

Town of Bedford

Zoning Board of Adjustment Minutes

August 15, 2023

A regular meeting of the Bedford Zoning Board was held on Tuesday, August 15, 2023, at the Town Meeting Room at BCTV, at 10 Meetinghouse Road. Present were John Morin (Chair), Neal Casale (Vice Chair), Sue Thomas (alternate), Alex Kellermann (member), Dave Gilbert (member), Bob MacPherson (member), Kathleen Ports (Associate Planner). Absent: Daniel Heath (alternate).

I. Call to Order and Roll Call

Chair Morin called the meeting to order at 7 pm, introduced members of the Board.

II. Approval of Minutes: July 18, 2023.

MOTION to approve the minutes for the July 18, 2023 meeting was made by Vice Chair Casale. Mr. Gilbert duly seconded the motion. Chair Morin, Ms. Thomas and Mr. Kellerman abstained from the vote. Vote was taken - all in favor. Motion carries.

Rules of Procedure: Chair Morin stated the following: All applications will be heard in order of notice. If we need to take a recess or an executive session that, will be done by vote. We will go into a nonpublic input for deliberation after each application. You can wait for tonight's vote or call the Planning Office after 8:30 tomorrow morning for the results. I'll ask that all cell phones be silenced, please so it doesn't interrupt the meeting. For the meeting itself, we'll have a presentation by each applicant. We'll have public input for those in favor and opposed to the applications. We've got a huge crowd tonight, so it might take a while to go through those folks, but we'll get it done tonight. No debate will be allowed between parties. We'll ask you to speak to the Board with all your testimony, and if the applicant would like to do a summation after all that part is done, they may.

For rehearings, any party has 30 days to request a rehearing from a decision of the ZBA. The Board has 30 days in which to respond to such requests, per RSA 677:3, tomorrow being day one. All requests must be in writing and must contain new evidence. Please point out any errors you believe were made with the Board's decision. At this time, I'm going to ask all folks that are going to speak this evening in the public, to stand up and be sworn in. Raise your right hand. Do you swear that the testimony you'll give during these hearings is the truth the whole truth and nothing but the truth? Thank you. And one last item I forgot: I'm not going to go through the five criteria at this time for a variance because we're going to ask each applicant to do that for us. That will make things much easier for us and for you. All right.

III. Old Business & Continued Hearings: None

IV. New Business

1. **Kim Castelo** – Request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow a shed within 8.8 feet of the front property line where 35 feet is required at 380 Donald Street, Lot 43-23, zoned GR.
2. **Kim Castelo** – Request for an equitable waiver for the construction of an in-ground pool within 17.7 feet of the side property line where 18 feet was approved by the Zoning Board of Adjustment at 380 Donald Street, Lot 43-23, zoned GR.
3. **Edward and Robin Comiskey** – Request for a variance from Article III, Section 27521J.(2)(e) to allow the construction of a detached ADU on a 1.0-acre lot where the minimum lot size is 1.5 acres in accordance with Article III, Section 275-22, Table 1 Table of Dimensional Regulations, at 40 Maple Drive, Lot 21-24-38, zoned R&A.

III. Old Business & Continued Hearings: None

IV. New Business:

1. **Kim Castelo** – Request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow a shed within 8.8 feet of the front property line where 35 feet is required at 380 Donald Street, Lot 43-23, zoned GR.

Ms. Kim Castelo presented: Good evening, everybody. Thank you for seeing me again on the shed matter. I appreciate you're not throwing it out completely. OK, so here's the plot plan. Here's where I'm asking for the shed to be. I'd like to start with all the photos. OK, so I took a bunch of pictures this time. This view is standing on the farm porch of my house facing the pool. These are steps going up to the patio. There's not much room in between for anything there. Eventually there'll be grass. This is an above shot of my lot from Rose Terrace. I wanted to show this. This was taken last fall, to show how steep the hill is. So this is the top of the hill looking down. It kind of gives you an idea of how steep the land is. This is facing the wall from inside the cedar fence. To the right is where the stone steps are that you saw. They're over here by this planter. I'm not asking for the shed to be on this side of the property because the topography here, as you can see to the right, the wall is double tiered and then over here is where it starts to get single because of the slope.

Vice Chair Casale asked can you state again where that is? Maybe go back to the plot plan and show me where that is, please. Ms. Castelo replied absolutely. Can you see the hand? I'm standing right here where I took the picture. So it's right here. And you can see here there's a double tier. I'll zoom in a little bit. So there's the double tier of the stone wall, and then it goes single because of the slope. So I'm standing here in that picture. Vice Chair Casale said OK, so having it there anyways, isn't going to change the need for a variance because it's still close to the road, right? Would you not agree? Ms. Castelo replied yes. At first, I was asking for two variances. I think that's why when I took these pictures—because the shed was going to be closer to the abutter here. So when I labeled those pictures and took them, it was because there were two variances. Thank you for pointing that out.

So here's another picture. This is left of the stone stairs facing east. You can see the land here. This is a picture of the proposed space for the shed facing south. To the left of shed there would be 4 to 5 stairs to

go up to the patio. Here, these orange lines are stakes in the ground to where the shed would be. Do you have any questions, Neil? Vice Chair Casale replied not yet.

Ms. Castelo said this picture is from the sandstone steps facing north. This is up on the patio to the left of the pool. So this is the patio area. This is facing southwest showing the topography behind the pool and that steep hill. And this is more centered facing south behind the pool so you can see the retaining walls here. I just wanted to show all of the space surrounding the pool, just to show you there's really nowhere else to put a shed. This is outside of the fence on the street, Donald Street, facing north from outside of the cedar fence, looking across the street at Rose Hill of Bedford. This is from Rose Hill of Bedford, facing south, so you can see my property. So here is the fence and the pool. That's it for pictures. Any questions? [There were no questions at this time]

Ms. Castelo continued, stating: The variance is requested from Article III, Section 275-22A of the Bedford Zoning Ordinance to permit a 12 by 10 shed within approximately 8.5 feet of front setback behind a six-foot cedar fence meant to be primarily accessed from pool area. The shed will house pool cleaning equipment, toys, chairs, etcetera and will provide shelter from the sun.

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

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

The shed will be screened behind the cedar fence as suggested by the ZBA on June 20th, 2023. Numerous properties on Donald Street have structures in the front setbacks. Said shed will be built with essential character and will not be contrary to the public interest.

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

The variance will not violate the basic objectives of the ordinance for the protection of health, safety and welfare.

2. The spirit of the ordinance is observed because:

No conflict with the implicit purpose of the ordinance. Proposed waiver is for private property. If granted, this will not increase traffic. It will not minimize road frontage. The variance will not violate the basic objectives of the ordinance for the protection of health, safety and welfare.

3. Granting the variance would do substantial justice because:

It is reasonable to request access to pool shed within a reasonable distance of the pool. The lot predates the zoning ordinance setbacks. If not granted, my loss will be greater than any public gain.

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

Variance will add value to surrounding properties and aesthetically enhance the property/neighborhood. Structure does not block sun rising or setting.

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:

Pool area is in the side/front yard. For shed to be used as requested, there is no other option. Behind the pool is a steep slope. Zoning predates small lot size. The shed needs to be near pool to meet its purpose.

(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:

There is no reasonable location for the shed due to topography of the lots. The lot predates the zoning ordinance setbacks.

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

Because pools and sheds are allowed in residential zones.

(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:

Property cannot be reasonably used in strict conformance with ordinance due to the landscape and therefore a variance is necessary to enable a reasonable use of it. Behind pool is a very steep hill.

Chair Morin asked are there any questions from the Board on this application?

Mr. Kellermann asked how high is the shed and how high is the fence? Ms. Castelo replied the fence is 6 feet and the shed, to the steepest part of the shed, the roof will be the 12 feet. So, like this. Ms. Thomas asked that's peak to 12 feet? Ms. Castelo replied yes. Mr. Kellerman said I see. OK. And then how close is it to the side of your property? Ms. Castelo said beside my abutter left? Mr. Kellermann said yes. Ms. Castelo said I measured it before I came here because I knew somebody was going to ask me that. So it's approximately, and I say approximately, because the fence is in between. So I measured from that stake to the fence, and then I went around from the fence. My abutter's wall is old cobblestones so some of the stones stick out more than others. So, I went to the one that sticks out the most instead of going back. So, I used the word approximately because of that: 8.7 feet. Mr. Kellermann said OK. Ms. Ports said you're allowed to have one accessory structure or shed 120 square feet or less within 5 feet of the side property line. Mr. Kellerman said OK. And this is 12 by 10? OK. Chair Morin explained yes, because last time she was here, she had those three—three or four. Mr. Kellermann said right, I remember that. Ms. Ports explained because it was on a permanent foundation. Then it would have been subject to... Mr. Kellermann said because it was going to be higher. Ms. Castelo added you guys thought it would be too high, yeah. Mr. Kellermann said thanks.

Vice Chair Casale said so going back to your application, I have 3 questions. One is on the application you state providing shelter from the sun. I know you had that on an original application. Did you just continue it and forget that the shed is actually lower than your pool, or at least most of it? Since that doesn't apply now. Ms. Castelo replied no, because with the steps, if somebody wanted to just go down into the shed to get away from the sun instead of going in the house. Vice Chair Casale said OK. Under altering the essential character of the locality, you said there are numerous properties on Donald Street that have

structures in the front setback. I drove through there and if you look at Google Maps, I didn't see anything in the vicinity that had those. Do you have any addresses where they have something at all in their front yard? Ms. Castelo replied I don't know if you have pictures from the June meeting on your computer anywhere. Ms. Ports said I didn't bring them. Ms. Castelo said I don't have the exact address. I'm at 380 and it's probably about 5 to 6 houses down if you're facing my house or to the right. They're very close to the setback. Vice Chair Casale said the house is, or is there something else aside from the house? OK. Other than that, though, you're not aware of anything like yours that's in the front setback. Because it looks pretty clear. OK. And it's not addressed in this application. It may have at the last meeting I was not at. What about the, if you refer to Page 7 in your photos—and this has to do with whether there are any alternatives to seeking a variance. It looks small, but I don't know. Why can't the shed fit in that corner right there behind that pot? So the left back corner of your house. Why can it not go there? Ms. Castelo replied OK, so can I go to the plot plan to answer that question? Vice Chair Casale replied sure. Ms. Thomas suggested just click the tab on top, it'll open. It will be a lot quicker. Ms. Castelo said oh, thank you. OK, so here the surveyor did not put in, there's a fence here—a gated fence. And then here's the deck. So it would be really far away from the pool. I mean, I don't even know how much feet there is between the deck and here. I don't know what the square foot is. It's not that big here at all. There's a tree here. I think I may have a picture facing that. Let me go back to another picture. I know I took one so you could see it. Vice Chair Casale said it doesn't look like there's a lot of room, so... Ms. Ports suggested maybe that aerial looking down. Would that show it? Ms. Castelo said oh, I took a picture of that. You can't really see it here. Ms. Ports said you can see the fence, though. Ms. Castelo said it's very tiny. So there's a tree there. There's not much, so a 10 by 12 would not fit there. Not a lot of room at all. Vice Chair Casale said OK, so your contention is that if you had it further back from that fence where it would fit, that would not suit your needs because it's too far from the pool. Ms. Castelo replied correct. Vice Chair Casale said OK, fair enough. That's all the questions I have. Thank you.

Chair Morin said my comment is I'm much happier with what you brought tonight. Ms. Castelo replied oh good. Chair Morin continued I wasn't comfortable when the shed was 5 feet in the air. Ms. Castelo said I understand. Chair Morin said now, at least in my feeling anyway, it looks conventional on how much is sticking over the fence and for the ridge line and stuff like that. Otherwise, that would have definitely been an eyesore. But I'm a lot happier with what you came back with for this piece. Is there anything else from the Board? Is there anything from the public? No comments on this one. All right, why don't you go through your second application and then we'll go into deliberation on both items.

Ms. Castelo said one thing I'd like to add, if granted, just so you know... where is Rose Hill? If granted, I'm going to have the roof of the shed like this roof. Like a very nice metal roof. Because that's what's going to be sticking out. So I want it to look really good. I don't want it to be ugly.

- 2. Kim Castelo** – Request for an equitable waiver for the construction of an in-ground pool within 17.7 feet of the side property line where 18 feet was approved by the Zoning Board of Adjustment at 380 Donald Street, Lot 43-23, zoned GR.

Ms. Castelo said this is my first time with an equitable waiver application. Chair Morin said in this one, I will ask you to read each section: what the piece is and then what you responded.

An equitable waiver of a physical layout or dimensional requirement of Article III, Section 275-22 of the Zoning Ordinance has occurred as follows: Pool side setback. Right side is not in violation. That's the 18 feet. The left side is 17.7 instead of the 18 due to the wall that I described earlier. It's a cobblestone wall,

being it's crooked and a bunch of stones are in different places. Contractor needed water's edge to be straight.

Please explain how the application meets each criteria.

- a) The violation was not discovered by any owner, former owner, owner's agent or municipal official until after the structure had been substantially completed:**

Did not know that this violation had occurred until I hired a surveyor for the pool shed.

- b) The violation was not caused by ignorance of the law, misrepresentation or bad faith, but was instead a good faith error in measurement:**

I had no idea that the edge of the pool is 17.7 when it was approved to be 18. Construction of the pool started to the right at the allowed 18 feet and measured straight across. Contractor did not know he would be 5 inches off on the left side.

- c) The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property:**

This is a private property surrounded by a six-foot cedar fence. The violation does not adversely affect any present or permissible future uses.

- d) Due to the degree of past construction or investment made, the cost of the correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected:**

The cost of correction far outweighs any public benefit, for this is a private property.

- e) Or in lieu of findings (a) and (b) above, the owner may demonstrate that the violation has existed for 10 years or more, and that no enforcement action has been commenced against the violation by the municipality or any person directly affected:**

Non applicable.

And then I have a letter from the contractor—e-mail, actually—for Dragon who was the contractor who constructed both all the stone walls and the pool. In his e-mail writing, it looks like he meant the word 'straight' not 'street.' So, from Kirk Dragon, he says the wall that they're pulling these measurements from is a very rustic old wall, meaning not straight in any direction, made with big and small rocks. You could simply gain or lose 5 inches by measuring from a different rock. I know it was 18 feet away before gunite because we sent the forms. Kirk Dragon, 603 Custom Stone Works.

Chair Morin asked are there any questions from the Board? [there were no questions]. Is there anything from the public? [there were no questions] OK. Are there any last things that you would like to tell the Board before we go into deliberation? Ms. Castelo said thank you for your consideration.

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

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

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

Vice Chair Casale said it's a pretty compact neighborhood, and you already have a fence there at six feet tall, and so you're adding another six feet in a small area within the fence. I don't see it making much of a visual difference then what's already there. Mr. MacPherson said I agree.

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

Chair Morin said I don't see it doing that. The Board agrees, no.

2. The spirit of the ordinance is observed because:

Chair Morin said again, I think the spirit is observed. As you stated, it's a tight lot. It makes it hard to put too much back there, especially with the hill coming down the back on that other side. To have a shed, to put it where it is, it's like I said, it's better than last time she was here where it was almost the whole shed was sitting above the fence. Now it's just going to look like a regular shed in the backyard. Ms. Thomas said I think that goes with the spirit, too, and that she's working with us to at least minimize anything. Chair Morin said correct. Mr. Kellermann said it's also in line with the house itself. It's just as far out, just as close to the road.

3. Granting the variance would do substantial justice because:

Chair Morin said it will give her the opportunity to have a shed and be able to utilize it the way she wants to.

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

The Board agrees there is no evidence of this. Vice Chair Casale said there was nobody against it.

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

Vice Chair Casale said it's a small property and I looked at it again. Although she could fit a shed in the area, even if you took the fence down, it really it wouldn't be appropriate. It would be sitting right in front of the porch. It would be close to the pool, but it would also get in the way of access into the backyard on that side. And then, as she had stated, if you put it in the back where it would fit, and I don't see any other obstructions and it's too far away from the pool and her stated purposes for it. So, yeah. Chair Morin said it would lose the function.

(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, it's that scale. You have to look at it. It's reasonable the way the application has come to us this time around to be able to utilize your property for a shed in a respectful way.

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

Chair Morin said it seems very reasonable.

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

Criteria not applicable, addressed in subparagraph (A).

MOTION Vice Chair Casale moves the Zoning Board grant the variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow a shed within 8.8 feet of the front property line where 35 feet is required at 380 Donald Street, Lot 43-23, zoned GR.

The motion is supported by the following findings of facts:

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

Mr. Kellermann duly seconded the motion. Vote taken – all in favor. Unanimous. Motion carries. The application is APPROVED.

Chair Morin said the second item is an equitable waiver. I'll go through each criteria and we just need to make sure it meets the criteria.

Kim Castelo – Request for an equitable waiver for the construction of an in-ground pool within 17.7 feet of the side property line where 18 feet was approved by the Zoning Board of Adjustment at 380 Donald Street, Lot 43-23, zoned GR.

- 1. The violation was not discovered by the owner, former owner, owner's agent or municipal officer until after the structure had been substantially completed.**

Chair Morin said by what we've gotten for testimony, it was during the survey for the shed, and the Town approved the shed. So as from the building inspector purposes, I think she meets that one.

- 2. The violation was not caused by ignorance of the law, misrepresentation or bad faith, but was instead a good faith error in measurement.**

Chair Morin said we've got something from the contractor saying what was going on. And it probably wouldn't be easy trying to get through. Mr. MacPherson said it was an honest mistake.

- 3. The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.**

Vice Chair Casale said not for this small amount.

- 4. Due to the degree of past construction or investment made, the cost of the correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected.**

Vice Chair Casale said that's a given. Mr. Gilbert said yes, that's a big given.

Chair Morin said after going through those, would someone like to make a motion?

MOTION Mr. Gilbert moves that the Board grant the request for an equitable waiver to allow an in-ground pool to remain at 17.7 feet at its nearest to the side property line at 380 Donald Street, Lot 43-23, zoned GR.

The motion is supported by the following findings of facts:

- 1. The Property Owner satisfied the criteria for granting the equitable waiver.**
- 2. The Board includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into this decision.**

Mr. Kellermann duly seconded the motion. Vote taken – all in favor. Unanimous. Motion carries. The application is APPROVED.

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

Chair Morin said you're all set. Ms. Castelo said it was a little easier this time. Thank you. Have a good evening.

Chair Morin introduced the next item:

- 3. Edward and Robin Comiskey – Request for a variance from Article III, Section 275-21J.(2)(e) to allow the construction of a detached ADU on a 1.0-acre lot where the minimum lot size is 1.5 acres in accordance with Article III, Section 275-22, Table 1 Table of Dimensional Regulations, at 40 Maple Drive, Lot 21-24-38, zoned R&A.**

Mr. Gilbert said I will have to recuse myself from this. So I will go sit out there. Chair Morin appointed Ms. Thomas to vote on this application.

Mr. and Mrs. Edward and Robin Comiskey presented: Mr. Comiskey said my name is Edward Comiskey. I reside at 40 Maple Drive in Bedford, NH. Ms. Comiskey said I'm Robin Comiskey and I reside at 40 Maple Drive, Bedford, NH. I'll get to the pretty pictures as well as everything else. So, the request is to add a

detached accessory dwelling unit (ADU) to the existing property at 40 Maple Drive. This property was really developed in 1968 where it met the minimum lot requirements at that time. It's positioning on the lot makes it rather unique in the neighborhood because the builder was a very good builder, but he couldn't read his plot plans. So it presented an opportunity. For my wife and I, it was an opportunity, purchasing the property from my mother's estate. As we looked at the time of the addition of the ADU, being permitted in the Town and looking might be an opportunity for us to take an existing property that we knew and we're familiar with, add to that property so that we could have a location where we could age in place. When the house was originally built, part of the design at that time was my parents plan was to age in place. And my mother, let's say, successfully did that, living there until she was close to 98 years old. So again, our plan here is to take a design, add to the property, and we believe that it conforms. Just to give some appearance to the property... So, 40 Maple Drive is right here. You can see the lot and the positioning of the current residence is on to one side.

What we'll be proposing to do is add the detached ADU over in this location right over here, such that it will still meet all the minimum setbacks from the road, from the side, from the rear of the property. There's that much space for it. The history of the lot is my parents were always asked if somebody could buy the lot next to their house. There's that much space to it. And you can see a lot behind. And working through just to show character of the neighborhood where it will not have much of an impact. Pictures are at the end, I'm sure. And so just looking at the appearance of the lot, this is the lot itself as we're looking at it. So the position of the house here and the proposed ADU would be there. Its dimensions are going to be 33 by 30. There would just be conforming driveway or pavement over to the exact positioning. I won't say it's perfect on this map, but we've got a fairly good idea and you can see how much space remains even after the addition. And looking at it, this is from the top end of the property line where we're looking at the driveway for the house next door which would be up the hill from the house and probably just make out where that telephone pole is. That is the edge of the property. And you can go to the woods. As we come down, this is a view between two houses down from us where we can see we've got one house and just barely the next. So, you can see there's not a lot of distance between the houses and the appearance. This is the distance that you could see from our immediate neighbor to the left facing the house and ours. So it's relatively close. And here's a pretty picture of the woods that used to be there. I say used to be because we did clear the lot. There were trees we were going to have to remove and as we were waiting, some of them decided to start falling down on their own. So rather than waiting for that, we just, you know, cleared and opened the space for future use. And my little pictures of what this might look like in terms of positioning of the detached unit: this being from the driveway just a cut out from the architectural plans that have been done. And this from the hill looking down as to what its position would be. And you get a fairly good idea of what the open lot looks like right now in terms of spacing.

So again, that's my initial overview of what we're looking to do and the reasons for doing it. Again, it's a plan for us to age in place. It also provides, in the case of we have the two-bedroom if we have visiting children from either overseas or down south where they live. Because my daughter, one daughter, resides up here and would be—if we have the ADU approved, my daughter and her husband will take over as the residents of the main house. Chair Morin said you can go through the application please.

Mr. Comiskey said this property is zoned as residential agricultural where ADU's are permitted. The ADU will be designed to meet the requirements for granting a Conditional Use Permit. The requested variance relates to the minimum lot sizing. This property was developed in 1968 when minimum lot size was one acre. Citing the current drawing on the lot provides a large tract of open space on the property. This space would support an ADU with positioning meeting all required setbacks.

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:

It would not alter the location of the locality. The lot has significant frontage, which would allow placement of the ADU to appear similar in spacing as between other buildings on the street. The spacing would address concerns of over building in the area. From the street, in our opinion, would look much like you saw with looking to the residents to either side. The visual would be equal spacing for the contiguous lots on Maple Drive. Also, the properties of 44 and 48 Maple Drive have detached barns. The detached ADU would be keeping with character of the neighborhood with just an additional detached building. The existing alternative to building a detached would be building an attached ADU, which would alter the appearance of existing house.

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

Addition of the ADU would not impact public health, safety, welfare. The lot has sufficient space and source for this of a septic design to meet state requirements. The current well should be sufficient to support the main dwelling and the detached ADU. As part of the septic design, there will be an analysis if an additional well as possible, though in all likelihood it is not. If an ADU is added as an attached unit, the current well and septic could support the addition.

2. The spirit of the ordinance is observed because:

The ADU Ordinance was adopted to provide additional housing opportunities in Bedford. A perceived opportunity was the addition that an ADU would allow owners to age in place. The ADU proposed to this property is for that purpose. The lot sizing requirement for subdivisions and detached ADUs was to ensure that there was adequate land to support the residential use, including well and septic systems. The property of 40 Maple Drive is mostly level, with no wetlands or unbuildable areas. The proposed ADU will meet the setbacks and all that are required for the detached ADU. This property was created before lot sizing requirements were enacted or the current sizing was enacted I think would be the better statement there.

3. Granting the variance would do substantial justice because:

Granting the variance would permit the owners to further the process of attaining the conditional use permit. A detached ADU is an allowed use in the residential agricultural zone. The lot is a pre-existing, non-conforming lot with regards to lot size.

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

The ADU would not impact the values of surrounding properties. Current real estate market is the driver of values at this time. In the future, the ADU would prefer to use as another residence, due to the placement of the lot. The area would not appear as being overbuilt because of the contiguous spacing, so value to the surrounding properties would be comparable to similar properties in Bedford.

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:

When developed in 1968, the current house was built adjacent to the lot line. This placement was approved by the Town of Bedford in 1972. The lot does not have environmental constraints, is unique, and can meet all other criteria for granting Conditional Use Permit for the ADU. Note that there is an exception in the neighborhood that this is one of the few lots that has a very large frontage.

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

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

The approving non-conforming lot has sufficient space to meet required setbacks of the ordinance. The lot also can support the required septic and well for the ADU. The lot does not meet the current minimum sizing but did so at the time of development. Strict enforcement of sizing would deny applicants of the voter approved conditional use.

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

Use of space for an ADU meets the spirit of the ordinance approved by the voters of Town of Bedford. Adding the ADU increases the tax base at the time without major impact on the provision of services, either Town or school district. The use is reasonable, allowed in the residential agricultural zone. The alternative, building an attached ADU would be difficult as a variance to side setbacks might be required due to the positioning of the main dwelling.

(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).

Mr. Comiskey said I think that addresses all five of the questions.

Chair Morin said thank you. Are there any questions from the Board?

Vice Chair Casale said regarding the criteria number 5, while the property is unique, you mentioned a couple of reasons for why you believe it cannot be attached and therefore why you need the variance. Can you just expound upon that further? You gave two different reasons. One was that you said it would be difficult as a variance to side setbacks might be required. So, if you could explain that one a little bit further and you also stated that it would alter the appearance. So, if you did an attached, it would alter the appearance of the house. Both of those, I would say that they're quasi weak. So, if you could just expound on both of those, because it does hinge upon whether you actually need a variance or not. Mr. Comiskey replied the statement would be is that the reason for that, if we look at the plot line and we look at the side border on the side, so that if we were to do an attached ADU, where that would fit as far as the lot lines as far as the setback from the side. Because the attached ADU would have to have a common heat source with the main house. That would be one of the requirements of the ADU. So, the placement in the lot, let's say it would be difficult because immediately in the back right here behind the lot, which would be the logical location for the attachment, you have the current septic leach field. We're looking here is that if it was an attached ADU, its attachment would have to be somewhere in this back portion right here, which we could not do. One is because the leach field is right in that position. So we'd have to jut out over in this way, which is, you know, is building sort of attachment. It's going to change the character of the house. As a freestanding, detached, it would look reasonable in position of everything

else. As the attached ADU where we'd have to come off the back and extend that way, you have the difficulty with the leach field there, the positioning, and all else. So that's really what the reasons would be where it makes it difficult. Vice Chair Casale said OK. Thank you. Chair Morin said yeah, especially looking at the plan and seeing as he brought up, how far the house is over to the side property line. And the garage is in the middle. Vice Chair Casale said right and I'm looking at it as reconfiguring the garage and adding it in the line with the home. It wouldn't look great. I agree with you, but I needed to hear that from you. It wasn't very clear in the application. Mr. Comiskey said again, we've looked at a number of different things and doing that to say that can it be an attachment and all else? I mean, you can do anything with board and everything else, but the appearance would not be there. Vice Chair Casale said fair enough. Thank you.

Mr. MacPherson said I'm just assuming that you only have one bathroom in the ADU. Mr. Comiskey replied the ADU is actually configured to have two. Mr. MacPherson said say that again. Mr. Comiskey replied it can have two. Mr. MacPherson said so you'll have two? Mr. Comiskey replied yes. Mr. MacPherson said OK, and there won't be a problem with septic? Mr. MacPherson replied I do not believe so, no. Chair Morin said remember, too, that we're only dealing with the piece concerning the lot size and having it. All those, and I confirmed with Kathleen beforehand, all the specifics; if we approve this, they still have to get State permits for septic. They still have to have the soil check done and they still have to go to the Planning Board, who approves these types of things. Really, all we're going to look at is can they possibly put this on a one-acre lot. As long as it meets our criteria for that. This is only the start of the uphill battle to get there. Mr. MacPherson said OK. Chair Morin asked are there any comments from the public? Seeing none, are there any last items to give us before we go into deliberation? Mr. Comiskey said no, I believe sent everything.

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

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

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

Vice Chair Casale said no, I think that this is a perfect lot for it. I think the spacing is ideal. Even doing it separate, as proposed, there's plenty of room and it fits in nicely with the neighborhood. Chair Morin said yes, I agree with you.

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

Chair Morin said I'm seeing none of that here.

2. The spirit of the ordinance is observed because:

Chair Morin said again, we're looking at the spirit of the ordinance and the ordinance we're looking at is the acreage portion. Ms. Thomas said the fact that they live on a lot size that was approved before the current ones and this ordinance was based on current lot sizes of an acre and a half. As long as it fits nicely, which it looks like it does, it would be hard to hold that against them that they live on that older lot size. Vice Chair Casale said right. And the purpose is for overcrowding. This is not overcrowding the neighborhood. Ms. Thomas said right. The Board agrees.

3. Granting the variance would do substantial justice because:

Chair Morin said it would give them a chance to age in place, to do what it's intended to do and have their family closer to them also. Vice Chair Casale said right. Chair Morin said just remember those grandkids get to sneak over even more.

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

The Board agrees there is no evidence to this.

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

Chair Morin said I think the biggest piece, looking at this one, is that the way this house was built originally on the property so far over, even the alternative of attaching an ADU would be very difficult in this situation. And looking at the size of the property, it fits.

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

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

Vice Chair Casale said the purpose is to prevent overcrowding and, as we already stated, this lot is substantial enough that it does not allow for overcrowding and it fits in with the neighborhood. Chair Morin said yes.

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

Vice Chair Casale said it is for this this particular property.

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

Criteria not applicable, addressed in subparagraph (A).

MOTION Ms. Thomas moves that the Board grant the request for a variance from Article III, Section 275-21J.(2)(e) to allow the construction of a detached ADU on a 1.0-acre lot where the minimum lot size is 1.5 acres in accordance with Article III, Section 275-22, Table 1 Table of Dimensional Regulations, at 40 Maple Drive, Lot 21-24-38, zoned R&A. The motion is supported by the following findings of facts:

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

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

MOTION by Vice Chair Casale to move back to public input. Mr. Kellermann seconded the motion. Vote taken – all in favor. Unanimous. Motion carries.

Chair Morin said you're all set folks. Ms. Comiskey said thank you very much.

V. Adjournment:

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

Meeting adjourned at 7:57 pm.

The next meeting will take place on September 19, 2023.

Respectfully submitted,
Sue Forcier