitted a letter? And I believe the abutter's attorney was present. Mr. Maynard replied the abutter's attorney was

present. The abutter was not. Vice Chair Casale said so, this addresses that issue specifically. Mr. Maynard replied correct. We went back to revisit that area just to see if we could reduce that and were able to get it below the six feet. Vice Chair Casale said OK. Thank you. So, we're withdrawing Number 2. To revisit the number of voting members tonight, are you OK and do you still want to proceed with the 4 voting members? Mr. Maynard replied yes.

Vice Chair Casale said all right, before you start, I guess the best way to do this is a couple of things: One is I was not here last time, and I was confused just reading it. I can read it quicker than I can watch an hour and a half to two-hour video. Reading it was very confusing. My understanding is that Planning asks if you could just treat this like it's a new application I think would be beneficial to everybody, especially for me, since I was not here and I didn't have the benefit of being present. I certainly saw the drawings, but I wasn't able to see how you described things in the use of the cursor. So, if you could treat this just as if you haven't been here before, I would appreciate that. And I guess the best way to go about this is if you could just give a general understanding of the project and then we'll go into each of the variance requests, go over each of the five prongs for each one. And after each one, I will just ask for input. I see two members of the audience there. I don't know if they will be asking questions or not. We'll get input from them, input from the Board and any questions from them and then proceed to the next variance request. If that's good with you. Mr. Maynard replied yes. It's not an issue. Vice Chair Casale said OK, thank you.

Mr. Maynard continued presenting: All right, so this piece of property, it's along Route 101. It's Number 206. It's the old Shorty's Restaurant. That property, in general, was part of the Riddle Brook Condominiums that are on the other side of Riddle Brook. So, this is technically looked at as a condominium piece of land, and it's a condo unit out of that project. The lot itself, it's about 2.6 acres in size, falls in the Town's commercial zone. The lot has about 600 feet of frontage along 101, with access along the north end of that property's frontage to get into the lot. The old building on the lot is about 5,700 square feet. It was constructed around the mid-1980s. There's a gravel driveway on the left side of the building, on the northeast side of the building, that goes up to the rear of the building. That driveway was used to maintain an on-site septic system that serviced the prior restaurant. When the Riddle Brook Condo Association was developed, there was a sewer service, a water service, and a gas service directional board under that brook to supply those services to this property. So those services all kind of sit at the southeastern corner of the lot. It's our understanding they're all installed. They're actually relatively deep, according to the record plans that we've been able to find on it. So those services are now available for this piece of property.

The existing restaurant building has about 70 parking spaces on that lot. The existing parking lot layout has a number of flaws. When we look at the layout of the existing parking area, all of the driveways or the parking aisles dead end, meaning you turned down one and you get to the end. If all the spaces are full, you have to back all the way out of that before you can go to the next leg. So the whole traffic layout on the property is pretty convoluted. The other thing we point out here is that that parking lot, the lower parking lot of the first when you come to, actually sits about 7 feet lower than 101. So, it's a very steep grade coming in the driveway off of 101, being it's about a 12 percent slope. It brings you down to that lower parking area. That lower parking area sits 7 feet below Route 101, and it's only about a foot or so above the actual wetlands that surround that parking area.

We also have a small portion of the lot that falls within the Hundred Year Flood that's associated with Riddle Brook. That floodplain does go across the drainage ditches that are along the front of our property. Vice Chair Casale said Mr. Maynard, excuse me, as you're talking, do you mind using the cursor and just pointing that out on the map, please? Mr. Maynard continued all right, so this is our proposed plot. I left

the existing building underneath of it in a ghosted fashion. The driveway is here in the same location. The lower parking lot does extend right across the frontage here. That lower parking lot exists now about 7 feet below 101 and only about a foot or so higher than the wetlands that's around the site. The other point I want to make about this is that we have some floodplain. So, the floodplain kind of cuts the top corner of our parking lot. It does go up through these drainage ditches and it does come around the rear of the property. As part of this development, there's no drainage on the lot now. Everything just sheet flows to that lower level and then it just goes right into the ditch lines or the wetlands that are associated with Riddle Brook. So, in order for us to develop the property and to do something effective from a drainage measure and actually be able to put something and that's going to function properly, we need to raise the grade so that we can get our flows there and we can put an underground drainage measure in. So, we're looking to put in underground plastic chambers. They'll be plumbed altogether through catch basin network. And then those underground systems will attenuate the flows. There would be pretreatment of flows before being discharged to the wetlands, and they meet all of the Town's drainage requirements, and they also meet all of the alteration of terrain requirements. In order to be able to put those in so that we can have a certain amount of separation from the bottom of those drainage units to the water table, we need to raise that grade. Without raising the grade, we don't have the ability to send the water and treat it and do the things that we need to do. So, to install those measures, we need to build this wall so that we can build our drainage behind the wall. The wall helps in a number of things. Number one is it helps with allowing us to put drainage in. The second thing it does is it allows us to raise our driveway grade. Like I said, right now it's a 12 percent grade going into the site. We can raise that to about a 5 percent grade, which is more reasonable for commercial development. The third thing it pretty much does during construction is as that wall gets built and lifts, the area behind the wall becomes like a sedimentation basin. So, any erosion that happens or anything gets trapped on the uphill side of those blocks that get built for the wall and keeps that runoff and the sediment from going into the wetlands that's around the site.

So, in the front of our property, there's three different systems. Down in the lower corner over here, there's an infiltration system that handles drainage from about the midpoint of the site in that direction. There's also, at the northeast end of the property, there's another drainage system that there's a pipe network that collects that runoff and sends it to this system at the northeast side of the lot. The middle system is not a drainage system, but it's a floodplain mitigation. So, we're filling X amount of square feet or cubic yards of floodplain compensatory storage. We're mitigating that floodplain storage in vaults underneath the parking lot. So, any place that we're displacing water, we now gave it a place to go so that there's no issues downstream from what we're doing.

Vice Chair Casale said excuse me. Is that the same material, plastic? Mr. Maynard said yes. Vice Chair Casale continued so, this is almost equivalent to a leach field, in a way, isn't it? Mr. Maynard replied it is because the drainage systems are also infiltration systems. Because when we look at the alteration of terrain rules, the two-year storm event, which is a considerable amount of water we have to store and infiltrate—we have to have zero flows out of those systems in a two-year storm. So, we're recharging the ground with the water from a two-year storm without it exiting the system and into the thing. So the systems are designed to handle, primarily—that volume takes up a big chunk of it. When we start getting into the higher storms, we can have water leave the site, but under the AOT rules, the two-year storm has to stay on the property. So, like I said, in order to be able to install those measures, have them to meet the separation that's required above water table, having to meet the Town's ordinances, the alteration of terrain ordinances, they're up in the air on the front of this property and there's no room to grade the end of that system before the wetlands. So, the only other option is a retaining wall that would go there.

When we were at the last meeting, the chair asked for a couple of things. Ms. Hebert said just quickly, can you explain the colors on the plan, too? Mr. Maynard replied oh sure. Ms. Hebert added just cause that's the plan you started. It's a little confusing to see. Mr. Maynard said it's hard to see on the picture here. I tried to color it. Ms. Hebert said and the red versus blue. Mr. Maynard said I tried to color it in three different things. I put the impacts to the front setback along 101 in a yellow. The impacts to Riddle Brook are in an orange and this rear area here, which was the original request for the back wall, in green. It's no longer required because we've been able to reduce the height of that wall to less than six feet in height. I tried to color code it. Yellow is anything to do with the front variance, being the drainage measures and the walls, and then the northeast end of the site is orange, and that's the impacts associated near Riddle Brook. Vice Chair Casale asked orange is wetland only. Yellow is wetland and setback from 101. Mr. Maynard replied correct. We were trying to just make sure it was pretty clear on the plans.

At the last meeting, went through all of these things. There were a couple of comments that came from the chair that we tried to address as went through this whole thing. One of them was they wanted some renderings of the property and where the wall would be to scale type of photo image so that you could get a feel for what this is going to be. I had the architect turn off guard rail and I had them turn off vegetation, just because you couldn't see the wall when they put their pretty fluff on it. And I thought that the biggest thing that people wanted to see was really how tall this wall is going to be in relationship to the building and the street. So, we had them give us a couple of renderings. This was one of them, looking somewhat from the northwest side and then there was another one looking from the other direction. So this represents the walls that would be along the frontage of 101 for this piece of property. There was some discussion I had with staff.

Mr. MacPherson said in your rendering, it almost looks like you're almost level with the... Mr. Maynard said it's about a foot lower than 101 for the most part. The parking lot ends up about a foot lower. Mr. MacPherson said OK. It looks like it's level there at first where you're rendering. Mr. Maynard agreed, yeah, it's just deceiving from the image location. We sent them our surface of the property. They extracted that into this picture. Vice Chair Casale asked is there any drainage for 101 close by that mitigates drainage coming from 101 into your property, or no? Mr. Maynard replied there's nothing. Vice Chair Casale said so you do get the runoff as well. Mr. Maynard explained well, their runoff—there are a number of structures that the State put in when they redid that stretch of road two years ago, three years ago, and they discharge into that ditch along our frontage, creating the wetland. The bulk of that ditch falls some on our lot, some in the State right-of-way, but it's a roadside ditch that they have. Vice Chair Casale said so, it's not all into the driveway? Ms. Hebert replied no, they have a curbed sidewalk along the frontage. It's a closed drainage system that was constructed as part of that whole system. It had to go through State wetlands permitting. Mr. Maynard said but I think their closed drainage system still dumps into that—it discharges. One of them discharges up to the other side of the road, which then goes through those 3 culverts that are at Riddle Brook. And then there's another one at the intersection that kind of goes, and it goes across our frontage. Ms. Hebert added and across the street, where the flower shop was, PJ's flowers. Mr. Maynard said yeah. Mr. Gilbert said I have a question. Why didn't you show the guard rails? Mr. Maynard replied I didn't show the guardrail because I thought it would cloud the pictures. There's a couple of other things as I was talking to staff today actually about it. There are three options for guardrail protection when you have a wall. Two of them bolt to the top of the wall. If I bolt the guard rail to the top of the wall, that adds to the height, and if that was the case, then I'm back before you to put a new variance in because now I'm expanding the height and I'd end up with a lot more walls around the property. If my wall is 5.9 feet and I stick a 30-inch guardrail on top of it to the bolt, now my wall is not 5.9 it's 7.8 or something like that. So there's three mechanisms to put guardrail on these. Two of them deal with bolting it to the top of the guardrail. The third is to install a guard rail on the parking lot side. If

the guard rail is installed on the parking lot side, it's not considered part of the wall. As I see it, I think that's the option that's going to have to go is the guardrail would go on our parking lot side of it—not bolted to the top of it. Vice Chair Casale asked do you lose any of your parking space? You lose a little bit, don't you? Mr. Maynard replied I'd lose about 6 inches of my parking space, but it would still fall right about my curb because we're putting in a closed drainage system also because we're trying to collect all of our runoff and send it to these drainage systems so that we can manage our runoff where there's nothing now.

Ms. Hebert said the Town Engineer did review that and said that you need at least three feet between the top face of the wall and the back of the guardrail and approximately 5 feet to the face of the guardrail, so that would change your plan a little bit. Mr. Maynard replied I have 4 now. It changed it a little bit, but I did sit down today and look at the dynamics of it. He was citing a wooden beam one. I went online. I found the steel I-beam ones, the galvanized I-beams. I'm 6 inches less than what his requirement was which would put me right to my face of my curb. It's ultimately going to need crash protection there, but to avoid additional height request on the walls, I think the only option we have is to put a conventional I-beam guard rail on our side of the wall. Mr. Gilbert asked and that's around the whole perimeter? Mr. Maynard replied it's around roughly three sides of it. There is a section on the back where we end up in a cut grade instead of a fill grade so, there's no need for crash protection in that area. The only thing that would be required would be fall protection, which would be chain link fence across the top behind the wall. Ms. Ports said can I just ask, the topography surrounding the property is not necessarily accurate, so like what we see in the background aren't true heights. Mr. Maynard replied no, I think they stuck a landscape behind the wall. We were looking more—once we eliminated the wall at the back, I think they focused on the front in their elevations. Vice Chair Casale said just to clarify: the front is accurate, but the back is not, because we see this rendering. Mr. Maynard replied yes. The grade wise, it's probably pretty close from a grade perspective because the grade at the back is roughly the grade at the front. So, there's a small kind of up and down in the back so that we can get the drainage to go to a low point and then we collect it in a catch basin, then send it over to this drainage system that's on the front. So, if I bring back up plans, when we go back to this plan—like I said before, there's a high point roughly at the driveway where it comes in. Half of this water is going in this direction and the other half goes in this direction. Then when you get to the back, there's a high point right about here. So, this run off is going down to this system and then runoff goes in this to this diamond shape, which is a low spot of the parking lot, which we collect water in a catch basin network, which would then pipe it to this underground system around the front. So that manages the site runoff without anything bypassing that drainage system. The only portion of the site that would not get to those drainage systems is—there's an existing culvert under the driveway now. Because of the grade that's in that area, we can't get that water around the corner. So, at that pipe under that, we're looking to put two deep sump catch basins over that existing drain line so that we can collect the runoff that comes in from 101.

Vice Chair Casale asked do you have a rendering from the bridal shop? Mr. Maynard replied I don't. Vice Chair Casale added because I know that was a question from last month. Because it is significantly higher. Mr. Maynard agreed, that is higher. So, when we look at that wall that's on that side of the property—let me give you a couple of things here. So, at that meeting, there was talk about the picture which we have here. We look at the first wall, which is the wall that comes in off of that driveway and then goes to the south. That wall is anywhere from 3 to 6 ½ feet off the edge of wetlands. It's about 15 feet off of the Route 101, right-of-way. The underground drainage at that end sits about 10 feet behind the wall and it sits between 13 and 16 feet off the wetland. The length of that wall was another question. If that wall ends up being about 140 feet in length. Let me just see if I can zoom in here to this for you. We put the 140-foot dimension here. It starts right about that culvert that's under the driveway, and it extends in

that direction. When we look at the wall that goes in that direction to the north, that wall, again, starts about the culvert. That wall is about 240 feet in length with about 120 of it across the front, and then there's that 90 in the wall, and then it's about another 120 feet in the other direction. That wall ranges anywhere from 6 to 7 ½ to 9 feet in height before tapering back down to 6 feet.

The underground vaults in that area are nine feet behind the wall. They sit about 13 to 14 feet back from the edge of the wetlands and about 29 feet from the right-of-way. Vice Chair Casale said excuse me. So, to get to the meat of the matter on that, since we don't have a rendering; you're saying that if somebody were to walk from the bridal shop up to the wall, so up to the property line, basically... Mr. Maynard said well, the property line is the roughly the center of the brook and the brook is 30 to 40... Vice Chair Casale said OK, so not walk right up to it, but close. If you were to walk up to the brook and across from the brook is a wall, the wall is—what's the tallest part of that wall you would be looking up? Mr. Maynard replied about 9 feet. Yeah, the last stretch, there's a good drop in that area and it's a small portion of it that ends up at that height. But it's the last stretch, so we put all the shots... Vice Chair Casale asked can you give me an idea of the length of, I guess at least the highest portion, where it's at? Ms. Hebert said the dotted line in red represents walls greater than 6 feet in height. Vice Chair Casale said I'm sorry. The dotted line in red is all greater than 6 feet? Mr. Maynard said yes. Ms. Ports said on the Riddle Brook side, I measured 1,110 feet. Mr. Maynard said it's like 240 feet total. It's about 115 feet or so from that 90 degree turn over to where it gets to a point that it's under 6 feet high. Ms. Ports said but along Riddle Brook, it's, oh, I must have measured it wrong. Mr. Maynard replied yeah. So, the setback from Riddle Brook itself, the wall is anywhere from 30, 32, 25. So right now, the pavement that's associated with the parking lot that's here is like 3 to 5 feet off of the wetlands associated with Riddle Brook. So, on this side, we're pulling all of that back and we're going to restore the paved area that's there with natural vegetation that we agreed our wetland scientists would put together to help restore that area. Vice Chair Casale said OK, just getting back to the wall though. Because, again, we don't have a rendering. If I'm driving south on 101, what am I looking at? I look to the left, passing the bridal shop. What am I seeing? I know that you had some renderings of a, well, I saw some renderings of a red brick wall. I don't even know if it's going to be red. Mr. Maynard replied no, I think it's always been an earth tone like a gray or a brown. Vice Chair Casale said so, it's going to be sort of like what you have there? Mr. Maynard replied yeah. I had them match what they could to the colors that were on the brochures. So, it's a tan, gray kind of color. Ms. Hebert replied you'll see the wall, and then you'll see a steep slope going down to the edge of the brook. Vice Chair Casale said but from the wall, right?

Mr. MacPherson said for the traffic on 101, you're going to be seeing the wall. The time you take a look past the site, you're going to see a wall, right? Mr. Maynard replied you will see a wall there, yes. Vice Chair Casale said now you may say, well, this is getting into like Planning stuff, but some may argue diminished value. Mr. Maynard replied I understand, but... Vice Chair Casale said nobody last time came in to argue it. I don't know if there's anybody in the audience to argue it, but some may argue that sometimes big walls look really ugly, and people say not my neighborhood. I don't have any evidence of that yet, but that could be an argument. So, I'm just putting that out there, that it sounds like it's a Planning thing, but it could venture into... Mr. Maynard said I understand you 100 percent. The other side, I look at this is that you talk about diminishing value. So, Riddle Brook is an impaired waterway, right? And right now there's not a stitch of runoff or drainage that does anything to the water coming off of this property to that. Vice Chair Casale said yes, and I get that but I'm just saying this is why I bring it up because some would argue, well, that's Planning why are you even delving into that, but it can be in our wheelhouse as far as diminished value. That's the only reason why I bring it up as far as appearance. Mr. Sfeir said Sir, we removed the vegetation that we were planning to plant against the wall to camouflage the wall so you could see the wall. The finished product is not going to look like that. We have wetland scientists that

have their recommendation of plants that we're going to plant to protect the runoffs up against the wall and also to basically camouflage the wall. So, it's not necessarily going to look like that. And up against 101, there's not a lot of distance, so it's you're not going to see it because it's not too far from 101. If you're walking on the sidewalk, you will see it. But all along it is going to be below 101. It's not sticking up. Vice Chair Casale replied OK. Thank you. So, Bob I may have like trampled on half your question there. I don't know if you got everything out. Mr. MacPherson replied just fine. Vice Chair Casale said I'm sometimes famous for doing that. Did you get everything you wanted? Mr. MacPherson replied yes, I got it. Mr. Maynard said so, that's what I have for the renderings. There were just the two that they gave me from those two angles, showing that. But like I said, they had vegetation across this. You just couldn't see the wall so, I was kind of like get rid of the vegetation because that's something we'll end up having to do later. But this would give you a better idea of what that would look like in association to the project.

Ms. Hebert said the Plaza hasn't been to Planning Board yet, so it hasn't received any type of architectural review. Vice Chair Casale asked is that your overview? Mr. Maynard replied that's for all of that, right. I think that covers what we're doing as a redevelopment of this property. It covers how we're managing our drainage. We have sewer, we have water. So, we have all of those things associated with it. We're trying to fix the drainage and everything kind of gets worked backwards when you start doing this. But like I said, the pet peeve I always had with this place because the parking is just horrible because of those dead-end aisles. So, by doing what we're doing, it helps I guess traffic, drainage, landscaping, we know we still have to deal with, but we're trying to get through this part now.

Vice Chair Casale asked do any members of the Board have any other questions based on the overview before we get into the nitty gritty? And then I'll open it up to the public as well. I just have one question and Planning, Miss Ports brought this up last time—the ability to make the footprints a little bit smaller with the parking spaces. I realized with the change from last time, you brought it down 9 spaces. I guess what I didn't like—seems like kind of strong, but—the excuse was well, we realized from other projects we may need more parking. Well, the problem is, is that it's not particular to this project. It really doesn't matter what has happened at other projects, whether you need more parking or not. It's what's needed at this spot here, and you don't even know what's going to go in this spot. For instance, if you do follow through with having the golf, the simulator there, you're not going to need 90 or 96 spots, whatever it's down to now. You're not going to need 96 spots, so it's kind of overkill. Do you have something else to substantiate not shrinking the footprint so that you do not need the variance regarding the frontage? I'm not talking about wetlands. It's kind of confusing because a couple of them are mixed in, but just to get back to that question though, because it's a little question of mine because it deals with does the applicant really need this? Is it a hardship? Mr. Maynard replied so, I'm going to start with I know there were comments at the last meeting about could we step the walls, could we do things like that to the thing to get the heights of those walls down below... Vice Chair Casale said well, it wasn't that, it was... Mr. Maynard said well, that started some of it right, because there was... Vice Chair Casale said well, it was about getting rid of that whole row of parking in the front, which actually came to, I counted, it came to 30 spaces; which would bring it down to about the 68, which is the minimum. And again, the only comment I heard from you guys was that well, we want the extra parking. How far do we take that? People could come in here and say, well, we want 200 extra spaces just in case. So how far do we take it? And again, it really doesn't matter what's happened in the past. It's what this application is about, and we don't even know what's going in, and right now it's a golf simulator which isn't going to even need 100 spots. So, is there something else? Because that, at least for me, on the question of, is there a need, is kind of an issue. Aside from, well, we just want extra parking just in case. Mr. Maynard replied AI can speak on his behalf for some of this, but from the standpoint of there are 70, roughly, on the property now. And when that had the restaurant there, there were many times that that parking lot was more

than full, right, with a decent restaurant on that piece of land. So, under the mall or the shopping plaza, I think the use that we're looking at, it came up to be 68, something like that spaces would be the minimum required out of this. There's 70 now for only 5,000 square feet. We go to 68 for 16,000 square feet. So, it's kind of one of those ones where I personally think that the number in the book is a little low for the use, especially if there's a restaurant use in the property. And what we're asking, some of that comment came about, could you reduce the drainage systems? Could you reduce the walls, and those things? The goal on our part, though, was to try and maintain a certain minimum number of parking spaces. But I think some of what was asked about it was I really can't move those walls back. And the reason being is I need certain design requirements to make the drainage work. So, if it was a matter of a green strip or something like that along that area, I think the comment was a 15 foot off the edge of pavement between that and the wall. The difficulty with that is I lose that entire row of parking when I do that. If I put another 15-foot strip on the backside of the property, I lose another half a dozen, dozen. Vice Chair Casale said a lane was mentioned. So, the possibility of a drive-through, but also cutting it back to one lane versus the two. Mr. Maynard replied that was a Conservation Commission comment and we originally had filed a request for a drive-through associated with this building. But we don't have a tenant as of yet. So, we withdrew that portion after speaking with staff for the potential of a drive-through on this until we know what the use would be. The Conservation comment was, can you make that driveway on the northeast side of the building one lane instead of two? I really don't want to lose that ability that if he has a tenant that wants a drive through, I don't want it built with the wall and then have to go and move the wall in order to make a lane work again when we're making it better now.

Mr. MacPherson said with that, you have, I think you're looking for 16,875 square feet. Mr. Maynard said right. Mr. MacPherson continued is that the only thing you could do, or could you have 10,000 square feet or 9,000 or is this something you have to have, 16,000 feet? Mr. Maynard replied so, there's an economic side of this whole project that in order to be able to spend the kind of money it's going to take to level the site, put the drainage in, redevelop it with that, AI needs a certain amount of square footage to support the infrastructure. The other thing is, that 16,000 square feet, a little over 5,000 of it is mezzanine, so it's above the first floor. I think the basic building is just under 12,000 or right about 12,000 square feet in size is what the intent was, 11 something. But in order to be able to spend the money on these walls, the underground drain, it's very expensive redevelopment on this piece of property. He needs a certain amount of square footage to be able to support the rents to pay the note. So, there is a certain minimum needed to make it a viable project, or else it's going to stay an old building up on a rock pile forever.

Mr. MacPherson asked and on these vaults, what if there is too much rain? Would that go beyond the vault? Mr. Maynard replied we look at the storm events, we look at 2, 10, 25, 50 and we make sure it's not failing in like 100-year storm. So, these systems that we put in, when you get to a certain level, they just overflow. They just overtop is what happens as a spillway. So, you get into 100-year storm event, it's not like it's going to blow the system out through the wall. It's going to just not take any more water at that point in 100-year storm, but we make sure the system doesn't fail for any of the storm events. Mr. MacPherson said we were just watching on the television all the storms that we've had recently in New Hampshire and Vermont, so this, what you're telling me, would not be a problem at all? Mr. Maynard replied no. Like I said, right now the water just sheets right off this site and it goes downstream. With us, we have a pretreatment measure, and then we attenuate our flows so that we have no increase in flow leaving the system from the property based upon the storm events that the Town looks at and the State looks at. So, like I said, the two-year storm event, nothing comes out of those systems. It just gets infiltrated back into the ground.

Mr. Sfeir said I would like to add a comment, if I may. The existing parking represents really two problems. One of them is the safety of the user or the customers of the building. If we leave it the way it is... Vice Chair Casale asked did you say the existing? I'm having a hard time understanding, Sir. Mr. Sfeir continued if we keep the building the way it is and we use it, that parking lot represents a real safety issue, especially in the winter. So, customers will have to climb the stairs up and down. Vice Chair Casale said yes, I understand. Mr. Sfeir continued plus, we have no drainage whatsoever on it. So, when we talk about diminishing value versus adding value, I believe we are really adding value to the site by redeveloping it and presenting this versus what we have right now. There's a lot of money that's going to be underground. It's going to be buried underground. And you really need something above grade to pay for it, and that's why we're looking at 11,000 square feet of retail place. And we're going to spend a lot of money on it to make it really nice and presentable. So, there is a lot of added value. Vice Chair Casale replied right. I understand, Sir. Well, we have to satisfy five criteria. I understand about the old Shorty's and the issues, but we have to satisfy five things and one of them is hardship. So, if you say that you're keeping the footprint of a building because you need extra parking spaces just in case, in my mind it's not a hardship, because you haven't proven a hardship yet. That's all I'm saying. You need, in my mind, something else. So, some of what you're saying is that something else, which is economically, we need it this size to support it. Maybe for drainage, so I'm trying to help you out here. Not extra spots because if you have something in Concord, you need it up there because this is on its own. Mr. Maynard said but again, I'm not here for a variance for number of parking spaces. I'm here trying to put up a retaining wall and drainage measures. Parking does come with the whole picture, but even if I reduce my parking, the systems don't get much smaller. Vice Chair Casale said no, but the footprint of the building can be reduced such that you don't need a variance, and we have to look at that. Mr. Maynard replied I gottcha. Vice Chair Casale explained that's where the hardship comes in, right? If you can't prove hardship, in other words, you have to show hardship in order to ask for a variance. So, if you come in and say, well, we want the extra parking just because or just in case, that's not a very good reason in my mind. Mr. Maynard said but from the standpoint of, you talk about arguing hardship, right, so, the piece of land itself is very unique, right? It's developed now, but it has no drainage. To install some drainage, we have to do certain things. Vice Chair Casale replied I get that. I'm not saying it's not unique. But combined with that, you also have to show some hardship and it doesn't mean that you can do what you want on a unique piece of land. It has to be reasonable, and it doesn't mean you have carte blanche to do whatever you want. Again, if you can reduce the footprint but still be able to conduct business, then you can do that. But that's, again, that's a balance between your rights as the applicant and our rights or our need to also look out for the rights of the Town of Bedford. It's a balance. Mr. Maynard said no, I hear you there. Like I said, I just, in my mind, from an engineering standpoint, right, I start thinking to myself well, wait a minute here. I'm arguing for drainage and walls, right, for the height of the structure. And I'm just saying, from my standpoint, the only way to put an effective measure in that would manage drainage on a redevelopment or even, like I said, if he doesn't redevelop, we don't need the drainage, right? He could keep that building is kind of how that, leave it the way it is. But I guess I'm just trying to understand, like in my mind, I've wrapped my head around to say that I don't have any way to be able to make a drainage measure work without doing this improvement. So, and I understand my parking might be high, based on the numbers. I get that. But even if I reduce the parking some, it's not going to reduce the drainage system because the standards I have to meet for the drainage; if I knock out 5,000 square feet of pavement, I'm going to lose maybe two or three of those chambers. That's all I'm going to lose. So, my systems aren't going to get expeditiously smaller just because I'm reducing the amount of pavement.

Ms. Hebert asked does moving the wall back from the property line, though, give you the ability to grade the site differently so you can lower the height of the wall? Like you did in those yellow areas by the dumpster? Mr. Maynard replied yeah, so those, yeah, but again, if I lose parking, right, and I have slope.

So, if I have my drainage at the front, I don't have enough room to grade from the edge of those drainage systems to the wetland. There's just not enough available room. Even if I was to ask for a 2 to 1 slope, I can't overcome that. Because in order to build a 2 to 1 slope, I'm nine feet back, plus three: I'm 12 feet off. But a 9-foot slope at a 2 to 1 is 18 feet. Plus I've got to have like an extension on the side of it so that it's not like I'm building a slope right off the edge of the system. I need to be able to have some earth on the side to hold the water within the chambers that we're creating. So, it's not like I can get rid of the wall and just grade it down. Vice Chair Casale said so, dumb this down for me? Can you go to the plot, please? We'll make this easy, maybe. Ms. Hebert asked do you have any sketches of a smaller plaza and what the parking might look like? Mr. Sfeir replied yeah, the existing building. I mean, we could stay with the existing building and leave everything the way it is and just go from there. Ms. Ports said I think, if you go to the picture on the right? Mr. Maynard said that's just the elevations, but he was looking for the site plan. So, the site plan is a PDF. Ms. Ports said I think it's on USB drive E. Vice Chair Casale said oh, show me the plan that has the parking spots on it. Mr. Maynard replied hold on. Let me just see. Vice Chair Casale added and I'm bringing this up because Planning brought it up in the last meeting and it would it's always my question pretty much at every meeting with people asking like, are there alternatives to a variance request? Because it hinges on do you really need this? Are there are alternatives? That's what I'm always looking for. So basically, what I'm asking, those in that yellow area there, there are 30 spots which just so happens to be 30 over the minimum. Can you wipe those out? Can you wipe them out and move it back? However you do that: reduce the footprint, move the wall in the back, whatever it is, that's all I'm asking. That's what was asked last time. Can you reduce the footprint? And you had said the Conservation Commission was mentioning about the one way, I'm quite sure Miss Ports asked about reducing a lane in the back and/or the wall, so that the footprint could be reduced to move everything back so that we would reduce the need for the waivers in the front. Ms. Hebert said yeah, the plans had a drive-through when it went to the Conservation Commission, but the drive through has been removed. Vice Chair Casale said but that was mentioned. It was mentioned. So that's my question, too. Mr. Sfeir replied I get what you say, but right now we have all these parking spots existing. Why should we take them away, spend \$1,000,000 to build the parking lot with the drainage, only to lose them. Just leave them the way it is, we'll work with the building that we have and leave the parking lot the way it is. At some point it's going to become cost prohibitive to do anything there. Vice Chair Casale said yeah, but my question to the engineer though, and I'm just asking, can you get rid of the 30 spots? Can you move, juggle things so that they're moved back. It was a question that was asked last month, and I'm asking this time. Just is it a yes, or no? Mr. Maynard replied I'd say no, and I can explain why. So, when we design these drainage systems under the ground, we have to have a certain separation of water table similar to a septic system. So, the high side of that chamber system has to be so many feet above the water table. So if I push things back, it means I have to push these drainage measures back. Now when I push them back, they go up. Because now I'm going into that slope that's behind the lot and therefore, I lose that separation that I have now because I'm building at the bottom of the watershed. And the systems always have to go at the lowest reaches of this so, you can get as much of the water from the property to them as possible. So, when we start talking about could the parking be reduced on the front? Yeah, probably could be, but the wall needs to go where it is because I need a certain amount of earth from the edge of my system to the wall. Vice Chair Casale said enough said. The answer at last meeting was we wanted the extra spots just because. So that's a great answer. Thank you. That's all I need. Does anybody else have any other questions?

Mr. MacPherson said well, it's just difficult because we don't know what's going into this building. Vice Chair Casale said I agree. Mr. Gilbert asked what do you mean? Vice Chair Casale said we don't know what's going in. [crosstalk] Mr. MacPherson explained we don't know what different businesses this is going to be. We don't know how many people they need in the... Mr. Gilbert said unless you're going to

put a drive through McDonald's or something in there, which they can't do. You don't care. Vice Chair Casale said well, I think he's asking because it's hard to judge the amount of parking that you need. But all I know is that the evidence was presented last time, all I heard was well, we just want the extra parking because... Mr. Gilbert said he's answered the question. The drainage is a problem, moving that, and also it would be an economic hardship from what you're saying, too. Vice Chair Casale replied there we go, thank you. Yeah, I'm good with that. Any other questions? OK, so before we get into the variances, the nitty gritty, does anybody in the audience that is in favor of the proposal wish to speak. You're neither? So, if you're the only one, ma'am, and you were sworn in, I believe. Yes, feel free to stand up and please identify yourself and where you live, please.

Ms. Susan Fullenwider of 257 Wallace Road, Bedford, comments: My name is Susan Fullenwider. My brother and I own 257 Wallace Road. We're the 5th generation to own this property. And we care about the view. We care about what it's going to look like. And last month, my brother and I were both traveling. We couldn't be here. Which is why we had our lawyer come and basically, we just really wanted a lot more information because the plans didn't provide some of the detailed stuff we wanted to know, which had to do with the height of the wall and the guard rail and the landscaping and all those kinds of things—much of which kind of still exists. So, as much as you've been talking about the view from the front of 101 and the side of Riddle Brook, we care about the view from 257 Wallace Road. I mean, we don't know exactly what's going to go in. I mean, my brother lives in Fort Worth. I live in Rye, New York. Our kids are not in New Hampshire. So, it's going to be developed at some point within the next few years. But I do think that as an abutter, we have the longest stretch along that rear property line and I think one of our concerns at the last meeting and I continue to feel is like parts of the wall are within 9 feet and 12 feet of our property line. Would it be so terrible? I mean, I hear what he's saying. I'm not an engineer. I hear what he's saying about the water situation. But just having 15 feet, somewhere we could put some landscape buffer in front of the wall. Whether it's inside the perimeter, on the outside of the wall, the section that's I think it's on page 7, which is the part closer to Wallace Road—so, it's that lower section. That bottom part to the left there, is a 5-foot wall there. That's where the wall gets higher and near where he's got the dumpster and that little spot where he's now got some landscaping. And I mean, our thought was our stretch of property is like three times—it's at least 150 feet. So, the only landscaping he's got is in front of the dumpster and in front of that little 43-foot section. And our thought was, couldn't you just round it out and at least continue between the dumpster and the 43-foot section and maybe go a little bit further so that whole section has a little bit of a buffer? I mean, why have three parking spaces in between the dumpster and the 43-foot section? I mean, in the ideal world, yeah, I would love to see a ton, a lot more landscaping in front of the wall, ideally. I'd like to see a rendering of what we're looking at from my mom's house. I literally walked the property in boots in that awful hot weather yesterday with our wetland scientist, which has now flagged our entire property to sort of get a handle on what's where. And without some kind of a rendering, those trees aren't going to have leaves in the wintertime. It's going to look a whole lot different. I just would like to pass this picture around. I mean if you could just... This is why I care about property. This is what it looked like in the 70s from the aerial view of our family farm. Things have changed, but we can't see Shorty's now. I like that. But what am I going to see? What are we going to see or whatever we put in, what are they going to see? And that's what I don't feel like we have answers to. Whether that wall is 5 feet 11, and I guess you answered you're going to use the type of guardrail that won't have to be counted in the structure of the wall because that was my other question.

Our property's been around for a long time, and I hope something really, really special goes in there. But I don't know what I'm looking at other than a wall, maybe a guard rail, maybe not, very little landscaping, very little landscaping around the building. How big is the foot...? You know, I don't know. So, I would love to see a rendering of what our view is going to be from our property line from the top of our where our

house is and also along the Wallace Road side. I don't know what else to say, but I feel like we don't really have a ton of information to make that clear for my brother and I, yet either. And I'm in favor of Shorty's looking better, you know. It's an eyesore, but I'm also in favor of protecting the value of our property and what our view will or won't be after all whatever is going to be put in there is said and done. So, I'd rather speak my piece now than not speak it and maybe I have to go to the Planning Board down the road. That's fine. But I drove 4 hours to be here, and I walked around the swamp yesterday because I really wanted to get a handle on what's out there. And I got to see it. So that's it. Vice Chair Casale said thank you, ma'am. Ms. Fullenwider said you're welcome.

Vice Chair Casale said so, before a rebuttal, just to clarify: if one of the waivers is approved, some of that is addressed, I believe, in the corner, but not all. Correct? Ms. Hebert said you mean the variance? Vice Chair Casale said right, one of the variances addresses some of it, but most of it is Planning. Ms. Hebert asked what do you mean? Vice Chair Casale replied in the yellow, as far as the landscaping that she's talking about in the corner. So, in the south... Ms. Hebert said you're approving the wall as it's shown on the plans. Vice Chair Casale replied right, but I'm sorry. Mr. Gilbert said I think it's all we're doing, setback to the wall. Vice Chair Casale said no, with the possibility of some conditions or with some landscaping, perhaps.

So, ma'am, most of what you're talking about is in the wheelhouse of the Planning Board. Ms. Hebert explained you're approving the plan as it's being presented to you tonight. Vice Chair Casale replied right. Yeah, most of what you're talking about is Planning Board stuff. Ms. Fullenwider replied only because where the wall is kind of dictates, if it's approved, that's where the wall is. Vice Chair Casale said well, but so as we stated, initially, they were asking for a variance regarding a wall that was bordering your property. But they withdrew that variance. So, the wall now is lower than required in which they need a variance. Ms. Fullenwider replied right and... Vice Chair Casale continued so it no longer requires a variance. Hence, we, for our purposes, we don't need to see the elevation of that side. Ms. Fullenwider said because as long as they use the right guardrail, they don't have to add it to the height of the five-foot nine wall. Vice Chair Casale said yes. Ms. Fullenwider continued but where that wall is, which is within 9 to 12 feet of our property line, doesn't really give you a lot of margin to put any kind of landscape in the front. Ms. Ports said you could make a recommendation to the Planning Board that the applicant reduce parking in that corner to address concerns of the abutter. Vice Chair Casale added recommendation only, of course. Ms. Ports said or you could make it a condition of... Ms. Hebert added the abutter is impacted by the entire site development. I would be careful to not say, all right, you're all set now. I would just be careful. Like I heard you said, the wall has been lowered so it's not impacting you anymore. Vice Chair Casale replied well, no, that's why I said the majority of it is in the wheelhouse. So, what I did not talk about though, is, because she had mentioned it, is property values. So, there is still what we have to consider is a reduction in property values, which is a prong that we have to consider, based upon the variance. Ms. Ports said but the whole proposal brings the property up and so... Vice Chair Casale said well, we haven't decided that yet. But that's the only, the closest—most of it is in the wheelhouse of Planning, which is what she's asking for as far as the light, as far as landscaping, that's what she's asking about the appearance.

Ms. Hebert said Joe, can you explain where there's going to be landscaping on the site as it is designed? Mr. Maynard replied Right. Ms. Hebert continued could you show the whole plan and talk the Board through that so they understand what the development is and where the paving is and where your available landscape islands are. Mr. Maynard said Right. So, a couple of things. Let's start with the areas that we're removing pavement from. At the very southwest side of the lot, which would, I guess, be looking toward Wallace Road, there's a lower parking lot area in there. We're actually removing that area and we'll be planting that area with three different types, low, medium and tree-height shrubs up against

that side. Ms. Ports asked can I recommend that you point it out with the cursor? [crosstalk] Mr. Maynard continued so, down in this lower corner here... Ms. Hebert asked is that a drainage outfall? Mr. Maynard replied yeah, there's a drainage outfall for that, and this is pavement now all the way out into this area. So, this area is going to be removed and restored for the most part. It will be brought down to—it's higher than the floodplain elevation, but we're going to lower the grade so that it would be the additional compensatory storage for any of the floodwaters that are in that section. But as part of the planting, as we get proximity to those wetlands, we'll be planting 3 different levels of vegetation in that area. So, we have a low shrub, some sort of a medium-height thing, and a tree, so that over the... Ms. Hebert asked and that's below the parking lot? Mr. Maynard confirmed below the parking lot. Ms. Hebert said so, it will be down below the pavement. Mr. Maynard said yes, and that's about four or five feet tall at that end. But I'd say within a four- to five-year period, all of that vegetation would be grown and established, and you wouldn't see it on that end from in that location.

The same thing happens up against the Riddle Brook side. There's a big, sizable portion of pavement and some gravel driveway that's up at that section. So, similar to the other side, that's anywhere from 6 to 9 feet of height, that area is also going to be restored with the same type of vegetation based on recommendations by our wetland scientist. So again, looking from the bridal shop within a three- to five-year period, you won't see that wall. You'll see a car sitting at the top of it, but you won't see the wall in that area. When we look at this corner up against our abutter, we did try and create these spaces. I just said to AI if the concern was to get rid of these three and add that as some more vegetation, I think he's amenable to that. The other thing I want to point out that in this area here on the low side up against here, that's not wetlands that's in that section. So theoretically we can do additional plantings up through those areas of uplands on the low side of our wall, in addition to whatever it is that we build into landscape areas on the upper portion. When we're going across the front, like you said before, we've been talking to our landscape architect about some of these things. We were trying to create some inland islands and keep some of this parking so that we could get some kind of shade trees for the parking lot through those areas. So, there's these roundings at the beginning of the driveway, which will all be planted. I'm trying to create some of this and that's something we can work on more with staff and Planning Board and the landscape architect on whether it gets split up every five spaces or something, there's some sort of a landscape work or if that had to all go. As long as we met our parking requirements, then it all goes, and the wall stays where it is. As you come around the backside, again, this isn't a cut situation. So, there's a hill there. That area would also be planted, but it's not visible from the neighbor. They're looking above us from that section. They would see more the upper levels of the building than they would this row of parking that's across the back of the building. Ms. Hebert asked that row of parking across the back of the building doesn't meet the land development control regulations. It is kind of a Planning issue, but the pavement needs to be set back 30 feet from the property line. But it's a Planning issue. Mr. Maynard said so, it's kind of those catch 22s for us. We get that minimum number of spaces. I could lose all the ones in the front like were just talking about and possibly landscaping that strip to satisfy it. But that's going to bring me to the minimum necessary to the ordinance. But if I pull the back lot 30 feet off of that line and lose the front, I won't even have half of what I need for parking to redevelop the lot. And, again, there's about 70 spaces on the property as it exists now for what was there.

Ms. Fullenwider asked would it be possible to get a rendering of what it's going to look like from 257 Wallace Road at some point looking down at this property with whatever the building, 16,000 square feet, is going to look like? And I guess even where, on the far-right side, are we just going to see a wall that's flat with cars like coming up to it, or we just going to be looking in the second floor of the building? Vice Chair Casale said so, they can hopefully answer that for you. They don't have the rendering. I can't ask for it tonight. We're going to vote on it this evening. That's something you could certainly ask of Planning

down the road. Mr. Maynard said well, the biggest thing I can't do is I don't have topography on her land to have the architect make a model and render a view from her side. I can start at our lot line, but you're going to lose the perception of the distance from her house to there because I don't know the grades of her land and where the view is from. So, in order for them to do an accurate rendering, they going to have some sort of topography or grades to be able to put it into their model. And therefore, then they can pick a spot on it and look at a view in that direction. Vice Chair Casale said I probably don't have to tell you; you may want to reach out to her if it gets to Planning after this evening. Mr. Sfeir said we will. Mr. Maynard said I'll try and get her number before we leave. Vice Chair Casale said because she'll probably drive another four hours and show up at Planning. So, you probably want to work with her. Mr. Maynard said no, I have no issues and I don't think AI does either.

Vice Chair Casale said and, Sir, you haven't changed your mind any? You don't wish to ask any questions? Mr. Sfeir said I mean, Tom, her brother, called me or sent me an e-mail and I called him the same day. We had a candid discussion. Vice Chair Casale replied OK. All right. You're going to need to go through the... Mr. Maynard asked, again? Vice Chair Casale said yes, unfortunately. Ms. Hebert said Neil, did you see if anybody else had questions? Did any of the other Board members have questions? Vice Chair Casale said oh, I thought we kind of went through that. There were no further questions from the Board.

Mr. Sfeir said I just want to add something here before we go further The right thing to do is not to work with the existing building but that's an option. And I was given advice to actually work with the existing building and don't throw so much money at the site just to try to fix it. And there's a big need for a standalone building that just has its own parking, its own entrance, whether for some kind of recovery clinic or some kind of doggy daycare, there's a lot of need for that. So, when we go back and talk about how about removing space from the building and make it smaller or take away parking lot, we fall back to: how about we keep the building, put a new roof on it and just rent it to someone that can use it the way it is? And just move on. I'm trying to do the right thing here. We already spent a lot of money for the architect to give us a rendering, and that gives the Planning, the Zoning Board an idea of the caliber of the product we're trying to put there. It's something really nice, and we're going through a big expense to fix that parking lot to make it safe. In the past, there was a lot of slip and fall in that parking lot—a lot of people got hurt in it—especially going down the stairs. So, there's a big safety issue. I'm fixing this. I'm here and hopefully you allow me to do that. If you don't, then at least I tried. I understand. But the existing building is an option. I think it's a big mistake not to start fresh with this site and fix it once and for all. It's really in your hands at this point. Vice Chair Casale said OK. Thank you.

OK, so you want to start with the first one.

1. **Bow Lane Next Gen, LLC and 206 NH Route 101, LLC** – Request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow the construction of a retaining wall greater than 6 feet in height, within 0 to 20 feet of the front setback where 60 feet is required, at 206 NH Route 101, Lots 20-22-14 and 20-22-14-1, Zoned CO. [*Continued from the June 20, 2023 ZBA meeting.*]

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:**

So, when we look at this, it's important to note that under this criteria, the test is in the negative and the applicant does not need to prove the project would be in the public interest. They only need to show the proposal is not contrary to the public interest. So, for this lot, the land is zoned commercial and is along

the state road. The lot currently has a restaurant use which was developed many years ago. The improvements proposed to this lot will help update the property and enhance the site. The walls are required to elevate the building and parking so that the redevelopment of the lot will sit somewhat higher than the road. Raising this grade also allows for the installation of underground drainage measures, which will meet today's regulations where the property currently has none.

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

This is a commercial lot. Water and sewer services were recently extended to the property which was previously serviced with an onsite septic system. The proposed design incorporates retaining walls around the perimeter of the property, so underground vaults can be installed to mitigate raising the site grades. Without the walls, the site grades would not allow proper drainage measures to be installed, since most of the predeveloped site is low and in close proximity both in elevation and proximity to the wetlands that's around the site. Also, currently there's no drainage measures on the property. This plan implements drainage improvements, which will pretreat and detain stormwater before discharging this runoff from the property.

2. The spirit of the ordinance is observed because:

So, the spirit ordinance element. It's technically related to the public interest element as a matter of law for the same reason that the variance is not contrary to the public interest. It also does not violate the spirit of the ordinance, since this prong is linked to the previous requirement, one cannot vote for one without number two. So, for this property, the lot is along a state road, and a good portion of the proposed wall is along this road. The construction of the wall helps immensely with the grade of the building and the parking areas. The walls also help elevate the grade of the land so drainage measures can be installed to control site runoff. Granting of this request will also allow the grade of the land to be raised so the drainage measures can effectively capture and treat site runoff where the property does not have any drainage measures now. The wall also helps with parking around the site and makes interconnected parking aisles feasible.

3. Granting the variance would do substantial justice because:

When we look at this, we look at the loss of the property owner in the event this thing is denied, is outweighed to any gains that would be to the general public. And this variance will help the owner redevelop the lot with many improvements to the flow of traffic in, out and around the land. The request also allows for drainage measures to be installed where the property currently does not have any.

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

This request will help redevelop the property, which is only an improvement upon the property's value. Raising site grades by installation of the walls not only helps with traffic circulation on the lot, but they also help with site runoff. This variance allows for underground drainage measures to be installed at the lower grade of the property, which when installed will treat, detain and mitigate these flows before they are discharged into the surrounding wetlands. The proposal will be a major improvement to the lot where the parking is currently fragmented, with no interconnection of aisles. This request will also allow the design to implement effective drainage measures which will help the quality and quantity of runoff from the lot. These improvements will help improve on the property's overall value.

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:

The property was developed many years ago and does not meet many of today's standards. Most of the lot grades sit below the area around it and in close proximity to the wetlands. The only available land for proper drainage measures is at the low end of the property, which sits only a few feet above the wetlands in this area. Site grades and wetlands on site prevent proper drainage and mitigation measures from being constructed without raising the area with the installation of the proposed walls. In addition, the way the property is currently developed, the parking is not contiguous where parking aisles dead end, requiring vehicles to back up to other locations on the lot. The lot also does not have any drainage measures and this proposal will allow for drainage measures to be constructed.

(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:

Primarily this variance is for setback relief, and we need to show that the relief sought does not aggravate the purpose of the setback ordinance because there's no credible threat to public safety or overcrowding. This property is an older development and as such there are no existing drainage measures on the lot. Runoff currently sheet flows to the wetlands that's around the site. Existing paved areas of the property are already at a similar setback to the wetlands. Much of the parking on the site will be moved back from its current location to allow for the installation of the retaining walls. In addition, site runoff from the proposed paved areas will now flow to proposed drainage improvements, where these flows currently do not have any drainage measures and sheet flow directly into the surrounding wetlands. The land we're looking to raise sits below the road and surrounding area. This request will allow the proposed retaining walls to be constructed which will help with redevelopment of the land so that proper drainage and reconfigured parking can be implemented.

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

The plan proposes the retaining walls around the perimeter of the lot. These walls will allow the site to be raised so that not only the grades of the lot can be modified, but this request will allow for proper drainage measures to be implemented for the property does not currently have any. The proposed walls are sited about 10 feet off the State right-of-way and a few feet off the drainage ditch that the wetland setback is from. The wall in this location of the property falls mostly in the same location as existing pavement.

(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:

Although the lot does have existing development, the site was developed many years ago and does not meet today's standards. In order to properly redevelop the lot, the site needs to be raised so that proper drainage and design of the parking and driveways can be constructed. Keep going?

Vice Chair Casale said we're going to vote on each one, and then we'll go back to each one.

MOTION by Mr. MacPherson to move to nonpublic input for deliberation. Mr. Gilbert 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:

Mr. Gilbert said I don't see any evidence of that. Mr. Heath said I agree. Vice Chair Casale said yes, and I agree.

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

Mr. Gilbert said I think you're enhancing it by doing this versus not doing it. Vice Chair Casale said OK, great. I agree. Anyone else? Mr. Heath said I agree.

2. The spirit of the ordinance is observed because:

Vice Chair Casale said so, the purpose of the ordinance is basically to prevent overcrowding. This is a wall and. In some cases, right in, at least in front of 101, at least in my eyes, probably barely noticeable or so it will appear to most people. Does anybody disagree with that? Any other comments? OK. There were no disagreements or comments.

3. Granting the variance would do substantial justice because:

Vice Chair Casale said so this is in regard to the scale. The applicants desire to put a wall there and his desire to build the business versus the needs of the town of Bedford. Any comments about that? So, our need to prevent overcrowding versus him being able to use this property. Mr. Gilbert said I don't see any evidence of that. Vice Chair Casale said yeah, I don't see where the public's need outweighs his right to do what he wants or what he's suggesting for this property.

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

Vice Chair Casale said I don't see any evidence of that. Mr. MacPherson said well, the abutter has some concerns. Mr. Heath said the abutter has come concerns, but then we also have the developer who talks about mediating that. So, there is that possibility of mediating any diminishment. Mr. Gilbert said well, I would say there's no direct issue right now. Vice Chair Casale said yeah, and the other thing too is we don't have any expert testimony right now. It's all kind of circumstantial. We don't know what's going in. None of us know exactly what it's going to look like. Any other comments about that one? Bob, do you want to add anything else? Mr. MacPherson said I'm not the abutter, but if I were an abutter, I would have concerns and if you're going to have foliage or you're going to have plantings, sometimes you don't know, it may take one year, two year, five years, six years before those plantings really get fully developed. I don't know. I have concerns. Vice Chair Casale said so, this waiver in particular though, is for the wall in front of 101. Granted, in totality if the waiver were to pass, it helps build what could affect the value of her property. And right now, we're talking about the wall in front of 101. Just keep that in mind. Mr. Gilbert said so, you're only talking about that. You're not talking about the rear, right? Vice Chair Casale said we're not even entertaining that right now, right? Mr. Gilbert said correct. We're entertaining this one with the front and another one with part of the front by the Wetland #2 and then Wetland #1. Those are the only three we're talking about. So that's what we have to deal with. Mr. Gilbert said I mean, there's no doubt it's a potential issue. Mr. MacPherson said I have concerns. That's all. Vice Chair Casale said OK. Anything else you want to add? Anybody else have anything else they want to add to 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:

Vice Chair Casale said do we think that this particular property has special conditions? I think it does. Mr. Gilbert said just a few. Vice Chair Casale said I'm sorry? Mr. Gilbert repeated just a few. Vice Chair Casale said yeah, a few hundred. I hated going up those stairways. Imagine for the elderly trying to traverse that stairway to go into that restaurant. Yeah, I think, and the applicant has mentioned the wetlands, it had a large rock which they're dealing with or have dealt with, the topography, triangular lot. Just the fact that property has sat there in an otherwise probably robust commercial Town where people would love to buy commercial property, that has sat there, and nothing has been done with it. To me, it's like a big red flag. That, yeah, there must be a reason why. And I think it's pretty obvious, at least to me, it had some issues. Mr. Gilbert said well it used to be the septic they didn't have. That was a big problem. Vice Chair Casale said and that's that way in other towns that that is a big thing. And I think they said the septic was put in, I was surprised, many years... Mr. Gilbert said not that many years. It was connected with Bow Lane as I remember. Bow Lane Apartments, right? Ms. Hebert said yes. Vice Chair Casale asked was it just that reason? I thought it was a... Ms. Hebert said yes. The Bow Lane project included the renovations to the restaurant. Mr. Gilbert said that's right. Vice Chair Casale asked are there any other comments about special conditions of the property? Mr. MacPherson said you've got Riddle Brook. Vice Chair Casale said this brook, that brook. Mr. Heath said the addition of underground retention basins in order to provide for the drainage, that's significant. Vice Chair Casale said right, to mitigate and bring it up to code.

(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:

Vice Chair Casale said this is that balancing act, again, between the applicants and the needs of the Town. So, at least in my mind, same thing that the needs of the applicant outweigh the benefit to the Town, at least in this case in my mind. Does anybody else have any thoughts on that? And again, we're talking about a retaining wall, which the purpose of the ordinance is to prevent overcrowding on 101. And I'm not diminishing it. Mr. Gilbert said I want to ask you a question. You said the needs of the applicant outweigh the needs of the Town. No, I'm saying it's a balancing act, the balancing act. Mr. Gilbert said right. In this case, I think it's a benefit to both. Vice Chair Casale said yeah, I agree. Mr. Gilbert said I just misunderstood what you said. Vice Chair Casale said no, I'm saying that it's the balancing and sort of like the spirit of the ordinance. The same thing. Mr. Gilbert said right. I'm with you. Vice Chair Casale continued and so, and I agree, so that in fact it benefits the Town and the applicant in this case. Mr. Gilbert said correct. Vice Chair Casale asked anyone else? Mr. MacPherson said not at this time. Maybe at maybe at the next ordinance. Vice Chair Casale said OK.

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

Vice Chair Casale said so, with the special conditions of this property, would you say it's a reasonable use of the property? I say that it is. Anyone else? Mr. Gilbert said yes.

(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).

Vice Chair Casale said OK, having all that in mind, is there a motion? And I do ask that you keep in mind the request from Planning staff.

MOTION Mr. Gilbert moves that the Board grant the request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow the construction of a retaining wall greater than 6 feet in height within front setback where 60 feet is required, to support the development of a proposed 16,875 square foot shopping plaza, as depicted on the plans submitted by Benchmark Engineering with a revision date of February 10, 2023, and stamped as received by the Planning Department on July 10, 2023, at 206 NH Route 101, Lots 20-22-14 and 20-22-14-1, zoned CO.

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 approval is based on the plans, documents and application materials submitted by the applicant and received by the Planning Department on July 10, 2023.
3. The Board includes all facts found in the meeting minutes for the application considered today, and at its June 23, 2023 meeting, and incorporates all meeting minutes into this decision.

Mr. Heath duly seconded the motion. Vote taken – 3-1. Motion Carries. The application is APPROVED.

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

Vice Chair Casale said that variance has been approved, Number 1. If you could go over the application for Number 3:

3. Bow Lane Next Gen, LLC and 206 NH Route 101, LLC - Request for a variance from Article IV, Section 275-28A to allow the construction of a retaining wall greater than 6 feet in height within 2 to 20 feet of the edge of Wetland #2 and construction of an underground vault within 20 feet of the edge of Wetland #2 where 50 feet is required, at 206 NH Route 101, Lots 20-22-14 and 20-22-14-1, Zoned CO. [Continued from the June 20, 2023 ZBA meeting.]

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. Maynard said when we look at this for this land, the property is zoned commercial. It's along the State road. The lot currently has an existing restaurant building which was developed many years ago. We're looking to update the property and enhance the site. The walls are required to elevate the building and

parking so the redevelopment lot will sit somewhat higher than the road. Raising the grade also allows for the installation of drainage measures which will meet today's regulations where the property currently does not have any drainage measures.

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

Again, this is a commercial lot. Water and sewer services were recently extended to the property, which was previously serviced by an onsite septic system. The proposed design incorporates retaining walls around the perimeter of the property so underground walls can be installed to mitigate raising those grades. Without the walls, the site grades would not allow for proper drainage measures to be installed since most of the predeveloped site is low and in close proximity, both in elevation and location, to the wetlands that are on the site. Also, there are currently no drainage measures on the property. This plan implements drainage improvements which will pretreat and detain stormwater before discharging this runoff from the lot.

2. The spirit of the ordinance is observed because:

The lot is along a State road and a good portion of the proposed wall is along that road. The construction of the wall helps immensely with the grade of the building and the parking areas. The wall also helps elevate the grades around the site, so drainage measures can be installed to control the site runoff. Granting this request will allow the grade of the land to be raised so that drainage measures can be effective and capture and treat site runoff, where the property does not currently have any drainage measures.

3. Granting the variance would do substantial justice because:

The variance will help the owner redevelop this lot with many improvements to the flow of traffic in, out and around the site. The request will also allow for drainage measures to be installed where the property currently does not have any.

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

This request will help redevelop the lot, which will only improve upon the property's value. Raising site grades by installation of the walls not only helps with traffic circulation in the lot, but they also help with sight runoff. This variance allows for underground drainage measures to be installed at the lower grades of the land which when installed, will treat, detain, mitigate these flows before they are discharged into the surrounding wetlands. Raising the site will also help with traffic circulation around the property. This proposal will be a major improvement to the lot where the parking is currently fragmented with no interconnection of parking aisles. This request will also allow the design to implement effective drainage measures, which will help with the quantity and quality of runoff from the lot. These improvements will only help improve upon the property's value.

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:

The property was developed many years ago and does not meet many of today's standards. The lot grades also sit below the area around it and in close proximity to the wetlands. The only available area on this lot for proper drainage measures is at the low end of the land, which sits only a few feet above the wetlands

in this area. Site grades and wetlands onsite prevent proper drainage and mitigation measures from being constructed without raising the area with the installation of the proposed walls. In addition, the way the property is currently developed, the parking is not contiguous and parking aisles currently dead end, requiring vehicles to back up to access other locations of the lot. The lot also does not have any drainage measures and this proposal will allow the drainage measures to be constructed.

- (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:

The property is an older development, and as such there are no existing drainage measures on the lot. Runoff currently just sheet flows to the wetlands that surround the property. Currently existing paved areas of the property are already at a similar setback to the wetlands. Much of the parking on the site will be moved back from its current location to allow for the installation of the retaining walls. In addition, site runoff from the proposed paved areas will not flow to the proposed drainage improvements where these flows currently do not have any drainage measures and sheet flow directly to the wetlands. The land we are looking to raise sits below the road and surrounding area. This request will allow the proposed retaining walls, which will help with redevelopment of the land so that proper drainage and reconfigured parking could be implemented.

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

This plan proposes the retaining walls around the perimeter of the lot. These walls will allow the site to be raised so that not only the grades of the lot can be modified, but this request will allow the proper drainage measures to be implemented where the property does not currently have any. The proposed walls are sited about 10 feet off the State right-of-way and a few feet off the wetlands associated with the drainage ditch that the wetland setback is from. The wall, in this location of the property, falls mostly over the same location as the existing pavement.

- (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:**

Although this lot has existing development, the site was originally developed many years ago and does not meet today's standards. In order to properly redeveloped the lot, the site needs to be raised so that proper drainage and the design of the parking and driveways can be completed.

Vice Chair Casale said OK. Thank you. Do I have a motion to move into nonpublic input?

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

Vice Chair Casale said just to recap, we are talking about the retaining wall greater than 6 feet and construction of an underground vault within the setback of Wetland #2, where 50 feet is required. Two wetland setbacks, basically the same deal, coming up.

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. Gilbert said I see no evidence of that. Vice Chair Casale asked anyone else? Mr. Heath said agreed. Vice Chair Casale said yes, I agree as well.

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

Mr. Gilbert said again, no evidence of that. Vice Chair Casale said no evidence. The Conservation Commission went over their plans, approved it. And while that's not like a rubber stamp, I'm in agreement with it. And it's certainly improving upon what is there right now. Certainly the applicant, as he said can just leave it the way it is. He can make improvements without substantially changing it, and the water is just going to continue to run off the pavement as it is, untreated, and he's improving it. [Mr. Gilbert and Mr. Heath agreed.] Anyone else on that one? Bob? You have a thought. Mr. MacPherson said for the next item. Vice Chair Casale said OK. You said that last time, Bob. Mr. MacPherson said yes, well, I'm ready now. Vice Chair Casale said all right. OK.

2. The spirit of the ordinance is observed because:

Vice Chair Casale said the spirit of the ordinance is to protect the wetlands. So, they're building a wall and they're constructing an underground vault for the purpose of protecting the wetlands. Mr. Gilbert said yes. Vice Chair Casale continued and the wall is being built to raise this whole project so that the project can be built, part of which is to put the underground vault in, but also to level the whole thing so that they can actually do the project. Mr. Heath commented to give you a better water quality in the wetlands. Mr. MacPherson said we have had a—from the notes—a study. A 2005 study commissioned by the Town, identifies Riddle Brook and its associated wetlands as wetlands of exceptional value. So, the spirit of the ordinance is a little bit contrary to what we've stated by this study commission. Mr. Gilbert said I think it's exactly the opposite. I think what we're doing is treating the water before it runs right into Riddle Brook, in an appropriate manner kind of like a gigantic French drain sort of thing. Am I missing the point? They're treating the water before it just runs right into Riddle Brook. Ms. Hebert said they're treating the water for the proposed development, yes. Mr. Gilbert said right. But if you don't do anything right now, it just runs in. Ms. Hebert added and the fill in the floodplain. Mr. Gilbert said right. So, I think it meets that criteria. Vice Chair Casale said yeah, I agree with that. My only concern, Bob, what jumped out at me, maybe I'm a little bit jaded given what I've done for 34 years, but I don't necessarily buy the snow is not going to be dumped right over the guardrail or the wall into the water. I have a hard time believing that. I don't really care how many certifications, green certifications, people have. When it comes down to money, if somebody can get away with it, it's going to go over the edge. That's what bothers me about that. I agree with Dave. The property as it sits, nothing's happening to the water because there's no activity. If it were a restaurant, you had 70 cars, yeah, you're going to have some oil spillage. You're going to have some salt on the driveway. This will be a bigger venue. There'll be more activity going on. As it sits now, it's not doing anything to the water, at least as far as I know. But when the business gets going, if it does get going, the water is going to be treated, my only concern is really the snow removal operation and whether they're really—and I'm not saying the owner is not, that the owner really doesn't have that intention. But really, to the snow operators when nobody's looking. It's much easier to do that and pocket the extra money. So that's my concern with it. Any other comments? Or do you have anything else to add about that Bob? Mr. MacPherson said well, I mean your comment is very valid. And being a property

owner, the Riddle Brook goes right by my property. I have concerns, yeah. Vice Chair Casale said yeah, so, it's one of those, the testimony by the applicant, he said that he will keep an eye on them. We've had plenty of instances, and it just happened that when I wasn't at the meeting in June where someone came back and asked for something else and we found out that the variance that was granted the month prior, or couple of months prior, wasn't followed to the tee. So, we know that happens at least once. [crosstalk] Yeah, right. I'm being generous. It's not followed so, we don't have any evidence that it's not going to be followed. To me, it's hard for me to hang my hat on while I'm going to deny an applicant or I'm going to say no to this as the spirit of the ordinance observed just because I distrust they're not going to follow the snowplow procedures. I have a hard time doing that even though they may not follow it. Mr. Gilbert said but we have no evidence of that right now. Vice Chair Casale said well that's what I'm saying, right? We can't really hang our hat on that because it hasn't happened yet. The problem is we can't enforce it and I have no proof it's going to happen. Mr. Gilbert said and as you said earlier, we judge these on face value. This is one thing. We can't consider others. Vice Chair Casale said that's right. I agree. Unless I had evidence that somebody is being dishonest. Mr. MacPherson said again, the ordinance requires 50 feet, versus here, 20 feet. We're making some exceptions here, that's for sure. Vice Chair Casale said my only thought on that is that they are mitigating issues that could potentially arise with their system. And again, and I feel strongly about this, I don't just rubber stamp everything the Conservation Commission, just because they say, well, we're OK with it. We have our own issues that we need to deal with. I don't automatically say well then it's OK for us. But they gave their approval. I don't see any reason why not to follow that in this case. That's my only thoughts, but you're certainly entitled to your opinion. Mr. MacPherson said OK. Vice Chair Casale asked anything to add, Dave? Mr. Heath said well, I think that the spirit of it is being adhered to. We had a lot of discussion of potentialities, but nothing to indicate that it's adverse. Vice Chair Casale said OK. Anything else? Mr. Gilbert said I'm all set.

3. Granting the variance would do substantial justice because:

Vice Chair Casale said so, this is that weighing of the scale, Town versus the applicant. I don't see anything different about this than I did the last one. Anybody see anything different? I think in this case it favors the applicant. I don't see much, if any, harm to the Town and I think it actually benefits the Town, like Dave said earlier and I agree with that.

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

Vice Chair Casale said I don't see any evidence of that. Anybody have any thoughts? Mr. Gilbert said I agree. Mr. MacPherson said no, we've already talked about that. Vice Chair Casale said OK. So, do you want to put your thoughts on it though? Mr. MacPherson said I think I've already heard the comments that I thought about. Vice Chair Casale said OK.

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:

Vice Chair Casale said we already discussed this. The property hasn't changed. Does anybody have any other thoughts? It's the same triangular, stone in the middle, property.

(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:**

Vice Chair Casale said so again, the balancing act. Just like the substantial justice balancing act between the needs of the Town and the applicant. Any change there between the Town and the applicant? I'm favoring the applicant in this case, and I think it also benefits the Town. Does anybody feel different? OK.

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

Vice Chair Casale said for this land, yes? Mr. Gilbert said yes. Vice Chair Casale said I agree too.

- (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 Mr. Gilbert moves that the Board grant the request for a variance from Article IV, Section 275-28A, to allow the construction of a retaining wall greater than 6 feet in height and the construction of an underground vault within the setback of Wetland #2 where 50 feet is required, to support the development of a proposed 16,875 square foot shopping plaza, in accordance with the plans submitted by Benchmark Engineering with a revision date of February 10, 2023, and stamped as received by the Planning Department on July 10, 2023, at 206 NH Route 101, Lots 20-22-14 and 20-22-14-1, zoned CO.

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 approval is based on the plans, documents and application materials submitted by the applicant and received by the Planning Department on July 10, 2023.
3. The Board includes all facts found in the meeting minutes for the application considered today, and at its June 23, 2023 meeting, and incorporates all meeting minutes into this decision.

Mr. Heath duly seconded the motion. Vote taken – 3-1. Motion Carries. The application is APPROVED.

Vice Chair Casale said so that Motion Carries.

MOTION by Mr. Gilbert to go back into public input. Mr. Heath duly seconded the motion. **Vote taken – All in favor. Motion Carries.**

Vice Chair Casale said that variance is granted, Number 3. So, the last one, Number 4.

4. **Bow Lane Next Gen, LLC and 206 NH Route 101, LLC** - Request for a variance from Article IV, Section 275-28A to allow the construction of a retaining wall greater than 6 feet in height

within 26 to 40 feet of the edge of Wetland #1 (Riddle Brook) and construction of an underground vault within 10 feet of the edge of Wetland #1 where 50 feet is required, at 206 NH Route 101, Lots 20-22-14 and 20-22-14-1, Zoned CO.

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:

Again, this is a commercial property that's along the state road. The lot currently has a restaurant use, which was developed many years ago. The improvements proposed to this lot will help update the property and enhance the site. The walls are required to elevate the building and parking so that redevelopment of the lot will sit somewhat higher than the road. Raising the grade allows for the installation of drainage measures which will meet today's regulations where the property currently does not have any drainage measures. The plan implements drainage improvements which would pretreat and detain stormwater before discharging as runoff from the property.

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

It is a commercial lot. Water and sewer services are already at the lot. The lot previously did have a septic system. The proposed design incorporates underground vaults to mitigate the proposed fill. Also, currently there's no drainage measures on the lot. The plan implements drainage improvements which will pretreat and detain storm water before discharging it from the lot.

2. The spirit of the ordinance is observed because:

The variance will help the owner redevelop this lot with many improvements to the flow of traffic in, out and around the land. The request will also allow for drainage measures to be installed where the property currently does not have any.

3. Granting the variance would do substantial justice because:

This request will help redevelop the property, which will only improve upon this property's values. Raising site grades by installation of the walls not only helps with traffic circulation on the lot, but also helps with the site runoff. The variance allows for underground drainage measures to be installed at the lower grades of the property, which when installed will treat, detain, mitigate these flows before they are discharged to the surrounding wetlands. Raising the site will also help with traffic circulation around the property. The proposal will be a major improvement to the lot, where the parking is currently fragmented and no interconnection of parking aisles exist. This request will also allow the design to implement effective drainage measures, which will help with the quantity and quality of runoff from the lot. These improvements will help improve upon the property's values.

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

The request will only help redevelop the property and it will only improve upon the property value. Raising site grades by installation of the walls not only helps the traffic circulation on the lot, but they also help with site run off. The variance allows underground drainage measures to be installed at the lower grades of the property which when installed will treat, detain, mitigate these flows before they are discharged into the surrounding wetlands. The proposal will be a major improvement to the lot where the parking is currently fragmented, with no interconnection of parking aisles. This request will also allow

the design to implement effective drainage measures, which will help with the quantity and quality of runoff from the lot. These improvements will help improve on the property's value.

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:

The property was developed many years ago and doesn't meet today's standards. The lot sits below the area around it, which prevents the site from implementing any effective drainage measures. The only available area on the lot for proper drainage measures is at the low end of the land, which sits only a few feet above the wetland in this area. Site grades and wetlands on site prevent proper drainage and mitigation measures from being constructed without raising the area with the installation of the retaining walls. In addition, the way the property is currently developed, the parking is not contiguous, where parking aisles dead end, requiring vehicles to back up to access other locations on the land. The lot also does not have any drainage measures. The proposal will allow for drainage measures to be constructed.

(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:

The land is an older development and as such, there's no existing drainage measures. The existing parking aisles dead end without any way to turn around. Currently paved areas of the property are already at similar setbacks to the wetlands. Much of the parking on the site will be moved back from its current location to allow for the installation of the retaining walls. In addition, site runoff from the proposed paved areas will now flow to proposed drainage improvements, where these flows currently do not have any drainage measures, and sheet flow directly into the wetlands. The land we are looking to raise sits below the road and surrounding area. This request will allow the proposed retaining walls, which will help with redevelopment of the land so that it can properly manage drainage and the reconfigured parking can be implemented.

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

The plan proposes retaining walls around the perimeter of the lot. These walls allow the site to be raised so that not only the grades of the land can be modified, but this request will allow for drainage measures to be implemented where the property does not currently have any. The proposed wall is sited about 8 feet off the wetlands in this area. The existing pavement in this area is currently only a few feet away from that wetland. The plan will remove about 1,900 square feet of driveway and pavement. The area where pavement is to be removed will then be replanted with native vegetation.

(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:

Although the lot does have the existing development, the site was originally developed many years ago and does not meet today's standards. In order to properly redevelop the lot, the land needs to be raised so that the proper drainage and design of the parking and driveways can be completed.

Vice Chair Casale said OK. Thank you. Is there a motion to move into nonpublic input?

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

Vice Chair Casale said so, we are on the last one, Number 4. This is the Riddle Brook piece, construction of a retaining wall greater than 6 feet in height within 26 to 40 feet of the edge of the wetland, Riddle Brook, and construction of an underground vault within 10 feet of the edge of the wetland, where 50 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:

Vice Chair Casale said so, will the wall, or this underground vault alter the essential character? I don't see that doing it in a commercial area. Anyone else? Mr. Heath said no, I don't see it doing it. Vice Chair Casale said OK. Bob, you're thinking again. You're thinking hard. Mr. MacPherson said I'm more on spirit of the ordinance and on the literal enforcement. Vice Chair Casale said all right.

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

Vice Chair Casale said so, wall and vault. Do we see that as doing any of that? Again, regarding the wall and the vaults and the waterway, I think that they're mitigating any issues being that close to the waterway. The Conservation Commission was good with it, and they're meeting the requirements. I'm not an engineer, but they're meeting the requirements as I see it. Mr. MacPherson said that's how they voted but, boy, 10 feet though. Vice Chair Casale said Bob, you're your own man. As I said, we don't... Mr. MacPherson said protection of wetlands, I think, is important. I wasn't at the meeting for the Conservation Commission, but I would certainly like to understand more about where they came from on that one. Vice Chair Casale said I will say again, it's not a rubber stamp that we have to follow. We're our own Board. Mr. MacPherson said I think it should be important to protect the wetlands, especially right next to this property, in this area—protect, especially in this particular area, yeah. Vice Chair Casale said I think that this is doing it, but again, my only concern, which can't be proved, is the snow removal. Dan, do you have anything about this piece? Mr. Heath replied no, I don't. Vice Chair Casale said OK, Dave? Mr. Gilbert said no.

2. The spirit of the ordinance is observed because:

Vice Chair Casale said as far as a wall and a vault... prevent overcrowding. That's why we have this. We're on 101, and it's a commercial area. I don't see that it's making it any worse. Does anybody see any different? Mr. Gilbert said no.

3. Granting the variance would do substantial justice because:

Vice Chair Casale said so again, the scale between the needs of the Town and the needs of the applicant. Mr. Gilbert said it's just like the last one. Vice Chair Casale said just like the last one. I see the benefit more to the applicant and to the Town. Mr. MacPherson said well, again, the Town is the one who established these wetlands of exceptional value—the Town! Not us, the Town did. That's a concern. Vice Chair Casale replied all right. Dan, any input? Mr. Heath said yeah, I don't see it harming the Town, benefiting the applicant.

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

Vice Chair Casale said we don't see any evidence of that. Mr. Heath agreed.

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:

Vice Chair Casale said we've beat this to death. I think we can all agree, the property has special conditions.

(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:

Vice Chair Casale said again, the balancing act. We've said this again one hundred times. Bob disagrees. I think we agree more on the side of it benefits the Town and the applicant. Bob, you're staying with benefits the Town only. Mr. MacPherson said yes.

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

Vice Chair Casale said I think we all agree that on this property this is a reasonable use of it.

(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).

Vice Chair Casale said so, with that, is there a motion?

MOTION Mr. Gilbert moves that the Board grant the request for a variance from Article IV, Section 275-28A, to allow the construction of a retaining wall greater than 6 feet in height and the construction of an underground vault within the setback of Wetland #1, (Riddle Brook), where 50 feet is required, to support the development of a proposed 16,875 square foot shopping plaza, in accordance with the plans submitted by Benchmark Engineering with a revision date of February 10, 2023, and stamped as received by the Planning Department on July 10, 2023, at 206 NH Route 101, Lots 20-22-14 and 20-22-14-1, zoned CO.

The motion is supported by the following findings of facts:

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- 3. The Board includes all facts found in the meeting minutes for the application considered today, and at its June 23, 2023 meeting, and incorporates all meeting minutes into this decision.**

Mr. Heath duly seconded the motion. Vote taken – 3-1. Motion Carries. The application is APPROVED.

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

Vice Chair Casale said so that variance was approved. Mr. Maynard replied thank you. Vice Chair Casale said thank you. Is there anything from Planning staff? There was nothing.

IV. Adjournment:

MOTION: Mr. Gilbert moves to adjourn the meeting. Mr. Heath seconded the motion. Roll call vote was taken – ALL IN FAVOR. Motion carried.

Meeting adjourned at 9:13 pm.

The next meeting will take place on August 15, 2023.

Respectfully submitted,
Sue Forcier