

**Town of Bedford**  
**Zoning Board of Adjustment Minutes**  
**July 19, 2022**

A regular meeting of the Bedford Zoning Board was held on Tuesday, July 19, 2022, at the Town Meeting Room at BCTV, at 10 Meetinghouse Road.

**Call to Order and Roll Call**

Chairman Morin called the meeting to order at 7pm and introduced members of the Board.

**Present:** John Morin (Chair), Alex Kellermann (regular member), Len Green (regular member), Neal Casale (Vice Chair), Dave Gilbert (regular member), Kathleen Ports (Assistant Planning Director), Becky Hebert (Planning Director).

**Absent:** Bob MacPherson (alternate member), Sue Thomas (alternate member).

**Approval of Minutes:** June 21, 2022

**MOTION by was made by Mr. Gilbert to accept the minutes of the June 21 meeting. Mr. Casale duly seconded the motion. Roll call vote was taken - ALL IN FAVOR – unanimous. MOTION carries. The minutes are approved.**

**Rules of Procedure:** We will have a presentation from each applicant. We'll have public input for those in favor and in opposition of those applications. I'll ask that there be no debate between the parties. That all the testimony is given to the Board, and then after that's all done, we'll give the applicant a chance for a summation. All applicants will be heard in order of notice. If we do need to take a recess, we will by vote. We will go into nonpublic input to deliberate and vote after each item. You can wait for the vote tonight, or you can call the planning office after 8:30 tomorrow. And I'm going to ask everyone to please silence your phones so that way we don't have those interruptions. The other thing I'll bring up, because I'm pretty sure it's going to be a very busy meeting, we've got a pretty hefty schedule to get through this evening. That if we don't get to something by 10:00 o'clock, we will not bring up a new topic by that point. We're all volunteers. We all have a place to be in the morning, and I'm sure you folks do also. So, if need be, we will table items to the next meeting, if needed. Our goal is not to do that, but we will try our best to get through as much as we can. Also, for rehearing's, 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. 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 also have it recorded. For a motion to pass this evening, there must be 3 affirmative votes. Thank goodness we have five Members here so that, you know, we should be all set. I'm going to ask any folks that are going to speak this evening to please rise at this time. Honorable counsel is exempt, but I need to swear everybody in before we get going. So even if you are not sure if you're going to talk tonight, please get up and let's do it now. We'll get everybody done, and then we don't have to worry about it later and stop. Sure, we got everybody?

Raise your right hand, please. Do you swear that the testimony you're going to give during this meeting is the truth, the whole truth, and nothing but the truth? [public affirms] Thank you.

**Old Business:** None

**New Business:**

Chair Morin said All right, so let's jump in. So, our first two items this evening are 209 Route, 101 Realty, LLC and Millennium Running. First one is:

**Item 1. 209 Route 101 Realty, LLC and Millennium Running - Request for a variance from Article I, Section 275-6 to allow for the construction of stormwater pond and floodplain mitigation accessory uses on a separate zone from the primary use at 137 Bedford Center Road, Lot 20-41, zoned CO and R&A.**

And I'll read the second one too, because I'm sure it's going to be given all at once:

**Item 2. 209 Route 101 Realty, LLC - Request for a variance from Article I, Section 275-6 to allow the construction of stormwater pond and floodplain mitigation accessory uses on a separate lot and zone from the primary use at 209 Route 101, Lot 20-39, zoned CO and R&A.**

So please introduce yourselves. And go ahead.

**Ms. Katherine Weiss testifies:** Good evening, my name is Katherine Weiss. I'm with Bedford Design Consultants. Here with me tonight is also Bob Baskerville of Bedford Design and one of the applicants, John Mortimer. He's in the back if you have any questions for him, from Millennium Running. We were here a couple months ago. We received a special exception for a garage use on the commercial portion of the site where Millennium Running will be having their trailers and extra vehicles and overflow parking. So, we're back today, as we discussed last time. We were supposed to be coming back for a residential buffer variance. It was determined that we do not need a residential buffer variance at this time, so we instead have some other variances that came up. There are two of them.

The first one is a floodplain mitigation variance because we are within the floodplain. And the second one is a stormwater pond variance, because we're putting stormwater in the mitigation area. And both of those are in a different lot and zone from lot 39, which is the larger lot, and for lot 41, they're in a separate zone. So, let me go over an overview of the two sites. So, the area that we're talking about is basically mostly this lot, which is lot 41. It's the Millennium Running lot. You can see the zone line here. Here's where we're putting the building, and you can see the kind of the parking area. Over here is lot 39, which is a larger lot. It has the Ace Hardware on it and Primary Bank. This has been here for a very long time. We'll be dealing with this portion right here of the site as part of this site. The two are going to be built together concurrently. The site is going to be cleared concurrently. Let me show you the variance plan. So right now, we have the floodplain. I'm going to talk about that first. So, if you look here, you can see this green line. This is an area that is outside the floodplain. Now, the floodplain in these two lots is at elevation 234.49. So that's what this line depicts. It depicts that elevation. So, everything above it, which is inside this area here, is outside the floodplain. We also have a floodplain line running through here. So, this part is out of the floodplain. This part is within. And then also in the back of the lot there is a big nub here as well. So, the blue area is the area that we'll be taking out fill. We'll be excavating down about 6 feet and then putting that over here in this peach area. And that will raise this lot up so that it's above elevation 234.49. We're looking at about elevation 235 is what we're going to bring it up to. And as part of that, we have to obviously mitigate. So, I don't know how much you know about floodplain, but when you fill a floodplain, you need to then take out from the floodplain

so that you don't increase the elevation of the floodplain in case there's a flood. So, the mitigation portion is over here. It's the blue part. So now we've got the zone line here, and then we've got this lot and this lot. So, the variance that we're asking for is a flood mitigation use. So, to be able to use this area here on a separate lot, which would be this one, and a separate zone, which is here and also here. So that's that mitigation explained.

The second one is—I'll locate our site plans because I think it'll show you. OK, I'm going to use the Planting Plan for this because you can kind of see what's going on a little bit better. OK, so since we took out this big portion, we thought well it makes the most sense this is where we should put our stormwater. We've already put a big hole in the ground. We should use this to our advantage. Put the stormwater here. The zone line, as you know, is a little bit close to the front and makes both these lots a little smaller than what normally a commercial lot would be. So, we decided why don't we take the water both sites and we'll infiltrate it over here on this section. So, what I'm showing here is this front portion is a bio retention pond. So, I've got all sorts of plants in here. We've got shrubs and perennials. The water will be held back for the one-inch storm and infiltrated, and the rest will overflow into the giant portion of the pond. Now I've also designed it so that there is no outlet. This pond far exceeds what it needs to be to hold the water for these two small sites. So, we will all infiltrate. I do have an emergency spillway this way in case something ever happened, but we are well below what we will ever need for water here. So, this seems like a good use of this area for the site, so again, this is the use of stormwater on a different lot and zone than the other two lots. Hope that makes sense.

Mr. Baskerville said could you mention how a lot of it is cleared now? Ms. Weiss continued OK, let me go back to the aerial so they can see. So right here this is the area that we're excavating in white. So, you can see that this area—a lot of it is already—trees have been taken down and the area has been disturbed. So, it's not a huge difference to what's there now in terms of trees. And again, the stormwater pond and the mitigation area will be vegetated so it's not going to be a building or anything like that. We are proposing also drainage easements. I show it on here. We recently submitted the Site Plan, and this is going to change a little bit, but we're doing a big drainage easement along this whole back section and a portion here. So, there will be an easement between the two owners so that this lot can use and maintain their portion over here. We're going to be connecting into a manhole and then into the pond and then obviously, this lot will have their drainage easement as well. So just wanted you to know that we already thought about that. So, now I'd like to read the applications. Is there any particular order you would like them in, or do they need to be in? Or should I read the flood plain ones one at a time? Or do I need to do all of the ones for one lot at a time? Ms. Hebert said it's up to you. Ms. Weiss said OK. Ms. Hebert clarified you do need to go through each application. Ms. Weiss said yes, I will. All right, let me get some water. A variance is requested from Article 275, Section 6 of the Zoning Ordinance to allow a stormwater pond and floodplain mitigation accessory uses on a separate zoning district from the primary use.

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

The stormwater pond and floodplain mitigation accessory uses will not alter the character of the area. We will be using soil in the residential zone to fill areas of the commercial zone, creating a stormwater pond in the process. The addition of the stormwater pond will not be noticeable to the abutters. The cleared area will be surrounded by woods and will not threaten public health, safety or welfare. The area to be excavated is partially cleared for the existing use.

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

The purpose of the ordinance is to keep uses in the respective zones. However, this parcel is bisected by the zoning line, making a smaller portion commercial, and the larger portion residential. Allowing the stormwater pond and infiltration and floodplain mitigation in the residential zone will not conflict with

the spirit of the ordinance because it is on the same lot as the use. There will be a 50' plus residential buffer and no structure will be visible from the abutters.

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

Allowing the variance will not affect the abutters and allow for an open drainage stormwater pond instead of an underground pond. The lands in the residential zone will not have any above ground structures. Raising part of the site above the floodplain using soils from the same lot saves money and allows us the right to become a buildable commercial lot.

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

The location of the stormwater pond and floodplain mitigation will not have an effect on the surrounding values. It will be hidden behind a woodland buffer and there will not be above ground structures visible. The area is already disturbed and has had trees removed from the existing use.

**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:**

Most lots have a zoning line located along the outside boundary, allowing full use of their property in one zone. Since the lot in question has a zone line bisecting it, it leaves a commercial lot too small for the use and necessary drainage improvements. The zone line is a setback based on the Route 101 right-of-way, which makes our commercial area smaller than a normal commercial lot. A large portion of the commercial area is in the floodplain. Using soil from the residential zone allows the commercial zone to be raised above the floodplain and become buildable.

**Denial of the Variance Would Result in an Unnecessary Hardship because:**

**No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

The purpose of the ordinance is to keep uses on the respective lots and zones and away from incompatible uses. However, the subject lot has a zone line splitting it in half. The residential side of the zone line is far away from the other residentially zoned lots and will not be built on. The location of the zone line does not serve its purpose in a fair and substantial way.

**The proposed use is a reasonable one because:**

The stormwater pond and floodplain mitigation will be located in an area that has already been cleared of trees and will not be visible to the neighbors due to the 50 plus residential buffer.

**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.**

The residential portion of the property is unusable based on the current zoning, the applicants can grade in the area, but it cannot have any other use. The commercial area of the lot is small and located partially within the floodplain. The lot must be raised to be developable using readily available soil on the existing lot to mitigate within the same floodplain is necessary to enable a reasonable use of the site. The open area created by the mitigation creates a perfect location for a stormwater pond. Mr. Baskerville asked should we let them vote on the first one before reading the second and not get them confused? Chair Morin said I think possibly some of the questions might relate to both. Mr. Baskerville said I just wanted to check before we... Chair Morin said why don't you go over both and then we can... Ms. Weiss said OK. Chair Morin said when we vote, we will vote in individually.

Ms. Weiss continued a variance is requested from Article 275 Section 6 of the Zoning Ordinance to permit stormwater and floodplain mitigation accessory uses on a separate lot and zone from the primary use.

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

The pad site will be built in tangent to the Millennium Running Site Plan. The floodplain mitigation area will be needed to make the site buildable. There will be no visible difference to either by allowing the stormwater use off site as the mitigation area is much larger than the required stormwater area. The stormwater pond located off site and in the residential zone will not threaten public health, safety or welfare. The existing use has already removed trees from this area.

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

The purpose of the ordinance is to keep uses on their respective lots and zones. However, this project will be part of a site plan where multiple uses often share drainage facilities. Allowing the stormwater for both sites to share a facility will not conflict with the spirit of the ordinance because both sites are zoned commercial and will be subject to an easement on the Millennium Running lot. The stormwater will also be in a separate zone but will be buffered from the residential neighbors with the required residential buffer. The mitigation will be located in the same area as the stormwater pond.

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

Allowing the variance will allow for greater flexibility for any future site plan design. The stormwater pond has additional storage area due to the amount needed for the floodplain mitigation. Additional runoff to the stormwater pond will allow the pond to be put to greater use and allow the subject lot more flexibility. Using cut from the mitigation area allows the site to be buildable and above the floodplain. No diminishment to the public will occur. The area is already disturbed.

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

The use of the stormwater pond on a separate lot and zone from the subject lot will not have an effect on the surrounding values. The pond will be hidden behind a woodland buffer and any above ground drainage structures will not be visible to the abutter. The area will also be used for drainage by Millennium Running. The floodplain area mitigation area is an already disturbed portion of the Millennium Running site.

**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 subject area is small and located in the floodplain. We will be mitigating the area by using fill from the adjacent Millennium Running lot, which also creates a perfect location for a stormwater pond. The adjacent lot also will be using this area for drainage. The addition of the subject lot's drainage will be minimal on the Millennium Running lot and mitigation area. The off-site stormwater will allow for greater flexibility of the site layout. The subject area is located above the floodplain but the access to this area needs to be filled to access it. This requires an area of mitigation nearby.

**Denial of the Variance Would Result in an Unnecessary Hardship because:**

**No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

The purpose of the ordinance is to keep uses on their respective lots and zones, and away from incompatible uses. However, the pad site is located in a small upland area that is directly connected to the Millennium Running lot. They will be sharing an entrance and sharing a site plan application. Because the lots will be designed together as part of one site plan package, the variance will allow the project to serve its purpose in a fair and substantial way.

**The proposed use is a reasonable one because:**

Both lots are located in a commercial zone and will be applying for a site plan application. They will be sharing an entrance. Many site plans share drainage facilities and are often subdivided for financing purposes. So, there are often lots that have drainage on other parcels. A drainage easement will be put in place to allow for access and maintenance. The cut and fill areas floodplain mitigation is a reasonable use because it allows both sites to have usable buildable area and mitigate the floodplain fill. There will be no filling of wetlands.

**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.**

A section of the subject area is located in the floodplain. The access area must be filled, and floodplain mitigation designed and implemented to allow for a project to be built. Allowing the stormwater on a different lot and zone will make the pad site more viable for development because as the development area is small and will require a septic and well on site.

So, the first one I actually did not say the first one was for lot 41, which is the Millennium Running lot and the second one was for lot 39 which is the 209 Route 101 Realty, LLC, sorry. Chair Morin asked questions from the Board? Go ahead. Mr. Casale said Katherine, in regards to item one, so lot 41, can you just explain, particularly referencing number three in the criteria—substantial justice—why the open drainage stormwater pond instead of an underground pond—for those that don't understand the difference—and why you want one over the other? Ms. Weiss replied OK. So, you can do underground drainage and that would normally be under a parking lot. It consists of crushed stone. There's usually catch basins involved. Water goes into crushed stone area. They're often pipes involved, and that's a fairly expensive route to go. You're paying for crushed stone, the pipe—ADS® pipe—one of the brands that we use. You've got to have manholes on the ends to for access. That's an expense. So, using above ground drainage is easier to maintain. We we're going to put the drainage over here. If there's ever an issue with anything we can just go in and fix it. If there's something wrong with an underground drainage, then you might have to dig up the pavement if it isn't infiltrating properly and the water is filling up. So, things can go wrong when it's underground. Above ground is much easier to maintain. And since, again, we're already putting a big giant hole in the ground, it really makes a lot of sense to use that area to infiltrate. And bioretention is, I think, a good way to infiltrate because you're using plant life—sustaining plant life, and I think that's a better way to do it, but yeah. Mr. Casale said OK, thank you. Chair Morin asked anything else? Mr. Casale said I do have a question for the planners though. Is it true that, the statement made by the applicant, most lots have a zoning line located along the outside boundary, allowing full use of their property in one zone? At least in this area, it doesn't appear to be the case, but you'd know better than I. Is that a true statement? Ms. Hebert replied the majority of the lots in Bedford are located in one zone or the other, but because along Route 101, the zone is a setback from the highway right-of-way, we do have some split-zoned lots in the commercial zone, particularly along Route 101. Mr. Casale said OK. Thank you. I'm all set. Chair Morin said OK. No other questions from the Board? Alright, I'll open it up to the public. If someone would like to speak on this application, please step to a microphone. Give us your name and address and go ahead with your testimony. Is there anybody that would like to testify for this one? Don't get up all at once. Seeing none, any last items before we deliberate?

Ms. Weiss added I did just bring up the zoning. It was in the packet. So, you can see here this is Route 101. This is the site Ace Hardware, and this is the Millennium Running site, so it's a little off. You can see the green stripe isn't quite lining up with Route 101 right here. So, our line is actually up a little higher, but you can see how it's an offset of Route 101 and that this road comes up at an angle. So, it does

make a very strange kind of zone line for these particular lots right here. Chair Morin said thank you. Anything else? Ms. Weiss said no, I just wanted to explain it. Chair Morin said last chance. All right, seeing no public input, I'll take a motion to go into deliberation.

**MOTION Mr. Green moves to go into nonpublic input for deliberation. Mr. Casale duly seconds the motion. Roll call vote taken – ALL IN FAVOR – unanimous. Motion carries.**

Chair Morin continued alright, let's go through the criteria. This is for the accessory use in a different zone, but same property.

**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:**

Board agrees no, it's not going to change.

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

Consensus of the Board is there is no indication of that.

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

Chair Morin said due to the constraints with the different zoning on the same lot, it makes it very challenging to be able to utilize the lot efficiently. For the spirit, it works for this piece. Mr. Casale said to their testimony, it doesn't conflict with the general purpose of it which is to separate uses. This really is kind of immaterial.

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

Chair Morin said again, it would give them the use of this lot and our next application we'll talk about also, but it would give them the opportunity to use it fully and really not taking away from the back or interfering with the abutters. It's not going to change the view. Once it grows in, it's just going to be, not a wooded, but a grassed area.

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

Consensus of the Board is there is no evidence of this.

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

Chair Morin said the split zoning definitely. You've got the four properties next to each other that are affected, as Becky said, due to the 101 issues.

**(A) Denial of the variance would result in unnecessary hardship because**

**(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

Chair Morin said we've got to look at the plus and minuses, and really there's nothing negative that's going in the negative side. It's not affecting anybody around it. It's a

good use. Mr. Casale added it allows them to maximize the use of the commercial property.

- (ii) The proposed use is a reasonable one because:**  
Consensus of the Board is 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).

**MOTION: Mr. Casale moves that the Zoning Board of Adjustment grant the request for a variance from Article I, Section 275-6 to allow for the construction of stormwater pond and floodplain mitigation accessory uses on a separate zone from the primary use at 137 Bedford Center Road, Lot 20-41, zoned CO and R&A as per our deliberations. Mr. Gilbert duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.**

Chair Morin said let's go to the second item. This is for the property next door. It's for the accessory use on the separate lot and zoned from the primary use.

- 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:**

Board agrees no, it's not going to change anything there.

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

Consensus of the Board is there is no evidence of that.

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

Mr. Casale said there are separate uses, but one doesn't affect the other on this property.

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

Chair Morin said again, it gives them the opportunity to use this piece, utilizing the same area to deal with that water issue.

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

Board agrees there is no evidence of this.

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

Chair Morin said again, we go back to how the State deals with those things.

- (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:**

Mr. Casale said it's a balancing act. There's nothing negative that would not outweigh their ability to make the property more commercially viable.

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

Consensus of the Board is 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).

**MOTION: Mr. Gilbert moves that the Zoning Board of Adjustment approve the Request for a variance from Article I, Section 275-6 to allow the construction of stormwater pond and floodplain mitigation accessory uses on a separate lot and zone from the primary use at 209 Route 101, LLC, Lot 20-39, zoned CO and R&A per our deliberations. Mr. Casale duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.**

**MOTION: Mr. Casale moves the ZBA go back into public input. Mr. Green duly seconds the motion. Roll call vote taken – all in favor. Motion Carried 5-0.**

Chair Morin said thank you. Ms. Weiss said thank you. Mr. Baskerville said thank you very much. Chair Morin said all right, our next two items on the agenda.

**Item 3. SV101, LLC - Request for a variance from Article III, Section 275-21(D) and Table 2, Table of Uses to allow a proposed light industrial (assembly)/warehouse use in the Commercial zone where such use is not allowed at NH Route 101, Lots 28-21 & 28-20, zoned CO and R&A.**

**Item 4. SV101, LLC - Request for a variance from Article IV, Section 275-28(A) to permit the construction of a light industrial (assembly)/warehouse building within 10 feet of the edge of wetland and a retaining wall greater than 6 feet in height within 5 feet of the edge of wetland where 50 feet is required at NH Route 101, Lots 28-21 & 28-20, zoned CO and R&A.**

Chair Morin said please introduce yourselves and go ahead.

**Atty. John Cronin testifies:** Good evening Mr. Chairman, members of the Board. My name is John Cronin. I'm an attorney with Cronin and Bisson and Zalinsky in Manchester, and I'm here on behalf of the applicant this evening.

**Mr. Jeff Kevan testifies:** Jeff Van with TF Moran's office. We're the civil engineering survey group working on the project.

Atty. Cronin said we may proceed with the presentation. This particular application before you seeks two different variances as called out when we read the case into the record. It is a development that was done in contemplation with the adjacent property, which are a number of items that are downstream on the agenda. Which, for purpose of where interconnectivity—I know they're separate for the purposes of it, and I'll stick with the Wholistic Pet application first. But just so you're aware that

they were generally filed together, and I think there's some cross references in various applications. For the purposes of the presentation, I'm happy in the interest of time where the factual circumstances to both applications are essentially the same, to address them together, and then, when it's appropriate, to address the criteria, I can go through it then. But as stated in the application, this particular parcel sits on 101 commercial corridor in the commercial zone. It's been identified as an area for commercial business.

Years ago, there was some work done by the State out on 101 where they widened Route 101. They also took some property from the applicants here to accomplish that mission. In the course of that, they came up with some drainage that goes across the front of the lot, which will be the subject for one of the variances requested here. That particular wetland has been classified by Mr. West, who is with us, who was taking a look at the wetlands and classified them really into three distinct locations. The way this project has been designed is to put the impacts out to the front of the property. As you can see up on the map where there's a wetland of least value. It doesn't have some of the other criteria that you would expect from more valuable wetlands, and it's basically something created by the runoff from 101. So that's how it was laid out. Also, you can see on the plan as it's laid out, there's an interconnection between the adjacent parcel, which is the topic of later cases that was designed in part to respond to questions and concerns about a prior application back in 2014. You all, I'm sure, know of Wholistic Pet and their origins. The principals are here with us this evening. They started their business here in Bedford I believe in the 80s, they told me. They've enjoyed some success and in some part are the victims of their own success. They're doing what they're proposing to do in this building now in the current location. And it's basically a kind of a light assembly commercial operation. But looking at the table of uses, it would fall into that warehouse type light industrial use, despite many of its features looking commercial in nature. What they basically do is assemble product inside the building and have it available for their customers. They want to stay here in Bedford. They're members of the community. Their customer base is here. They're known. And they definitely need more space. And this is a site that they thought they could work with. Jeff Kevan worked with them closely and architects did a lot of moving around with boundary lines and other things to try and create the least impact to the wetlands and the most viable application. I'll turn it over to Jeff here for a few minutes and he can talk to you about the site layout and the specific areas that are in question.

Mr. Green said Mr. Chairman, before we proceed, I have a question concerning Attorney Cronin. In the Conservation Commission, he said my name for the record is John Cronin. I was here at the last meeting. I'm speaking as counsel to the development team but also as an interested party. If he's here, and has set himself up as an interested party, then he must be sworn in as a witness as well, and not just as counsel. Atty. Cronin said I'll make that easy. I'm happy to be sworn in if you wish. Ms. Hebert asked Chairman, do you want to see if anyone else has wandered in? Chair Morin asked has anyone else come in since we started that hasn't been sworn in, in case you want to speak? Ms. Hebert said if you want to speak, you need to be sworn in, please. Chair Morin said raise your right hand. Do you swear that the testimony you give at these meetings tonight is the truth, the whole truth and nothing but the truth? Thank you. Atty. Cronin said thank you for that procedural piece and I'm glad we attended to it early.

Just to clarify, some of what appears to be some confusion when I was at the Conservation Commission. I was here in my capacity as an applicant, but I did mention further on in the Minutes that I have an ownership interest in several of the units at Pine Tree Place. And we took up this particular application and the adjacent one at one of our meetings. That area has not been developed for a long time. West Bedford for office space, the rents are amazingly low—compared to South River Road and other places—difficult to attract tenants. You can get them there if they live locally. But I just wanted to express support as an interested party and one of the abutting properties. So that was basically it. But I'll get back to Jeff and let him talk about some of the site specifics for you.

Mr. Kevan said Jeff Kevan with TF Moran's office. So, what we've shown in blue is the property line after some minor adjustments between the two. Right now, again, there's a culvert that discharges from 101, comes in. There's a pocketed wetland here. This is primarily a drainage way that conveys the stormwater back. There's a wetland in the back here that is on the adjacent lot that is of higher value. This has kind of taken a beating from 101 and the construction and everything that's gone on, so it's a little degraded as far as these pocketed wetlands. There's also a wetland pocket in the back here that just comes on and nicks our property that is a vernal pool, so that has a little bit higher value. And the other piece as the previous application, we have a zone line that runs across the back of the property. In this case, there's about 1/2 an acre of this site that will be in the RA zone that we're not proposing to do any work on. So, the proposal is for a 14,623 square foot building for light industrial warehouse use. Wholistic Pet is talking about mixing ingredients and packaging them for shipping and use at their other facility. So, it's accessory to their current facility, which is just down the street here, on the other side of Hardy Road. Their access—their primary driveway would be full access into the site off of 101. And a right out only at this location. Secondary driveway would be through a driveway easement across the adjacent property that would get them back to Hardy Road in the intersection. So that if they wanted to go east on 101, that's the direction they would take. Minimal parking—there's about 17 spaces. You could see we've placed them along here. Loading would be in the back. We shrank this building down as much as possible. Typically, when you're looking at the other buildings of this type of light, industrial and warehouse, they're easily 20 to 30,000 square feet. We worked with Wholistic Pet and got this down to a small footprint as we could make it and provide them with adequate loading and so forth. Because this back pocket is a vernal pool, what we tried to do is push the building forward or push the building away from it and maintain as much buffer around that as possible. Because that is the higher value, this is a lower value. And so doing that, this building is pushed forward towards this lower value wetland and degraded area here and we're within that 50-foot wetland setback, structure setback that Bedford has. There is no requirement from the State, but Bedford has a 50-foot structure setback.

There's two spots that we have that—the building adjacent here and then as we come in the driveway, crossing is actually permitted by Bedford regs as far as utilities and access to get to the uplands in the back. Because of the pitch in this drainage way, the headwall on this side is less than 6 feet. On the downhill side, it's about 7 feet tall. So, it would be a structure within that setback as well. But basically, it's that red area shown that we would have a retaining wall headwall that would be greater than 6 feet. So, that is another point as far as the variance. So, variances that we're looking for is for use. Again, this is a supplemental use to the Wholistic Pet down the street. Very low impact as far as the area. And then the second variance is for, again, this structure setback adjacent to this front wetland pocket here, and this retaining wall there. Atty. Cronin said thank you, Jeff. Just one comment to supplement. We say in our application that it's over 6 feet. Could you tell them the height of that retaining wall so that they have the finished height? Mr. Kevan replied yeah, I think it's roughly 7 plus, 7 and a half feet. Something in that range. Atty. Cronin said it's not crazy. It's a little bit higher than what's allowed to meet the structure standards. Chair Morin said just a question on that. As long as you brought that up. Is the 7-foot height on the side of where the water is going to be coming out? What's the height of where the pavement is? Mr. Kevan said yes, so basically from invert of the bottom of the channel to where the pavement is, because what we did—so, there's two ways we could have done this, right? We could have put the driveway in and filled out until we were less than 6 feet, and then that would be filling a lot more of this wetland. This kept me down to 990 square feet for a culvert crossing. If I had put the driveway in and chased that out, I probably would have 12 – 1,500 square feet of wetlands impact, but I wouldn't need a variance. Chair Morin said so, the entirety of the wall is basically below the pavement. Mr. Kevan said yes, exactly. So, what you have is the tallest part of the wall, 7 – 7 and a half feet right where this is. And then it's decreasing in height as it comes up down the side here. Chair Morin said thank you. Atty. Cronin said Mr. West did prepare a report. I believe it's in your packet with

the other case. You may have seen—if you have any questions, he's available to discuss them. I'll address the five criteria.

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

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

Granting the variance would do substantial justice because, and I'm also going to take it together with the spirit of the ordinance is observed based on the Farrar versus Keene, which they say the elements together can be taken and the standard is generally the same and it's basically whether or not if the variances are granted, will it alter in a marked or substantial way the essential character of the neighborhood. This particular character of the neighborhood is intended by zoning to be commercial in nature. So, if you use the benchmark of allowed uses on the table of allowed uses, it will essentially function the same. You may not have the same amount of trip traffic in on a daily basis as you would a retail service establishment or an office, but from its visibility and function and its spirit and intent of the ordinance, it'll essentially function the same. You saw the elevations, which I think everyone can agree, are somewhat nicer than you would suspect for a typical warehouse in an industrial park where we may be selling windows or something like that or doing a distribution type facility. With respect to the actual use itself as how it's laid out, it's been designed in such a way to put the property to its highest and best use, which is also one of the intents of the ordinance. To make land productive. This land which has been dormant for many, many years. Our places across the street at Pine Tree, we've looked at the barren land across that section for many years. It would be nice to see some development there and some positive tax revenue from that particular use.

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

With respect to the substantial justice prong, we recognize that's a balancing test, and it takes a look at what the harm to the applicant would be. Although the applicant here is the developer, the intended user will probably suffer the most harm as they have a business that they want to maintain in Bedford. They have a going concern that's a couple 100 yards away here heading to the north. For them to have to relocate or move their business elsewhere, would certainly be something that they don't want to do. They would like to stay here.

With respect to harm to the public, I don't see that there's any harm to the public. The traffic has been designed to address prior concerns. Where it a lighted intersection on 101, which is not always the case with some of these types of uses where people can get out safely and head in the easterly direction of 101 through a signalized intersection.

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

The other standards, we have a look at surrounding properties will not be diminished. We ask Calley Milne, who's a licensee and a former Real Estate Commission member from Kanteres Real Estate to evaluate the plans and both of these sites. And she prepared a report taking a look at the property and the surrounding properties to determine whether or not if the variances were granted, would there be a diminishment of value of the surrounding properties. She concluded there would not be for this particular property. You can see it's buffered in part to the east by the other lot. There's development going along that corridor. I think as you go forward or west towards Amherst, you have Murphy's, which is a pretty substantial development—if not the building, but the parking lot. She concludes, and I'll submit a report for the record, in this case, and I have one for the next one.

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

With respect to hardship, the special conditions, I think it's clear to look at this map. This property has special conditions that make it unique. You have various dispersed wetlands—some in the front, some down from 101 disbursement and run off. The other one you have the vernal pool up there to the

southwest and another one on the adjacent lot. So, design has been taken with great care to make sure that those wetlands are respected to the best of their ability.

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

**Denial of the Variance Would Result in an Unnecessary Hardship because:**

**No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

**The proposed use is a reasonable one because:**

**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.**

Taking a look at the use itself, if you looked at any of the table of uses, people talk about office. I can tell you based on the rents at Pine Tree for years, it costs you a lot more to build them than you could ever generate and rent for office. Similar with the retail unless you can find the right specialty. So, on the table of uses, this property, both of these properties, have been on the market for a considerable period of time with no takers looking to put them to the use that's strictly allowed by the express terms of the ordinance. And I think the major conclusion after the Grey Rocks case and the trilogy of Grey Rocks, Bocchieri and Simplexes. When you look at hardship, we've shifted dramatically from years ago where when you could graze a cow on the land, they'd say you had productive use and you didn't have a hardship where now the key is, is it a reasonable use? And I think if you look at this and the totality of circumstances, it satisfies that criteria and the five prongs of the ordinance. So, we'd be happy to entertain any questions, bring Mr. West up here if you have any specific questions for him about the wetlands.

Chair Morin asked are there questions from the Board? Mr. Green said I have question. This property, together with the next item on the agenda, the gas station, seem to be intermingled, or at least some presentations seem to be coming as intermingled. And as you presented it, if you want to get out of the property and head West, you come out, you take your right turn, and you head West, correct? Atty. Cronin replied that's correct. Mr. Green continued, but if you want to go East, that would be a huge difficulty unless you're able to go through the gas station. Which means, if you're approved but the gas station is not, does that kill the project? Atty. Cronin said oh, that's an excellent question. I think what we were in Conservation, someone asked that question and I guess it depends, right? Ideally, this property was acquired subsequent to the other one to address that traffic concern, so you have a way to get people out to that light and do it that way. That's totally up to the applicant. If this one gets approved and the other one doesn't, will they go forward and do it? I think that's a business decision they're going to have to make. But we can address the cross path by doing an easement, whether that property is developed or not. And that would be pretty typical for us to do on commercial pieces where we're doing reciprocal across easements between parcels. So, it's feasible. It's just going to be a business decision. Mr. Green said there's no agreement in place, at this point, to allow him to do that. Atty. Cronin said it's the same owners, essentially, so they could. Mr. Green asked what do you mean the same owners? Atty. Cronin replied the principles of the entities are the same. Mr. Green said so really, this is one large development by the same people in two different setups with the same attorney representing the same owners. Atty. Cronin said same engineer, same attorney, same experts, yep. Mr. Green asked, and you see no conflict in that? Atty. Cronin replied none whatsoever. Mr. Kevan said like John said, if they choose to move ahead with just let's say this side of the development, this driveway could be constructed over Hardy Road and an easement provided. Mr. Green said good, but nothing is written in stone at this point. Mr. Kevan said it would have to be provided if that's how they move forward. Because you're not going to just provide access going to the West and not give them a way

out. Atty. Cronin said so, one of the things that we'll have to do if we get to the Planning Board is to do traffic analysis. There is one in the packet, a traffic memo that talks about the traffic, but when we get to the Planning Board, they're always interested in traffic. How it works, how it moves and what the rights are. And I would expect if the Planning Board looked favorably on this, Ms. Hebert or others would say, make sure you make a condition of approval that that easement is properly done, approved by Town Council, in a form for recording before the plan is signed. And that's typically how it would go. Ms. Hebert said the Zoning Board can also attach condition regarding egress to Hardy Road.

Chair Morin asked Alex, did you have something? Mr. Kellermann said I do. So, on the first page of your application you refer to it as a showroom/warehouse. What's the showroom aspect? Atty. Cronin said my understanding is they're going to have some display pieces so customers could come in and look at different product and how it's how it's packaged, and that's a small area towards the front of the facility. Mr. Kellerman said OK, and then in terms of the industrial use, can you just explain a bit more what goes into the, I guess, packaging of this pet food. What does that entail? Atty. Cronin said well, I know a little bit about it, but where we have the experts here, I might ask Mr. Phillips to come up and explain how that's done, if that's OK. Mr. Kellerman said and the reason I ask is just it's, you know, with the wetland encroachment, just understanding what's happening in the warehouse. Atty. Cronin said absolutely, sure. Mr. Kevan said this same process is occurring at their existing facility as well. They're just expanding.

**Mr. Ryan Phillips testifies:** Good evening, my name is Ryan Phillips. I'm here with my father, John Phillips, longtime Bedford residents, Dad since '81 and myself a lifetime Bedford resident. As you know, we currently occupy 341 Route 101 in Bedford, where we have been there since 2007. Since that time, we produce our certified organic animal health supplements. We use raw, whole food ingredients. We do not use any fillers, synthetics, GMOs or chemicals—anything of that nature. Our facility is USDA, FDA, NASC, and APHIS certified, registered and inspected and audited. This property would also have those same accolades. What we do is we have a dry blending procedure. We do not use any heat, any steam, any water. Everything that we do is dry, blended, packaged and sealed for consumer use. And again, we'll share the same properties as our current location as being audited and inspected by the USDA, the FDA, the NASC, APHIS, and more. Does that answer your question? Mr. Kellerman said great, yeah, thank you very much. Chair Morin asked anything else? Neal? Mr. Casale said well, while we're talking about the blending, sir, what kind of machinery is used for that? And are there any associated noises, fumes, anything that would be detrimental to the neighborhood behind? Mr. Phillips replied certainly, so machines are all such things as ribbon blenders, hand blending, gravity fillers, piston fillers, all very light machinery using compressed air and low voltage. There will be no more noises. What we're currently doing, if you walked by Wholistic Pet today, you would not hear any of that, and this would be the same to be said about the new facility. There are no fumes. There are no byproducts. Again, we are using certified organic ingredients. They are all plant based. We do not use any meat products. So, again, no fumes, no byproducts. There's no smells. Again, no noise. Just as if you were to walk by Wholistic Pet today, it would be the same. Mr. Casale said truck traffic, specifically tractor trailer? Mr. Phillips replied correct, again, same as what we're currently doing. We see maybe one to three trucks a week. Mr. Casale asked tractor trailers? Mr. Phillips replied correct. Some pop trucks every now and then. Some 53-foot trucks. Again, no different than what we're currently doing.

Mr. Casale said for Mr. Kevan, two questions. One, is I assume the median that you're showing on 101, so, the divider, is that to scale? Mr. Kevan said yes. Mr. Casale continued so, the way you have that here, you'll agree that anybody that's supposed to make a right turn, can easily cut across that. They don't want to go through the gas station. They can easily bang left if they can get through traffic and head northerly or easterly on 101. They have the room to do that. Mr. Kevan said yeah, there's real estate to do it. Again, the final configuration of that driveway—we're basically showing what our

intention is. The final configuration of that driveway may change to accentuate that, so that there's less apt to take a left-hand turn out of the site. We will have to go through the New Hampshire DOT, as well as the town of Bedford, to get permits for that driveway. Right, but as it stands now, people can make a left turn. Mr. Kevan said no, I mean the again, we're indicating that it'll be a right out only. Mr. Casale said you haven't—OK, but you understand that people don't necessarily pay attention to signs, right? Mr. Kevan said I understand it. Like I said, the final configuration may accentuate this island so that it is more difficult. Will there be somebody that takes a left out of that site? Potentially, we've all seen, I mean, I've watched people take U turns on South River Road, you know, in front of the old Macy's site that you know at 11:00 o'clock. Mr. Casale said OK, I wouldn't say somebody. We'll put an S after that. It's going to be quite a few. Regarding the last criteria. So, number 5, the prong 5, literal enforcement, there's a lot here that just has to do with the business and how it affects Wholistic Pet. And you're using that as evidence to say, well, you know, special conditions distinguish it because this is what's good for Wholistic Pet. But yet, they're not in there yet. You don't have a contract with them. We, you know, hopefully they do continue to do well, but other than what benefits Wholistic Pet who may or may not be there in a couple of months or whenever this is built, how is this property different from anything else in that area? Mr. Kevan replied I think some unique components of the property are, again, the zone line across the back. We lose about 1/2 of an acre. The water drainageway that comes off of 101 bisects this property, obviously limiting the front of the site for any development close to 101. It has to go on the backside. And, you know, that drainageway was created by that culvert being dropped out on to this property years ago. You know, so I think there are some physical uniqueness to this property. Mr. Casale said OK, thank you. Atty. Cronin added and there is a contract with the Wholistic Pet for the property. Mr. Casale said you do, for how long? Mr. Cronin replied it's not that it really matters, right? If they—it's based on the conditions of the approval, you know. They may or may not go in. It's pretty standard, right, when something is not approved? Mr. Casale said OK, thank you.

Mr. Gilbert said I think Neil covered what I was going to say, and so did Alex, so you guys are thinking the same way I am. Chair Morin said that's why I go last. All right, any further questions from anyone up here before I open it up? All right, I'm going to open it up to the public. For those who would like to speak, I'll have you come up to the microphone. Give us your name and address. Give us your comments. Make them directed to the Board and whoever wants to go first, step right up.

Atty. Cronin said Mr. Chair, if I may? Chair Morin said sure. Atty. Cronin said I know there's a lot of people in this attendance, so I can take particular attention of abutters, could you ask people to identify themselves that are an abutter or general public so I can make careful notes? Chair Morin said OK.

**Mr. John VanUden testifies:** John VanUden. I'm going to be your first speaker tonight. Ms. Hebert said also, Chairman, this is specific to items three and four on the agenda only. Chair Morin said hold on Mr. VanUden. Just to let people know, we're specifically talking about the warehouse. Mr. VanUden said I'm talking about the warehouse. Chair Morin said OK, but I just want to let everybody know, Sir. Mr. VanUden said ... concerns the warehouse. [Mr. VanUden hands documents to the Board members.] I ask you to all take a look at it and read it. Read the whole thing. Read about other parts of the state. Chair Morin asks can I have your address, Sir? I didn't hear it earlier. Mr. VanUden said 49 Seton Drive, Bedford, NH. Chair Morin said thank you, Sir. Mr. VanUden continued been here for about 15-40 years. I think I have a right to speak. The people of Bedford are being scammed. I mean the main part about this whole problem is that the Town Planning back a number of years have rules and regulations for the protection of the Town. We also have the protection of the people, which is you and I and others who were looking to come here. We have gasoline stations in Town. Some have been here a long time. And I support them. I find that the people out of state coming here think they're a joke. They earn a living.

We have now a dog making idea—food. I got a dog. I buy food from Market Basket. And with that said, we have a building that is going to be put up. Maybe the food company will go along with it, maybe not. Kind of a weird approach to getting something approved when there is a variance, and the variance was explicit. This part of Bedford was to be part of history, and history in turn is very precious. And we have water areas and drainage, and we also have an aquifer that goes beneath the road and it comes from the north. And it could be contaminated at some point. I heard the idea that this dog product has machines and chemicals too. Chemicals, in turn, can be absorbed by the ground. Think about the environment. And I'll go no further than that. But think about it. It's there. And with that said, when you guys look at the last page, what I gave you. You know some of the people are looking at the last page. There's something about where we are the protectors of wildlife. And I've heard the wildlife idea is a joke from these people that sit before me. I don't find it joking. What we have is something that we are responsible for to take care of and to assist. And with that, the assistant is far greater than that. But on the same token, going back to this building that's going to be built, you've got one entrance. And the traffic on 101 is tremendous. How long is this building going to be open? Twenty-four hours a day, seven days a week on production? How much noise is it going to make? Who knows? You have people who live within a stone's throw of what is being put up or considered being put up. Have some consideration for them. And I'm talking about you. There are rules and regulations that people before us took hours to think about it. And it's proven to be very effective and very beneficial to the Town.

This Town is changing by leaps and bounds. There are two gas stations. And the distance factor from Hardy Road to the first one going down to Viva is less than a mile. But after that, drive West amongst the traffic as I did this afternoon. It was horrendous. I go about 45, not much more than 50. And horns are blowing me to get the hell out of the way. But the reason why I took the drive is because the gas station that's down below Mobile, has a Dunkin' Donuts. Maybe you don't know that, but I know it. I bought gas there over the years. Still do occasionally. But I don't travel as much as I used to. But what I'm trying to lead to is this; the gas station that's there is the last gas station for almost 8 miles to Amherst. And when you get the Amherst, you go for gas in the town. There's no gas stations along Route 101. And Amherst, in some parts, is like a little ghost town. But aside from that, I came north. As I came north, I drove past 101 at the location of Hardy Road and continued up to Meetinghouse Road. And that gas station has been there for, God, my lifetime, not the same one.

Chair Morin said Sir, can I just remind you we're not dealing with the gas stations we're dealing with this building? Mr. VanUden said I know you're not dealing with the gas station, but on the same token the discussion should be the gas station. Chair Morin said that'll be later, Sir. Mr. VanUden continued but on the same token, let me just kind of finish up a little bit on that. I drove up to the gas station, and from there there's a gas station northbound on Boynton Street called Heavenly. There's also a gas station called Irving just north of... Chair Morin said Sir, Sir, I'm going to stop you, and the reason I'm stopping you is... Mr. VanUden said what you guys don't want is the truth. This is a scam. Chair Morin said I'm just asking for testimony about the building first. We're going to deal with the second piece after. Mr. VanUden said OK. How often are the trucks going to go in and out of that building during the day? And are they going there during the night? And I think the people who live in the area should be wondering what the noise factor will be and what type of trucks will be coming in. Are they trailer trucks? Are they box trucks? Most likely they're going to be trailer trucks if they're going to be going through the outlet that this group is participating with. We have a gas station there across the street from the Manchester Country Club. And it's just one of many. So how many is it? But the idea of this—of a production of making food for dogs—I think it's maybe not too bad. But on the same token, there are people who live down the hill on the backside of that property is where the water problem is. And in today's newspaper, there's an article about the drought. Now we have a drought. And consider this; if the drought is there, and your well is dry, you're kind of stuck. But on the same token, I think the explanation of what the time period would be, is it Monday through Friday or is it seven days a week

with the production of this product? And when is the trucks going to come in and such? And when are they going to go out? The same idea comes with the gas station. But with the gas station there's another curve with that as well. Read what I gave you and look at it. You have other spots in this State that are experiencing similar problems for development. Sometimes development is not always nice. But on the same token, the decision that you're concerned with is how do we approve this when it's really not approvable? Read the law. It's the Town law. Chair Morin said thank you, anybody else?

**Mr. John Cleary testifies:** Good evening. My name is John Cleary, 60 Grey Rock Road. My house is the one up there in the upper left. I'm an abutter. I have a couple notes, and I'll try to stick to the variances, as requested. Although I am concerned, and I know you guys can't do anything about the traffic—the right turn, the left turn, as you brought up. One of the prior discussions talked about what was noticeable to the abutters. I'm an abutter, and I do believe this is going to be noticeable. But I knew that when I bought the property. I knew that I was next to commercial property. And I recognized that and said, OK, I accept that. And I guess from tonight's testimony, assuming it's correct that some folks bought that property and didn't know there were wetlands there that they had to deal with, that maybe later in time those wetlands were created. I don't know if that's fact or fiction. But that's what was stated. Knowing that there's going to be commercial there, I've dealt with it. I deal with it. I think about it. When the sand and gravel for the improvement of some road near us was dumped to the left of this property, and at 5:30 in the morning, the trucks backed up and you hear that beep, beep, beep, you know, you deal with that. And I dealt with it. But I think we have to look at what's being requested here. As far as the spirit of the ordinance being observed, the ordinance is 50 feet. The request is make that 5 feet, if I read the materials right, and 10 feet. That's not the spirit of the ordinance. So, let's deal with what the request is, which is changing 50 to 5, changing 50 to 10. That's not following the spirit of the ordinance of having this whatever the value you want to call this wetlands. I heard high value, low value, that's a neat trick to say something's better than something else. I'm next to the high value vernal pool, and my groundwater is right next to that dug down 275 or so feet right behind all of this and where they're going to be putting the septic system as well. But that's not part of the request. So, dealing, again, sticking with the request, which is to basically bypass the Wetlands Ordinance to go from 50 to 5 feet, 50 to 10 feet. It's not within the spirit of the ordinance. Someone said something about substantial impact to nearby abutters. I'm an abutter. I don't know how many other people here are actual abutters to this thing, but I'm an abutter. I know you know; my property value is going to go down when this is built, and while this is being built. I'd love to see the documentation that says my property value is going to stay the same. And I did notice some of the other documentations that would actually improve because we have a, you know, this facility nearby. It's not going to improve for me. It might improve for the overall neighborhood, because we've got this here. There's a job there. And I congratulate Wholistic Pet for being successful in doing a good job and running their business. And that's a great thing. But for me, and I can only speak for me as an abutter, I think we need to obey the wetlands regulation. Certainly not violate it from a 50 to 5 or 50 to 10 perspective. And I'll save all the other traffic jam concerns for later. Thank you very much. Chair Morin said thank you.

**Ms. Gayle Ricevuto testifies:** Hi, I'm Gayle Ricevuto at 121 Hitching Post Lane. We've lived there for 35 years. For just this plan, the only thing I wanted to add was that it's a very incomplete plan. You have to cut through a gas station that has not been approved to get to it, and it does cause a lot of traffic concerns. And therefore, it should not be approved. Chair Morin said thank you. Anybody else? Seeing none.

Atty. Cronin said yeah, I'll just respond. With respect to the abutter at 360 Route 101, 13-1, 13-2, 13-3 and 13-4 over at Pine Tree Place directly across the street, just to let the record reflect that Kroger LLC supports the application. With respect to the spirit and intent and looking at measurement 50 versus 10 and so forth, I think it's appropriate to bring Mr. West up to just to talk to you a little bit about that

wetland in the front. The intent of the buffer is to protect wetlands, right, to make sure that there's no harm. There's different distances in different towns—some very small, some very large. But I think the intent is the same, and I'll have Mr. West talk to you about that wetland that's impacted. Mr. West if you could come up, please.

**Mr. Mark West testifies:** My name is Mark West. I'm a wetland scientist. I actually originally flagged wetlands on this property way back in 2006, so I've seen the change in the property over the years. There was a drainage across the property, always, but it's been affected by, especially by the widening of 101 when that project occurred. They not only increased the runoff, widened the trees, cut trees next to the front wetland, therefore changing it from forested to growing in now with cattails. But they also took the water from the intersection with Harvey Road and drained that right down to the wetland that is behind the proposed gas station. When we looked at this, it is a challenging site because of the wetland, but when we looked at the warehouse lot, we made a decision to have the building closer to the wetland in front and further from the vernal pool in the back, next to these abutters. That ended up getting us at least a 40-foot buffer to the vernal pool, because it's clearly a more valuable wetland than the wetland in the front. Yes, if you could get 50 feet setbacks to both these wetlands, that would be ideal, but you would really have trouble building any commercial facility on this lot without some encroachment on some of the wetlands. So, that's the way I guided the engineers and to make this set-up as it's the best to protect the most important wetlands. So that's why we did it the way we did it. Chair Morin said thank you.

Atty. Cronin said another comment, Mr. VanUden said a lot. I took some notes. I think what's worthy of comment is the principal's here, Mr. Vallis, who's with us and also Mr. Sullivan. Mr. Sullivan is not an outsider. He and his family have lived in Bedford for I don't know how many years—been active here as a resident and operated his business here for a long time. With that being said, I do have the report from Kanteres Real Estate. I can submit it or read it from the record, whatever the Chair wants. Chair Morin said why don't you read it to the record? Atty. Cronin said it's addressed to John Morin, Chairman, Bedford Zoning Board of Adjustment.

Dear Mr. Morin. Our office was engaged to review the site plans and variance application for 2 Hardy Road LLC and SV101, LLC, seeking to work in collaboration to develop the land located at the corner of Hardy Road in NH 101, identified as tax map 28 lots 20 and 21. Conceptual site plans include a lot line adjustment where THR and SV101 cooperatively worked together in an effort to best accommodate development plans for both lots and proactively align as close as possible with Town zoning requirements. However, even with cooperative efforts, variance application is required for development approval on both lots. The plan shows a warehouse assembly facility on Lot 21, located off NH 101 and a multi-purpose gas station with electric vehicle charging stations, a convenience store and drive through restaurant on Lot 20 at the corner of NH 101 and Hardy Road. The variance application requests permission for development of the aforementioned proposed use facilities in a combination commercial and residential zone and installation of retaining wall and building within the wetland setback. In the course of our work, we evaluated the impact of the proposed commercial use and site plan designs and the established surrounding residential neighborhoods in the existing local development sector. The immediate surrounding area is primarily made-up of restaurants, fitness facilities, commercial retail businesses, family medical centers, and a grocery store. While a majority of commercial buildings exist on the opposite side of NH 101, there are numerous established commercial buildings with overlapping CO and RA Zone lots near Hardy Road on the same side of Route 101, all with established commercial use. Tax map 28 Lots 5 through 8 and similar mixed zone lots where The UPS Store, Lefton Dance Complex, and Bedford Fields have no apparent negative impact to the value of the abutting or nearby residential lots on Grey Rock Road, Hardy Road, and Hitching Post Lane. Further up NH 101, there's a represented example of an existing Mobile station established near Gage Girls Road,

where wetlands tie to the McQuaid Brook. The residential neighborhood is a direct comparable to Hardy Road, where similar access roads and traffic patterns demonstrate that a gas station can coexist with nearby residential neighborhoods with no negative influence in home values, no history of destructive effect to the wetlands and no evidence of hazards to the health and safety of those residing nearby. Based on recent closed property sales data, pricing of nearby residential homes range between \$415,000 and \$752,000 on Grey Rocks Road, Route 101, Hardy Road and Hitching Post Lane. Comparable properties surrounding the Mobil station off Gage Girls Road range between \$405,000 and \$794,000. This pricing aligns with market conditions in comparable neighborhoods throughout Bedford as NH 101 is an established commercial zone. There are no indicators that suggest additional commercial establishments will have any impact to the marketability and resale value of the nearby residential homes, nor the surrounding commercial businesses. Traffic count and the availability of desirable retail restaurants and businesses that draw public interest to the area are primary factors that impact commercial value. Population growth and expanded housing developments nearby have increased traffic count and attention to this zone. This, coupled with new business emerging, has had the biggest impact on property value. In fact, the multi-purpose gas station with charging stations could have a positive impact to surrounding businesses with the demand of charging stations increasing as the electric car market continues to grow and become more mainstream throughout the State. Electric vehicles are commonly seen throughout Bedford, however electric charging stations per household, these green energy vehicles are significant lagging market demand throughout New Hampshire. In addition, the site plan design is aligned with the commercial architecture for the area, takes into consideration some protection to the wetland impact with the construction of the retaining wall. The nearest residential neighborhood has limited to no line-of-sight to the commercial sector on NH 101 at Hardy Road. There's a significant buffer zone of trees and green space that prevent visibility to the proposed multipurpose station and warehouse site. Also, no indication that existing homes will be impacted by the proposed use nor traffic patterns for parking lot, access from Harvey Road and NH 101. Housing remains in short supply throughout Bedford, and even with rising mortgage rates, market indicators show a year over year increase in home prices that continue to trend upward, including in commercial zones. In fact, a recent residential sale in the same development sector further north, at 243 State Route 101, sold for \$15,000 over asking price. And the list price of the subject property was above average for houses of a comparable size and square footage sold in the past 12 months. Our real estate practices we conducted commercial land use and residential real estate for over 60 years in New Hampshire. Based on my experience working across multiple sectors, is my opinion that the availability of a multi-purpose gas station and EV charging stations and drive-through restaurant with coffee service has a potential positive impact to the area and aligns with residential needs in this sector of Route 101, in response to increasing demand for electric vehicle support. Approval of the multiple variants enabled these businesses to proceed with development plans and has no evident negative impact to the real estate values of surrounding properties, if approved. Sincerely yours, Kanteres Real Estate, Calley Milne, Agent. Chair Morin said thank you. Any questions from the Board?

Mr. VanUden said I have a question. Chair Morin said OK, go ahead, Sir. Mr. VanUden continued my question is this. You chastise me for bringing up another subject to be heard, but you let this gentleman here continue making it sound good. It's not good. Chair Morin said thank you.

Mr. Cleary said John Cleary from Grey Rock Road. There's obviously a lot of very good analysis that's been done on this, a lot of hard work to make this as palpable as possible. On the value of homes, specifically mine, which abuts it, I can see that it would be a little bit more difficult to sell if there was a building behind it versus the trees and the woods that are there. I imagine that the facilities across the street will go up in value because there will be more traffic in the area to go into their parking lots and attend. You know where they are, the yellow buildings across, I think they've been mentioned several times. However, perhaps what should be done is a bond or something like that should be set aside in

case that predictive analysis is incorrect. Just a thought. Chair Morin said thank you, anybody else? Seeing none, anything else to add before we...?

Mr. Kevan said just to add, so, from this building to that house on Grey Rock Road is about 240 feet just to give you an idea of distance. And as far as the spirit of the ordinance, you have a 50-foot building setback and it's to protect wetlands. But you can't not take into consideration the value of that wetlands, or if they've been degraded or impacted by, you know, the adjacent use of Route 101. And so that is why we feel we've met the spirit by preserving the higher value. Keeping in mind that your ordinance is a structure and I'm allowed to pave and grade right up to a wetland. We've tried to preserve a buffer around that back, higher value wetland, and that's how we feel we've met the spirit. Chair Morin said thank you. Any last questions before we deliberate? Seeing none, I'll ask for a motion to go into nonpublic input for deliberation.

**MOTION Mr. Kellerman moves to go into nonpublic input for deliberation. Mr. Green duly seconds the motion. Roll call vote taken – ALL IN FAVOR – unanimous. Motion carries.**

Chair Morin continued alright, let's go through this.

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

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

Mr. Casale said just to confirm, Mr. Chairman, we're on number 3 regarding the change of use? Chair Morin said number 3 would be yes, change of use. So, again, whether granting the variance would alter the essential character of the locality? Personally, I don't think it will. It's all commercial businesses on 101 in that area, both sides of the road. I don't think this building will do that. Mr. Casale said, and it's done well, aesthetically, anyway. Mr. Green asked wasn't there another light commercial industrial that came before the Board a couple months ago? Mr. Casale said yes, it was on Lynn Drive. We'll revisit that.

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

Chair Morin said again, I don't see that for the building itself, the use, that it's going to do that piece. Mr. Casale said no, at least individually with just this property, I can't say where it would affect traffic greatly. It appears there'll be few customers coming in and out and few deliveries, so I don't see that as an issue. Again, just this property alone.

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

Chair Morin said yeah, I can understand, you know, it is commercial. But this type of building is-- we're not talking a big difference of what's happening in some of these areas already. It's actually happening at the other building right down the street. But I think it meets the spirit in this case. Again, for this particular. Mr. Green said my only problem with the spirit is that it seems to me they've divided and basically given us a package that isn't a package. But it really is a package. Chair Morin said but it isn't those, it's two individual... Mr. Green said I understand that, but that's but that's the way the underlying impression is. Chair Morin said and we've got to take one piece at a time, yep. And we get those quite often, you know. We always get this—we've had things in the past that have been big projects that have broken down into individual things after the fact. We've got to take one at a time and deal with them one at a time. Mr. Casale asked Mr. Chairman, can you clarify what you were talking about under the spirit that there is a business or two or ten down the road doing the same thing? Chair Morin said well, even the owner, you know, he's doing what he's

doing now in his building down the street, which is a commercial—it's the actual store, but they're actually doing this procedure already. Mr. Casale continued but if that's the case, then that's light industrial, and why is that happening? Chair Morin said well, because it's a retail space also. They're just utilizing probably different parts. Mr. Casale said well, so isn't this. So, I have a question concerning that. So, if that's happening, it appears, since they're here for a change of use, that we should be looking at that. Is that not true? Ms. Hebert asked do you mean is the existing use lawful? Is that what you're asking? Mr. Casale said right. Ms. Hebert said it was in a pre-existing building that had warehousing space, and it's located behind the Wholistic Pet retail store. Mr. Casale said OK, thank you. Ms. Hebert said the applicant may want to clarify that, but there's a large—you don't see it from the road. You can see the storefront from the road, but if you drive behind the building there is a large warehouse area. Mr. Casale said OK so it's pre-existing. And then I guess my only argument is that, you know, Len brought it up and I was going to bring it up, let's talk about this light industrial which we have before, and of course, this will run with the property, and it was one of my reasons for asking, how rock solid is Wholistic Pet because they may not be there a week from now. It runs with the property, and right now we're OK with what Wholistic Pet is planning to do. But if we have the same set of circumstances that we did on Lynn Drive with someone grinding machines, open back doors on the on this property here, 200 and I think Mr. Kevin said 40 feet from the abutter's property, what are we going to do then? Wholistic Pet is not rock solid. The applicant has relied on a lot of their testimony, them coming in here, including this substantial justice, and we don't know if it's going to be there. Chair Morin said well, the question I'd throw to Becky is so, say down the road, this building becomes vacant, someone else goes in, how much does the Planning Board get involved again in how the building is used? Ms. Hebert replied sure, this is a smaller, light industrial building, so it would have to be used for a light industrial warehousing use. That use couldn't be enlarged without coming back to the Zoning Board and the Planning Board. The use would have to be contained within the general building footprint that you see here. I don't see any outside storage or display spaces, but it could be any light, industrial or warehousing use could move in and occupy the space in the future because the variance does run with the land. Mr. Casale said so, and if I remember correctly from Lynn Drive, the Town does not have a definition for light industrial, and therefore that's open to interpretation. If I remember correctly. Ms. Hebert said well Lynn Drive was a different situation. That was a home occupation. Mr. Casale continued no, but we are talking about light industrial though. Mr. Kellerman said I think that was the one down the street on 101. Ms. Hebert said right, the one down the street on 101... Mr. Casale said oh yeah, sorry, yes sorry. Ms. Hebert continued was, yes, the former Grenon's Trading Post building, yes. We do have general definition for light, industrial, and when we don't have a definition in our zoning ordinance, we look to the dictionary, and we take a general accepted definition from the dictionary for terms that aren't specifically defined in the zoning ordinance. So, light industrial is not heavy industrial. It is something that's contained within the building and any more intense use would have to come back to the Zoning Board. Ms. Casale said we'll call that mini-industrial, but it can involve, and my concern is it can involve loud sounds noxious fumes, machinery's, more traffic, etc. Would that be fair to say? Ms. Hebert replied I'm looking at your minutes from your last meeting when this was discussed. Light industrial is defined as the production of small goods that will be sold to the people who use them rather than another manufacturer. So, this is not like heavy manufacturing. It's not heavy industrial. It would be a lighter industrial use. A good example of that or some of the facilities you see along South River Road in the Harvey Road area of Town where you have a varied mix of contractors' warehouse. A plumber might move in and use the space. Or you might have—it's a very wide-ranging use, but it's not a heavy industrial use. That would need to come back to the Zoning Board. Mr. Casale said OK, thank you.

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

Chair Morin said again, for this property, I feel it would. When we're looking at the property itself and the usability of it, I think this use would be a good one for here. Again, that's just me. Anybody else on this piece? Mr. Casale said well, at least on this particular one, I'm more OK with the fact that it's, I don't know about demonstrated, but that they have not been able to utilize the property and rent the property and use it for commercial purposes. At least for this prong, I find that it's acceptable. That it would be substantial justice. Mr. VanUden said excuse me. Chair Morin said Sir, we're in nonpublic input. We are deliberating now on this. Mr. VanUden said well, you're deliberating, but you're deliberating against the people. Chair Morin said Sir, we're in nonpublic input. Mr. VanUden said explain to me where there's light industrial in Bedford. And the property, the property that we're talking about is not light industrial. You're changing it, and you shouldn't be doing it. It's against the law for you. Chair Morin said Sir, Sir, we're in deliberations. Mr. VanUden said that law is voted on by the people. And you know it. Chair Morin said All right, thanks.

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

Chair Morin said we have had testimony concerning this in a report. We've all also heard from some of the surrounding neighbors.

**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:**

Chair Morin said as they brought up this, unfortunately, you know, it appears in testimony was that this front wetland was pretty much the reason of the State of New Hampshire putting a drainage right there that drained across the property. So, of course, it limits the use and where about something can be on the property. That is definitely different from some of the other areas, other properties in the area. Mr. Casale said but are you talking about area, well issue, or you're talking about use of the property? Chair Morin clarified I'm talking use, but I'm just getting into the distinguishes it from other properties. So due to that piece... Mr. Green said but if the State did something, would not the property owner have been compensated for any diminution? Because the state can't just take. Chair Morin said well, they're not—I'm not saying they took the property—I'm saying they put a drain, they put a drain and had a drain going through your property, you don't get much of a choice when they do their engineering things and stuff like that. Mr. Green said I understand that, but then, if they diminish the value of your land, you can go after the State for basically a taking. Chair Morin said I'm not sure how much that happens, but OK. Mr. Green said when they build roads, it happens all the time. Chair Morin said but again, that's my opinion. You have yours, and you have the opportunity to give it. Any more on that piece? Go ahead. Mr. Casale said so, you know, again, we're talking about the use. We're not talking about an area variance because of the wetlands. So, if we're talking about the use, changing it to light industrial from commercial, and I had asked us earlier, and I don't think it was a sufficient answer, nor is it viable. How is this property different from other properties in this area—commercial properties that have wetlands? And that's my issue. So, going to the notes, we received this from the Planning Department and I'm just going to read them out—food for thought. So, we're supposed to analyze at least under this prong, what is unique about this property? Look directly at the lot and determine if things such as shape, size, location, distinguish this property from others in the area. I want to know how this is different. I don't believe it is. And this is actually more important, I believe. It is—because they're relying on this. It is not enough to demonstrate that the property would be difficult to use for other purposes. They have said, geez, we can only get Wholistic Pets in here, and it's right up the road. It's a perfect fit. Or that it is unique—maybe I already said this—or uniquely suited for their proposed use. So, they're saying that. Hey, this is just perfect for them. Even if those facts are

present, applicants still must demonstrate that the property is different—it's underlined—is different in a meaningful way from other properties in the area. And I don't see it. I don't think it satisfies this problem. Chair Morin said OK, anybody else on that piece? Mr. Gilbert said when you say different from other properties in the area, how many properties in the area have three different wetlands to deal with? I mean, it seems to me that they've done the best job they could putting that building where it would do the least harm to the vernal pool. And then up in the front there, it's kind of like, I think of it in terms of the properties that are down on the other side of Town, that can't meet the setbacks because they were built over 50 years ago. And this property because of those wetlands and the restrictions there, that's, to me, that makes it different. Because I don't see other properties like that or I don't know of them, I should say. Mr. Casale said well, yeah, I disagree, and there's a there's a letter from Attorney Gerry Prunier, from Nashua, representing the Irving Gas Station owner, which also refutes that. And that has to do with the gas station property, but it's one in the same where I I'm quite sure in his letter he also states the same thing which is that this property is not any different than any others. I haven't taken a tally, but we have a lot of properties like this that come in, and again, so this particular variance is for a change of use. Then we have one in change of area. And so maybe, perhaps what you're pointing to is more defense for that than it is a change of use. Mr. Gilbert said I would just say it looks very difficult to put any building on this property because of the constraints of these wetlands. That's all I'm trying to say. Mr. Casale said well they can. Mr. Green said they can, but it's difficult to mitigate the risk is what I'm thinking in terms of, I think they've done that to mitigate the risk. Is it enough for us to go with it? That's the question, you know. Mr. Casale said but again, that this prong is for the area, the change of use. Mr. Gilbert said OK, alright, I'm with you. Mr. Casale said so, again, if we just focus on the change of use, commercial to light industrial, is this property unique enough to say, you know what, guys, yeah, we'll give you the light industrial instead of the commercial. Is that warranted under this prong? And that's my issue with it. Mr. Kellerman said I think that's a good point, Neal. I do think the front wetland could have an impact when you're talking about commercial space, retail space. You know that kind of, seeing it from the road, having the signage being able to place that in a visible location could make this a bit different for that particular use. Mr. Casale said but it wouldn't be the only one that has... Mr. Kellerman said you're right. Mr. Casale said OK, that's all I have to say.

**(A) Denial of the variance would result in unnecessary hardship because**

**(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

Chair Morin said it's that balancing act again. You know, utilizing some of what Dave said and what Alex said, you know, we're looking at use and it does make a difference as commercial, especially if you have to have a visual. Commercial buildings you've got to have sight, line and everything else, and, you know, without touching that front area, how much sight will there be from the road of a building, if it was commercial? And that's what people are looking for is that visibility. Utilizing this use with the distance back in the... unable to really do much with that wetland in the front, so that hinders some of that visibility. That does make a difference in this issue, I think. But again, that's just me. Mr. Casale said and my last thing; they didn't bring that up. Their support for satisfying the 5th prong is solely, this is a perfect fit for Wholistic Pet. And the property is unique. But I don't see the property is unique, and that's my issue. You can't use Wholistic Pet towards the support of satisfying that particular part of the prong.

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

Mr. Casale said it is.

**(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: Chair Morin moves that the Zoning Board of Adjustment approve SV101, LLC request for a variance from Article III, Section 275-21(D) and Table 2, Table of Uses to allow a proposed light industrial assembly/warehouse use in the Commercial zone where such use is not allowed at NH Route 101, Lots 28-21 & 28-20, zoned CO and R&A per our deliberations this evening. Mr. Gilbert duly seconded the motion. Roll call vote taken:**

**Chair Morin votes yes**

**Mr. Casale votes no**

**Mr. Green votes no**

**Mr. Kellerman votes yes**

**Mr. Gilbert votes yes**

**Motion carried 3-2.**

Chair Morin said alright, now we'll go to the second one. And this is the request for the setbacks of the building within 10 feet of a wetland and a retaining wall greater than six feet high at 5 feet of a wetland.

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

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

Mr. Casale said no. Anybody else with that piece?

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

Chair Morin said again, no, it's not going to make a difference there.

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

Chair Morin said well, as was brought up, the spirit is to protect wetlands. Again, I think Dave brought it up earlier, you know, this property is surrounded by three different wetlands. They were by the wetland scientist per say, graded. This one being a pretty much a manmade wetland from 101. It's close, but the way this property is situated, they've protected the other wetlands that are more important, vital, whatever word to use. And with the retaining wall, I think the retaining wall, that's just a safety feature. That won't make a difference to anything for building that wall to retain the driveway area, so it doesn't fall into a lower area. Mr. Green asked are there any height restrictions on building those walls? Chair Morin asked height restrictions? Mr. Green clarified greater than six. Chair Morin said right, anything greater needs a variance. Mr. Green said but there's no... so you can do up to six feet without a variance. Chair Morin said but once you go over, you have to get a variance. Mr. Green said right. Is there any information as to advantage, disadvantage, or? Chair Morin said I think that's just the construction, yeah, but the town utilizes that 6 foot as that line for a structure. Same thing for fencing too.

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

Mr. Casale said yes. Chair Morin said yeah, I think so too. It gives them the opportunity to utilize the property in the most substantial way.

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

Mr. Green said no evidence that it will. Chair Morin agreed, no, we've heard the contrary.

**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:**

Chair Morin said as I brought up earlier, now I can do it, is it cuts off the property. So, you know, it makes it very difficult to utilize the property. And, again, they've gone into trying to utilize the property the best way they can with the different areas on it.

**(A) Denial of the variance would result in unnecessary hardship because**

**(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

Chair Morin said again, I think we've talked about it. It gives them the opportunity to use the property and be able to safely use it and try to deal with the wetland the best they can—that front one anyway.

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

Chair Morin said for what's going on, I think it's a reasonable one. So, alright, with that I'll accept a motion please.

**(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 Zoning Board of Adjustment approve the request for a variance from Article IV, Section 275-28(A) to permit the construction of a light industrial assembly/warehouse building within 10 feet of the edge of the wetland and a retaining wall greater than 6 feet in height within 5 feet of the edge of a wetland where 50 feet is required at NH Route 101, Lots 28-21 & 28-20, zoned CO and R&A per our deliberations. Mr. Kellerman duly seconded the motion. Roll call vote taken:

Chair Morin votes yes

Mr. Casale votes no

Mr. Green votes yes

Mr. Kellerman votes yes

Mr. Gilbert votes yes

Motion carried 4-1.

**MOTION** Mr. Casale moves to go back into public input. Mr. Gilbert duly seconds the motion. Roll call vote taken – ALL IN FAVOR – unanimous. Motion carries.

Chair Morin said alright, those two have passed, gentlemen. Before we get into the next 3 items as a public hearing, the Board first has to meet and decide if we're going to accept the applications. The reason for that is years ago there was an application put before the Board for a gas station on this property. So, at this point the Board needs to talk about it, decide if there has been material change to the circumstances affecting the merits of the application. So, it will be a nonpublic input session while we're talking about it. Once we make that decision, then we will go forward at that point with whatever it is. So, I just want to let you guys know what we were doing before we started doing it. Mr. Gilbert asked are we in nonpublic right now? Chair Morin said well, let's go back into nonpublic input to talk about this.

**MOTION Mr. Casale moves to go into back to nonpublic input. Mr. Green duly seconds the motion. Roll call vote taken – ALL IN FAVOR – unanimous. Motion carries.**

Chair Morin said our goal is to look at what was proposed and see if there's enough change to move forward with the applications in front of us. Anyone want to start? Mr. Kellerman said yeah, I can start off. I think under Fisher, there's really two avenues here for us being able to hear this. It's whether there's a material change in the use and nature, or material change in the circumstances. I don't really see a change in the circumstances here, I don't think. I mean they simply cite to the EV use on the 101 corridor. I don't see that. I don't see a change in the law here since the 2014 application. So, I think it really, at least for me, the focus here is whether there's a material change in the application itself. I think that the EV usage and the EV stations could lean and, you know, move me towards that direction. And some of the changes here where there's different curb cuts, some of the traffic concerns may be mitigated, but I'm not sure if that gets us all the way there for being a materially different application.

Chair Morin said I was surprised when I was going through the material and didn't remember sitting on the first one, so it's interesting to see my name there. I think I've been doing this way too long. But after reading through and stuff like that and looking at this, I'm having a hard time seeing a difference. It's a gas station/convenience store. Same property, same thing that, you know, it talks about a restaurant. OK. If you want to talk about a drive thru, I don't know. There wasn't a drive-thru before, but it's still a convenience store. It's still a gas station. I'm not seeing much difference. I'm having a hard time looking at this as, actually, I don't see a difference. I really don't. Yeah, things change in years, but not that much.

Mr. Green said if this was just an EV station, but you didn't have gas tanks, that could be considered a substantial and significant change because you would do away with the fear and concerns about pollution of the groundwater and things of that nature. But gas tanks are gas tanks. And whether they're made out of steel or made out of some other material, there can be issues with them and it's on an aquifer, and that isn't changed with this application. Mr. Gilbert said I'm with you in, I don't know, it seems to me like it's not a big material change because just because you're doing EV versus gas, I mean, it's the same intent. You're putting something in a vehicle to move it. Like you said, it's a convenience store, whether it's got to drive through or not. It just seems like the same thing. That's where I'm at. Pure and simple.

Mr. Casale said to clarify, it's not an EV instead of gas, it's a gas and some electricity on top of it. Mr. Gilbert said but you're doing the same thing. You're charging your car whether it's with gas or electric. Mr. Casale said right. You had said either or, but that's not... Mr. Gilbert said yeah, I'm with you, yeah. I'm having a hard time seeing a material change in the use, as John stated. Mr. Casale said, and I agree that it appears that the three points of the so-called change; a lot line adjustment, adding the EV stations, but there's still gas there, and in fact, because this proposal, the store itself is bigger and you

have a drive-thru, it's increasing the intensity, which therefore increases the issue of traffic and the traffic issues that were brought up. And for those reasons I would not support moving forward with looking at these variances as proposed. Mr. Kellerman said just to add to that, I think in one of the letters of opposition, I think it was from Miss Cole, that she cites the CBDA development case, and that case, I think, is helpful. It talks about that the Board must be satisfied that the subsequent application has been modified to meaningfully address the Board's prior concerns. I don't see that happening here. I don't think they've addressed any of the concerns that the Board had last time with the gas station use.

Mr. Green said just a question; I'm looking at the letters that were for or against—the people who were against it seemed, uniformly, made legible their name, their printed name, and their address, whereas many of the people who were for the gas station, I had no idea who they were or where they lived. Is there any rule of when they send it in that they're supposed to make this clear so people can understand that they're not just saying they're residents of Bedford? Chair Morin replied I don't think we have anything in writing that talks about that. But, again, we're looking at the 2014 and the 2022, and there's nothing really different that changes. In Neil's cases that he brought up, it's actually a larger form of the same exact thing. Mr. Casale added making the issues worse, and I just want to add for the record, too, because both Fisher versus City of Dover and Brandt versus the City of Somersworth were both mentioned. Fisher, in that particular case, nothing in the application for a variance had changed between the first and the second. Which is not the case here. And then regarding Brandt, that was because the law actually changed in between the time of the first request for a variance and the second. So, neither of these cases deals specifically with this kind of change or lack of change, and therefore it's, in my mind, it's a very gray area and subject to our interpretation. And my own feeling is it's not a substantial enough change to warrant revisiting. Chair Morin said OK. So, with that, I'll ask, does someone want to make a motion?

**MOTION: Mr. Casale moves that the Zoning Board of Adjustment deny the request to hear the variance applications to allow a proposed gas station in the commercial zone at 2 Hardy Road, Lots 28-21 and 28-20, zoned CO and R&A, per our deliberations. Mr. Green duly seconded the motion. Roll call vote was taken – ALL IN FAVOR – unanimous. Motion carries 5-0.**

**MOTION Mr. Casale moves to go back into public input. Mr. Gilbert duly seconds the motion. Roll call vote taken – ALL IN FAVOR – unanimous. Motion carries.**

Chair Morin said the Board has denied the application. Would you like to withdraw the sixth and seventh? Atty. Cronin asked why don't we just say it's the same result? Chair Morin said I'm just asking. Atty. Cronin said I think it's moot at this point. You're not hearing it. You can mark it however you want. It's moot. Thank you for your time tonight. I appreciate it. Thank you.

Chair Morin asked staff, do we have anything else for this evening? Ms. Hebert said we do not. Chair Morin said so with that, I'll take a motion to adjourn.

**MOTION: Mr. Kellerman moves to adjourn the meeting. Mr. Casale duly seconded the motion. Roll call vote was taken – ALL IN FAVOR - unanimous. Motion carries 5-0.**

**Meeting was adjourned at 9:09 pm.**

**The next meeting will take place on August 16, 2022.**

Respectfully submitted, Sue Forcier