

Town of Bedford
August 17, 2021
Zoning Board of Adjustment
Minutes

A regular meeting of the Bedford Zoning Board was held on Tuesday, August 17, 2021, in the Town Meeting Room at BCTV, 10 Meetinghouse Road.

Present: Sue Thomas (voting member), Len Green (regular member), Neal Casale (Vice Chair), John Morin (Chair), Dave Gilbert (regular member), Bob MacPherson (alternate member), Bill Greiner (alternate member), Kathleen Ports (Associate Planner), Becky Hebert (Planning Director).

Absent: Elizabeth Jude (regular member)

Call to Order and Roll Call

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

Approval of Minutes July 20, 2021

MOTION by was made by Mr. Casale to approve the minutes of the July 20, meeting of the Bedford Zoning Board of Adjustment as written. Mr. Greiner duly seconded the motion. Roll call vote was taken Ms. Thomas and Mr. MacPherson both abstained - ALL IN FAVOR – unanimous. MOTION carries.

Rules or Procedure Chair Morin stated we will have a presentation by the applicant. We will have public input for those in favor and in opposition of the application. I'll ask that there be no debate between the parties. All testimony comes to the Board please. If I start to see it, I'll try to say something and get it back to the Board, okay? All applicants will be heard in order of notice. If we need to take a recess for anything, we will. After we've heard the application, we will go into a non-public deliberation and vote on those applications. You can wait for tonight's vote, or you can call the Planning Office after 8:30 am tomorrow. I'll ask that everyone please silence your phones so that way we're not hearing those wonderful rings, or whatever they might be, during the meeting. Anybody looking for a rehearing. Any party has 30 days to request a rehearing from a decision of the ZBA. The Board has 30 days in which to respond to such requests per RSA 677:3, tomorrow being day one. All requests must be in writing and must contain new evidence. Please point out any errors you believe the Board has made in its decision. The criteria for variances: I'm not going to go through the five criteria. We're going to ask each applicant to go through that criteria on their application. Also, for a motion to pass, there must be three affirmative votes. We have a full Board tonight so we should reach that. I'll ask anybody who thinks they're going to testify this evening to stand and be sworn in. Honorable Counsel is exempt, but I do need to swear everybody in. Please stand – even if you think you might not. Let's get it over with just in case you're going to speak so we don't have to stop and do it later.

Please raise your right hand. Do you swear the testimony you give at this hearing is the truth, the whole truth and nothing but the truth?

Room affirms.

Old Business & Continued Hearings None

New Business

Chair Morin began the agenda with **Carnevale Spa Associates, LLC and Bedford-Carnevale, LLC**. There are three items on the agenda for this and I'll go through each one of them.

Mr. Greiner recuses himself from these next three items on the agenda as he is an abutter.

Chair Morin said, I'll go through each one of these. The first is a request for a variance from Article III, Section 275-21 F(2)(a) for impacts to the existing buffer between the commercial use on Lot 13-40-1 and the R&A zone on Lot 10-50-5, on Olde Bedford Way, Lots 13-40-1, 13-40-2, and 10-50-5.

The second item is a request for a variance from Article III, Section 275-21 B(2)(a)(1) to allow a market-rate elderly housing development where affordable housing is required for 25 percent of the housing units on Olde Bedford Way, Lots 13-40-1, 13-40-2, and 10-50-5.

The third item is a request for a variance from Article III, Section 275-21 B(3) and Section 275-21-A, Table 2, Table of Uses, footnote 33, to allow a non-cluster, elderly housing development including driveway access, one elderly housing unit, and associated improvements on Lot 10-50-5, in the R&A district where elderly housing is not permitted unless designed as a cluster residential development, on Olde Bedford Way, Lot 10-50-5.

Before I move forward, I'm going to ask the Board how do you want to handle these three items? Do you want an overview and then go through each one and deal with each one separately? Or do you want to get an overview, get all the testimony on all three, and then deal with all three votes at once?

Mr. Green said, I like all three. Chair Morin asked, Sue, do you have a preference? Ms. Thomas does not have a preference. Mr. Casale also does not have a preference. Mr. Gilbert said, I'm with Len. Chair Morin stated, alright, so we'll get all the information and then we'll go forward from there.

Ari Pollack, Gallagher, Callahan & Gartrell agreed with the format and testified: Good evening, Mr. Chairman, members of the Board, please let me know if you can't hear me clearly. I'm Ari Pollack. I'm an attorney with Gallagher, Callahan & Gartrell, a law firm in Concord, NH. I'm here this evening to represent Carnevale Spa Associates, LLC and Bedford-Carnevale, LLC. We're before you this evening for the three variance requests that were just read into the record. With me this evening and to my right is Jack Carnevale, the landowner and the project developer. You also would likely know Jack as the owner and operator of the Bedford Village Inn and the Bedford Grand. Also, with me this evening, sitting behind me is Jeff Kevan of TF Moran, our civil engineering firm, and Aaron Weinert with our architectural group.

The project before you tonight and if I can just put up a graphic. The project before you is classified as elderly housing under the ordinances table of uses wherein at least one of the occupants of each housing unit needs to be 55 or older. The use is permitted in both the commercial and the residential districts. That's important because this property has area in both of those districts. This is, on the screen, our preferred layout for the project, which is a conceptual layout of nine single family residences. This was included with your application materials. The total land area for the project is just over seven acres. There's seven and a half acres, I believe. That includes a lot line adjustment which we'll get into as pertains to one of the requests, but a lot line adjustment in this area here where I've got the cursor moving to accommodate the access road coming in from Olde Bedford Way. Once you are on the access road and come through this adjusted area, the private road will then extend westerly to a cul-de-sac terminus and there are seven homes located around and in the vicinity of the cul-de-sac. There's one located to the southeast of a wetland area and then one located on the entry parcel, which is the residentially zoned parcel.

The ownership platform for the project is intended to be condominium--footprints with common infrastructure, common drainage, and governance. Obviously, the private road would be the primary piece of common infrastructure maintained and managed by the Board. At this point, I'd like to introduce Jack Carnevale to just discuss a little bit about the project goals, the interconnectivity between the hotel and amenities offered for residents of this development and, frankly, to share that he intends to be a resident in this development. Take it away, Jack.

Jack Carnevale testified: Thank you very much. First and foremost, I take pleasure in being here tonight and thank you for having us here, getting away from all the world troubles and talking about something that's going to be responsible and doable and sustainable. Going back a little bit, I just want to go through just a little history in how we got to this point. I want to commit to the Board that this isn't a flash in the pan. This is something that's been developing for over 30 years now. When I bought the property--actually took possession in 1982--I told my banker when they financed the property that I wanted to expand the current facility by oh 50 or 60 rooms, and I also wanted to do a lifestyle community next to the Inn. He looked at me like I had three heads and he said, let's just go ahead with the financing, and we'll take it from there. Along the lines, I don't know how many people remember the way Village Inn Lane looked before we took it over and I started buying the houses on Village Inn Lane. Basically, I bought four houses in anticipation of building the new Grand. I wanted to eventually build those 50 rooms--which took me forever to do--since all the homeowners knew what my intentions were, and they were raising the prices of their homes well beyond what the real value was. I look back and I think to myself, this is an incredible improvement over the way it was when it was Village Inn Lane. I remember the first house that I bought was \$126,000. I bought it after there was an offer on the house for \$125,000 and the owner took that offer, and I said I'll give you \$1,000 more. He said, okay, I'll take it. So, I bought that house, and it was literally a shack. It was a five-room house, and I housed oh I think five culinary students from Canada. This was before 9/11. They worked at the Inn. That was their room, and I gave them board and they stayed in that small little, tiny house. Then, eventually, I bought home two, three, and four. The fourth house and the last house I moved on the Inn property and it's now the Luxe Salon & Spa. Originally it was a facility we used for bridal parties on the weekend mostly for the families. It was a really nice accommodation with four bedrooms, etc. After a while, when we built the Grand, I felt that we needed a spa. We basically converted that facility into a spa, which is currently operating very successfully as the Grand is, as the original Bedford Village Inn is operating at this point. So basically, I committed to do this years and years and years ago. I've been planning. I've been hoping. I've been planning. I've been thinking about this for a number of years. It's

not like this was invented last night. The whole scenario that surrounds this community is going to be control. The control comes from me and the architects that I will control the architecture that goes on in this development. I have a style of architecture that I believe we submitted to the Planning Board, that identified with and not that every house is going to be similar, but every house has to have some character to it that matches pretty closely with something like this. This is much larger in scope. Actually that will be my house and it will be about 2,900 to 3,200 square feet where this particular house is about 6,100 square feet, but we're going to shrink it down. I'm anxious to move into a smaller house, something with a bedroom on the first floor, which hopefully all the residents will have a bedroom on the first floor, so we don't have a lot of stairs involved with people over 55 years. I think the community, in that it's going to be a 55-plus community and a gated community. We intend to bring water, sewer and natural gas up to the community, which is something that I think is going to be very sought-after. I love cooking with natural gas instead of propane. I think everyone's going to enjoy the fact that they have natural gas on their property. I'm looking forward to being a part of this community that will share in all the recreation of the facilities at the Bedford Village Inn, including the pool, the exercise room, transportation that we have—a Sprinter. We have a Mercedes SUV available, which we intend to provide transportation to the Manchester Airport. So, if you want to take a vacation, you don't have to pay for parking over at the Manchester Airport. We'll bring you there. You call us when you're ready to go. We'll come back to pick you up at the Airport. I think there's going to be a lot of conveniences there—even if you want to make a reservation at the BVI for dinner, we'll come and pick you up in one of our vehicles. We're looking to make this a real, active lifestyle community where there will be sidewalks. The landscaping that we provide will be, I think, second to none. The Hillside Community will lend itself to architecture that's not seen in Bedford. It's a sloping piece of land. We hope to have windows in the houses that look out at the outdoor natural landscape. A lot of this will be natural landscape. One of the things we don't want to do is clear cut the development. We want to plan this so that the development is...the lots are established and then we cut trees based on where the lot is and how the houses are going to be built. There's going to be major input from a landscape architect, plus myself. I consider myself a novice landscaper myself because I've done all the landscaping at the Inn and I'm looking forward to this project for doing the landscaping. So, really looking forward, I think it's going to be a major plus for the community, bringing a lot of attention to the community and providing excellent housing for nine lucky homeowners that will have the privilege of living up at the grand residences at the Hillside.

Mr. Pollack said great, thanks Jack. Just to continue with the application presentation. In working with staff on the concept plan in front of you, we identified three variance requests that would bring the proposed project and layout into conformity with the ordinance and, if granted, allow us to move forward with the Planning Board.

First and simply in the order they're listed on the ordinance is, again, the proposed adjustment to an existing buffer strip to make a corridor for the project access road. Again, that's in this area where the cursor is now. I'll get into each application in a moment.

Second, we're asking for relief from the 25 percent affordability requirement for elderly housing given that this project proposes a very low density count relative to what would otherwise be allowable for an elderly housing development and the single-family nature of the proposed development.

Third, and it's really only relevant to the existing residential lot on the top of the screen—the northern lot. It's lot 10-50-5. We're seeking relief from the footnote attached to the Use Table that recognizes that

elderly housing is allowed in the residential zone, but that it needs to be part of a cluster subdivision. I'll get into how, essentially, we've accomplished the same thing in our condominium. In terms of the elements, I heard the Board's preference to have everything presented at once, and I'll go through them in order if that makes sense.

Variance number one relative to the buffer strip – even with an adjustment to the boundary between lots 10-50-5 and existing Grand Hotel lot and parking area 13-40-1, the access driveway runs through this pinch point here at the southeast corner of the assisted living facility's lot. It's between the assisted living facility's lot, which again has significant distance from their improvements and the commercial parking area for the Hotel that now exists. This is for the purpose of putting in the access road through this narrowed area so that we can get access to what otherwise would be this landlocked parcel in the rear. In terms of the public interest, this narrowed stretch is not clearly visible from Olde Bedford Way and it's substantially distant from the improvements on the adjoining assisted living parcel. In other words, we're able to achieve the type of separation that the ordinance and the strip requirements are intended to ensure. There's a significant grade, you can see some contour lines on here, and this area plateaus a bit up in this narrow pass, but from Bedford Way it's quite difficult to see all the way up that hill and then on the flat at the top.

The Spirit of the Ordinance.

The spirit of the ordinance is observed in that the proposed housing units would, again, be more than 50 feet from the subject area. We can provide landscaping on the sides of this access road to beef up what's already on the existing parking area and what is naturally occurring in the assisted living lot to the north.

Substantial Justice is Served.

Substantial justice is served in that the lot line adjustment would allow access to and development of an otherwise landlocked lot, 13-40-2 to the rear. This is about five and a half acres, and this adjustment would provide that access.

Values of Surrounding Properties not Diminished.

Surrounding properties are protected by the upscale nature and residential style of the development. I think you heard from Jack, and you saw the elevation. What's intended here is very consistent with an upscale residential neighborhood that's to the rear and to the west of these properties. We're not proposing multi-unit style or, frankly, additional assisted living units, which have all been considerations, but certainly not Jack's long-term vision for this property. And certainly not what we want to see here.

Literal Enforcement of the Ordinance Would Result in Hardship.

In terms of hardship, the lot's otherwise landlocked and it needs zoning relief for reliable access. Additionally, and we'll get more into this with the other variance, but the proposed use threads the needle in terms of being a permissible residential project on a lot that's zoned commercial. It's something of an oddity here where we're essentially pursuing a residential use—a residential housing layout—but the lot is actually zoned commercial, and it is a permitted use.

The second variance relates to the affordable housing requirement. The ordinance requires 25 percent affordability and, frankly, that equates to three of the nine units. It's a pretty heavy lift. As Jack discussed, the proposal is for nine upscale single family residential units. Whereas the ordinance would allow up to 28 dwellings per acre, in an elderly housing development. Nobody wants to see that here.

What would equate to dozens of units of assisted or nursing-style living, that's not our density. That's not our project. It's not our desire. I just point that out to explain that three of nine is heavy considering how light we're keeping the density. It causes us to seek relief from that affordability requirement.

Variance is not Contrary to Public Interest.

The variance would not be contrary to the public interests since the relief would allow for a use that's consistent with the surrounding neighborhood and, frankly, the nearby Inn. The whole idea here is to have these houses be affiliated with the amenities at the Inn and have that be an attribute of this neighborhood. You're not only buying into an elderly housing community, where others might be in the same station in life, but you're also buying into those amenities that are offered right nearby.

Spirit of the Ordinance.

In terms of the spirit of the ordinance, it's simply the reality in this case, I think, that the opportunity doesn't lend well to affordable housing goals. This lends well to more of the same. You've got an upscale neighborhood. You can match it with more upscale neighborhood. While there's certainly nothing incorrect about affordable housing goals, it's simply our thought that they're better provided near some of the more retail centers in town, along Route 101. Other places are more suited for multi-unit density where you can have that affordability component and not sink the ship.

Substantial Justice is Served.

Substantial justice would be done because the development proposal here, you know, I think it ends what has been a long story of speculation about what would happen with this rather sizeable and improved tract. You'd no longer have that lingering uncertainty for the neighbors. You'd no longer have what's going to happen there. Is Jack's story going ...how's it going to end, and who's going to end it? You'd reach your substantial justice. You'd know what's happening.

Values of Surrounding Properties not Diminished.

The value of the surrounding properties would be much better protected without an affordable housing component. Just a quick search on GIS showed that the surrounding properties are all of significant value. The Arrowhead Drive properties are well over a million dollars in assessment. I don't want to point out one versus another, but they're all significant assessment values. Having an upscale nine-unit development versus a more multi-unit approach would be significantly more protective of property value than the multi approach.

Literal Enforcement of the Ordinance Would Result in Hardship.

In terms of hardship, the property is wedged between two commercial uses. Frankly, its zoned commercial, and it could easily be developed commercial, but this project really kind of threads the needle, if you will, by offering, again, a consistent use in a commercial zone. There's just no way to check all the boxes of single family, elderly housing, keep the density low, keep the impact low with a small amount of access roads, stormwater management and things for an association to govern - at the same time as you're building in an affordability component - something's got to give. It's our request, given the circumstances, that the zoning restriction interferes with the unique circumstance of this property and that these affordability goals can be achieved more appropriately elsewhere in the community.

The third variance relates to this northern residentially zoned lot. It really is simply, elderly housing is already allowed in this district, but there's a footnote dropped in the Table of Uses that talks about having it included in a clustered subdivision. Well, in this layout, there's only one unit proposed here.

There's nothing to cluster it with. In that sense, I guess we've complied. More importantly, it's going to be part of the whole condominium scheme of development where you are essentially clustering the homes on the other property. You're avoiding wetlands and buffers and keeping the density low with the setbacks and protective areas surrounding the units and in this one as well even though it's on a lot all by itself. In our view eliminating the cluster requirement is consistent with the public interest since it only applies to the one lot where there's only one unit being proposed.

The Spirit of the Ordinance.

In terms of the spirit of the cluster requirement, it's being served by the common scheme of development where you've got a nine-unit housing program, again, with shared infrastructure, a minimum road that doesn't provide all of the frontage of a conventional subdivision. It keeps it as restricted as possible.

Substantial Justice is Served.

Substantial justice is done because it essentially lines up the residential lot with the commercial lot where that footnote does not apply. It's simply not in the table for that district.

Values of Surrounding Properties not Diminished.

Surrounding properties would be served positively – this existing lot here has a single-family residence on it. I believe it's been a rental property for a number of years. Jacks recently acquired it. It would be raised as part of our program and a new structure would be put in its place that, almost certainly, would be positive to surrounding property value.

Literal Enforcement of the Ordinance Would Result in Hardship.

In terms of hardship, it's really the ability to incorporate this property as a residential lot into the larger scheme of development with the commercial lot and lining up the requirements of one district versus another.

At this point I thought it might help to introduce Aaron to talk a little bit about the architecture that's being proposed. Aaron, so if you go right to that microphone over there, we don't have to play musical chairs.

Aaron Weinert testified: Can everybody hear me okay? Great. My name is Aaron Weinert. I'm from Studio DRAW Architects based in Boston. Joe Fratoni is here with me from my office, who is working on the project as well. I'll keep it brief because I think Jack already spoke to a number of the features of the homes. What we want to do here is create an exciting and cohesive neighborhood. As Jack mentioned, we are going to put together guidelines for the design that will be set forth for anyone building a home on one of the properties and, also as Jack said, not every house is going to be the same. They're all going to be different. That's partly due to the fact that we don't want to make a cookie cutter kind of development. Also, because each lot has setback requirements and wetlands requirements and what you can't really see on the plan as well as in person is this is a pretty hilly site. That means that each house is going to have to deal with the topography differently. I think that's going to create a really cohesive neighborhood without it being the same house repeated over and over again. We also are intending to keep it in a style that is similar, but also its own distinct group of houses to the area. We're also going to use materials that are found in the area. We also may introduce other materials such as metal roofs and that kind of thing to give it a bit more of a modern twist. We also do want to keep it keeping with the neighborhoods around it. The homes themselves will also have all the bells and

whistles in terms of smart homes and that kind of thing. We're also committed to using sustainable materials and be as ecofriendly as we possibly can. That also includes providing systems within the homes that are energy efficient and so on and so forth. Joe is there anything you should add? I think that's about it. As Jack said, this house is representative of the feel that we want. This is a larger house than there will be. They will all be somewhere around 3,000 square feet. Thank you.

Mr. Pollack added, I would only add that the presentation we've provided is consistent with the written materials that we had provided prior to the meeting, which I think the Board members have had access to. Our whole team is available for your questions. Thank you for your consideration.

Mr. Moran said, thank you. We'll start going around the table. Sue, do you have any questions? Ms. Thomas answered no, I'm good right now. Thank you. Mr. Moran asked, Len? Mr. Greene said, yes. I've got a few issues that are problematic for me. One – you talk about having affiliated ownership. What does that mean other than the owner of this development also owns the Bedford Village Inn? Ownership changes. Things change. Is there anything in writing? Is there anything specific that says the people who are buying there have these? You're touting this as one of the reasons for the variance, but you give us no specifics as to the legal ramifications. Second, you claim that the site can't sustain inclusion of affordable units. That's a fine assertion, but it tells me absolutely nothing. You give me no facts and figures as to the price point. You give me no facts and figures as to how having an affordable unit would affect the development. All it's telling me is that you can make more money if you don't have to deal with affordable development. That's not a reason for a variance. If you've got some financial reasons and can price it out, that's different. But you've given us absolutely no facts on that issue. Then you said elderly housing is permitted and it's better off somewhere else. Presumably as long as it's along Route 3, that's fine, but if it comes anyplace else, it sounds to me like your argument is NIMBY. Elderly housing is fine or affordable housing is fine as long as it's not in my backyard. That again is not a reason for a variance. If you could address those questions, I'd appreciate it.

Mr. Pollack said I certainly can. Thank you for the questions. In terms of the access to the amenities, the condominium documents which would need to be reviewed by the Attorney General's Office, would certainly be reviewed from a consumer protection perspective and we would need to have some form of joint use agreement or amenity access agreement that would bind not only the current owner of the Inn, which in this case happens to be the same person, but would bind the successor entity as well. People would be buying into this development knowing the opportunity exists as being offered to them. It's part of the value that they are receiving when they buy into this development. It would be documented, and certainly we could accept that as a condition here, at the Planning Board, and it would be addressed by the Attorney General's Office in their condominium review.

Mr. Carnevale added I think with respect to a developer, who's me, who's a fledgling developer, making more money from this—no. I think I have opportunities to make a lot more money if I provide a greater density to this project, which I don't want to do. Period. I can make a heck of a lot more money than putting nine houses on this development, and I chose not to do that. I don't want to disrupt the elegance of the Grand and the Bedford Village Inn. I want to do something that complements the facility. In terms of the people, the owners, they're going to be owning the land and the house that they live in. It's not going to be me. As a matter of fact, I'm going to hire a management company to operate this facility—not me. It won't be me. I might be on the Board, but that's it. I will, as Ari states, I will make sure that, if and when I ever sell the Bedford Village Inn, this complex is protected forever. It goes—deeded control over the facilities that are available to the Inn are always available to the owners of this

property. Ownership is individual and access to the facilities will go to the Inn. That will be done before anyone puts a dollar down on any one of these particular homes. I think over the last 30 years I've abided by all the rules, building codes, everything that I had to do, and I hope you can trust me for those particular aspects of this community. I will certainly don't want to live with people who I basically pull the plug on them.

Mr. Pollack said we can also, since we're on the record and under oath, we can also put a little more information in the record for you on affordability. We're talking about single family packages. The condo unit in the \$400,000 to \$500,000 range plus a home built on it, so you're talking packages north of a million dollars. It's consistent with the neighborhood that surrounds it. If you went to a multi-unit platform, you'd be talking about significant additional unit count. You'd be talking about significant dollars for parking areas, additional drainage for impervious parking areas. You'd be talking about far more traffic impact and, in this instance, the idea here is to have everybody parking in a garage in their unit or at their unit. Whereas in a multi-family development style, you'd have a significant parking area with some shared parking, significant more impervious coverage. You'd fade quite quickly from low-impact development, and you'd be picking up costs that can be shared amongst a higher volume of units so that you've got that affordability component. There's another wrinkle to the affordability component that I wanted to bring out. According to the ordinance, and let's remember this is an elderly housing development, according to the ordinance language, it talks about annual household income. There are a number of--it's not surprising, that there are many folks who would qualify by age for these developments who are retired. They may have significant lifetime savings, but they don't have much income. They could qualify for an affordable unit because the analysis is entirely directed at income and not savings or assets. It was simply our calculation that it was easier to ask for relief from the entirety of the affordability requirement than to start slicing and dicing and getting technical with income versus savings and to try and keep the density as light as possible by not trying to introduce that factor in this setting between commercial uses... you look like you're about to say something.

Mr. Green replied that's all fine, but paragraph five of your presentation says it cannot sustain the inclusion of affordable units. That's what I'm asking. Why not? What's the dollar figures? You're not answering that question. I'm just reading what you put in. You're giving me an answer to a different question that I didn't ask.

Mr. Pollack answered based on the median incomes in this area, which I think are from the Manchester market, you would be talking about a significantly lower income and asset level than what this development is targeting. You simply wouldn't find buyers for this style of home that could qualify. They wouldn't be moving here. You'd be doing it purely for the purpose of compliance and not achieving much in terms of end results. Mr. Green said thank you. Chair Morin asked, Neil?

Mr. Casale said Len addressed some of my concerns. I just have one question. This can be addressed to either one of you. You keep throwing out about the fact that this comports well with the neighborhood. In your mind it seems like you're limiting the neighborhood to houses that we are not only not on this map, but that you can't even see from the road, which to me the neighborhood would include anything that is contiguous to that Olde Bedford Way, would be my definition. Maybe not yours? So, you're using that as your way to say hey we want to keep it low density because it blends well with houses we can't even see on Arrowhead. I don't know that Arrowhead is up there, and I don't know that the homes are a million dollars, but would you not agree if you keep along that same line where you're going—at least in my book—well beyond this property into something we can't even see, then why don't we also include

the assisted living community next door, which basically are multiple apartments—many—huge building. Why would we not include Levy Drive which is right across the street? Dunkin Donuts, assisted living...that to me, if you want to include Arrowhead, you should also include across the street as well. Correct me if I'm wrong.

Mr. Pollack answered the definition of a neighborhood is always subjective. I think your interpretation is as reasonable as any and as reasonable as ours. What we have tried to do is focus on the properties that we've identified as abutters for this proceeding and many of them have significant value and significant improvements. There's also significant unimproved land that borders...or it's got a residence on it but it's a significantly sized parcel, and I know that that landowner has significant concerns about additional commercial uses in his backyard. So, I think you're going to hear some of that tonight, and I think it's important to recognize that we're trying to thread the needle. We're trying to be that transition area between the assisted living facility which is approved and exists and built and in operation versus the residential single-family lots and while the hotel and restaurant and spa is a commercial concern, it's certainly light commercial. It's certainly more residential in appearance than institutional. I think that's also an important consideration in terms of how you define your neighborhood. If you want to include the Dunkin Donuts Plaza, I think you've gone too far. I would concede, of course, that is not residential.

Mr. Casale replied okay. Just one other question. You had mentioned that this was your preferred layout. Do you care to comment on any other options?

Mr. Pollack said we had submitted an eleven-unit layout, which, I think, is in the materials right there. It stays with the condominium-style single family. It extends further to the rear in terms of impact to abutting owners. It's a unit count that would require some modifications to the roads and some modification to the drainage system. I believe that it resulted, yes, in a significantly larger wetland impact to get the road in that configuration. It quickly became our second choice, and I believe staff agreed with that in our presentation to the Planning Board on our conceptual visit as well as in the report provided for these applications.

Mr. Casale said okay, thank you attorney. Mr. Pollack said you're welcome. Chair Morin asked, all set? Dave? Mr. Gilbert said I don't have any questions right now. Chair Morin said okay, Bob?

Mr. MacPherson said yes, I have a clarification from what you have talked about on the waiver for the affordable housing. Are you saying you would not go forward with the project if this waiver was not granted? That you would not be able to make other alternatives?

Mr. Pollack replied I think we would not go forward with the project as you see it on the screen in front of you. We would not be able to make three of those nine units comport with the affordability requirements. What we would likely need to do is redevelop the project with multi-unit buildings or multi-unit concept or townhouse type style. It would not be what you see in front of you. Mr. MacPherson said thank you for that clarification. Mr. Pollack said you're welcome.

Chair Morin said alright I have a few for you. Why not change the zoning to the residential lot? That would affect two of the three variances you're looking for. Just asking why you didn't go in that direction?

Mr. Pollack replied I'm not sure it would affect two. I think it would certainly affect the footnote relative to the residentially zoned parcel. As far as the landscape buffer strip is concerned, I think the issue would be the same. Chair Morin added if that property was commercial, why would the buffer strip be an issue at that point?

Mr. Pollack said I don't think it's an issue of different zones. I think it's a requirement. Chair Morin said I think it's an issue of being ... abutting a residential zone, isn't it? Ms. Hebert added it's abutting uses. Chair Morin said it was there because the next-door property is a residential zone. But if it wasn't residential anymore, and it was commercial, that buffer wouldn't be needed anymore, would it?

Mr. Pollack said the buffer zone requirement in Section 275.26 describes it as types of uses, not necessarily types of districts. So, I think we would confront the same issue. I'm sorry for giving you the hard answer first. The easier answer is it's just the footnote talks about clustering of the units, and we've achieved the same thing in terms of a condominium style of layout. We've got the homes clustered together with the open spaces surrounding it. We haven't subscribed necessarily to frontage on a lot or to setbacks from each other. We've clustered those houses to provide maximum buffering to the abutting properties.

Chair Morin said you brought up, I think at least two of you brought up, the amenities issue with the homeowners being able to use the amenities at the different locations. Isn't by zoning ordinance, you have to do that for an elderly project? It's not a special thing that's being done. Isn't it something that you have to provide?

Mr. Pollack answered again, it's kind of like the neighborhood discussion. It talks about the provision of amenities. It doesn't talk about which, where, how many, what. In our case, we have the special circumstance of being next to the Inn, an established concern. Owned by the same person. We can document the availability of those amenities which I think we'd all agree are significant. What does it do for us? It saves us from providing a lot of that on premises. And to address the prior concern of what if the Inn sells or what if somebody doesn't want to do that anymore, I think it would have to be an element of our condominium registration because the owners of these structures would be banking on that availability.

Ms. Hebert said I believe it's also a federal requirement for age-restricted housing, correct? Mr. Pollack answered that could be and we will paper that. I understand the concern and it is most certainly part of the marketing package. It will have to be documented from a consumer protection standpoint. Chair Morin said I just wanted to make sure people understood that might be listening or in the audience to know that it is part of what's written in the ordinance is and as Becky says possibly federal law and that type of thing so it's not a special item to an elderly housing unit that there have to be amenities of some type.

Mr. Pollack said there are measures of degree. You don't have to have a spa and a pool, transportation, restaurants and all of that. You can have a club house and call it your amenity and qualify. Our intention is to do significantly more. Chair Morin said that's all I have. Any other additional questions from the Board before I open it to the public? Seeing none, I will open it to the public for folks that are in favor of the application. Then I'll move forward to the folks that are in opposition. Okay, go ahead.

Gary Ekdahl of 10 Braeburn Court, Bedford, NH testified: I'm Gary Ekdahl. My wife, Anne, is here. We're long-term residents of Bedford. We've been looking at downsizing and going to something that would be more appropriate for our age bracket and in the future as well. We've looked at this property. It lends itself very well, I think, to the development. It would be advantageous if we could become part of this type of a community. It's very difficult to find this type of facility within the confines of Bedford. We have been looking and we're kind of anxious to move forward. We're hopeful that the Board and the developer will see their way to make this come to fruition. Thank you.

Jim Lamp of 30 French Drive, Bedford, NH testified: Good evening. My name is Jim Lamp. I live at 30 French Drive. Our property abuts this, basically the blue line along the bottom of the page that you see on the screen. We've owned the land for 30 years. We've lived there for 27. To give a little history to the Board if you're not aware, we worked with Jack back when this was rezoned. We wanted to help Jack do the hotel, but we also wanted to protect ourselves and our abutters from future development. The Town saw fit at that time on the rezone that they could not rezone a portion of the land. We would have preferred the back portion remain residential. But they didn't want to have a split zone on a piece of land. They said we have to rezone the whole thing. So, we worked with Jack and his attorneys at the time, and we put some covenants and restrictions on the back piece of land so mostly where you see the seven buildings clustered in the back has covenants and restrictions that are attached to my wife and my ownership of 30 French Drive. Our land is 22 acres. We're away but the trees are fairly thin there and during the winter we can see right through the property all the way to the senior living facility. The point of the senior living facility and talking about the adjacent communities, I think the town figured out that the zoning was improper and changed the zoning. So, that development could not occur today. But it was grandfathered because they had the application in before the zoning change. I believe that's the case. Correct me if I'm wrong. This is consistent. Jack worked with us again back in 2012, and he proposed a nine-lot residential development. I think there were five variances. It did not get past the ZBA at the time. But it's very consistent with what's being proposed here. I think there is some anxiety. Our restrictions only last for a period of time. We have restrictions on the hotel use for 30 years, which there's probably only ten years left. We have restrictions on the remaining back land for 50 years, which there's 30 years left. I would like to see this done because of the density that's allowed. There is a loophole in the regulations. The covenants and restrictions were really meant to keep the back land consistent with what we've allowed in the RA zone. That five to seven and a half acres would be exactly five units at an acre and a half each if you don't put a road in. I think this is a reasonable proposal. I think there is something to be said for the area. This would not have been if we could have worked things out with the Town, this would never have been zoned commercial, which would not allow the density of 28 units per acre. That's two hundred ten units on this lot. It's not the right use. Push comes to shove, I'd be afraid what the next proposal would be. It might even meet the regulations and not have any variances required. I would ask the Board to consider this. I think nine units is reasonable. I think they're going to find when they put these three thousand square foot homes on the lots, it's going to be a little difficult to grade it out. They might lose a unit or two, but the proof will be in the pudding when they get the grading, and they work on it, and they go before the Planning Board. That being said, I think this is a reasonable proposal. When they were before the Planning Board for a Preliminary Hearing, I requested that they include the buffer. They allowed lower buffer underneath, because in this area the wetlands—it's kind of a weird wetlands—it gets washed out so there's not a lot of undergrowth. So, I was hoping that they could do planting. They agreed to do additional plantings, naturally inside the trees that would be inside the buffer. So, I'd like to say I'm in favor of this. I think it's a reasonable use and I'd like to ask the Board to consider putting a restriction on number of units so that when they get the variances, they don't have the ability to come back and increase the density on the proposal. One question, if you can

ask through the Board, the architect. I'd like to know what the footprints are shown on this plan—what size the footprints are when they're talking about three thousand square foot homes—just to see if they're two-story homes, one-story homes and how that might work. Thank you. Chair Morin said, if you want to answer that.

Mr. Weinert said to answer your question, each lot, as I mentioned before, has its own peculiarities and we're going to be discovering as we get further into it, how much ledge there is that has to be blasted. We're trying to avoid doing that as much as possible. I think we're looking for houses, again, 2,900 to 3,200 square feet. It's going to depend on each lot just how big the footprint can be, just because some of the lots are misshapen. They're not all consistent. I wish I could give you a firm answer right now as to what the exact footprints would be. I can tell you that at least we're going to keep it within that three thousand square foot range. Probably they'll be one and a half stories. There may be like a walkout basement, not basement but a walkout level as you come down the grade. We're going to try to keep them as compact as we can, but also because of the age range of the people who would be living there, we also do want to try to keep as much of the living spaces on one level if possible.

Mr. Lamp said, if I can just follow up with one more statement? The one thing that would happen if this got rejected and they came back because they had no other alternative to develop this property with a higher density multi-family-type use is the intent, the original intent of the covenants and restrictions in my mind, and I'm not a lawyer I'm an engineer, that would be absolutely in conflict with what those covenants and restrictions are. We've kind of got boxed in and might have boxed in Jack. I don't know if it's a good way or a bad way, but there would definitely be a legal discussion after that. I think this is much more in harmony with what the intent was of the covenants and restrictions. Thank you.

Chair Morin stated Becky, before I go forward, I just want to ask the question, and I think we got the answer before, but when it comes to covenants and all that type of stuff, that doesn't have anything to do with us, does it per se? Ms. Hebert replied no it doesn't. Chair Morin said we're dealing with the zoning only. Ms. Hebert said correct, they're private restrictions. Chair Morin responded the other stuff would be civil matters between the parties. Just wanted to make sure. Ms. Hebert said yes.

Chair Morin continued okay, anyone else in favor? Alright. We'll move to those opposed to the application. Step up. Name and address please.

Bill Greiner of 12 Aspen Lane, Bedford NH testified: Bill Greiner, 12 Aspen Lane. I am an abutter. I'm not speaking as an abutter, more as just someone that owns a workforce property in Town, building a second workhorse property in Town. Workforce housing works, and there's a reason that it is in the zoning ordinance. It's pretty clear. One of the developments that I own is a few hundred yards from this—not on the other side of town, not on Route 3, not on Route 101, not buried somewhere where nobody can see it or it's not accessible. It can exist. There are several workforce housing projects which have been approved in this community, and every single one has had to comply with the 25 percent workforce component. Most recently, I believe, the most recent one that was approved was Circle Drive Associates, which had a 55-and-older development, and they complied with the 25 percent workforce housing. It can be done. It has been done. It has been done very recently. It's not what the developer desires. I understand that. This is a nice-looking development. It's just not zoned for this without the workforce piece. What the developer desires is fine, but that's not really what the ordinances are for. The attorney mentioned that the cost could sink the ship. That was initially in the presentation. One, I don't think we've seen any evidence that is the case. Len, you alluded to that. As I said before, number

two, several have already been successfully done including one that was approved less than a year ago—55 and older in Bedford. Three, even if it did sink the ship, that's irrelevant from a variance perspective. The fiscal impact of a project has no bearing on granting a variance. There are other reasons to grant a variance, but because the project may or may not be feasible is not one. As I said, so many regulations exist for a reason. Not necessarily because the property owner may or may not desire what those are. Another comment that the developer made, the attorney made, I'm sorry, is that there could be a lot of people that could qualify for this. Maybe not on the asset side, but on the income side. Workforce housing only talks about income. There is no asset test to workforce house. Somebody could take, who makes under a certain amount of money, could buy one of these with the assets they have. Maybe they're selling their home and downsizing, but they would qualify for that. But if somebody couldn't, it's not as if the project couldn't succeed. The developer could certainly hold two units, or whatever that number would be, and rent those out. Those are a loss leader. You make money on the ones on the market, and you lose on the other. That's how every workforce housing project in this town has worked. You know you're going to lose money on the workforce piece, but that's the price you pay for getting your development approved. Len, you hit a few things, not to be crass, but it sounded exactly like NIMBY. Workforce is great, just not where I am. What I didn't hear but I heard was that it might devalue my property. I don't care about some other part of Town. I care about mine. The ordinance is here for a reason, and I would just leave it at that.

Chair Morin said thank you. Anybody else? Any more questions from the Board? Back to you for responses or last comments before we go into deliberation?

Mr. Pollack said, yah, I appreciate that opportunity. It's really our position that the affordability piece will sink this layout—not development as a whole. We like this layout. Our abutters like this layout. It's a fulfillment of a vision that started long ago. This property does have some unique characteristics in terms of being next to commercial use, being zoned commercial and trying to bring forward a residential project that's consistent with the residential abutters at least in terms of the neighborhood that surrounds. It's our position that this is the best use of this parcel given its unique circumstances. We need relief in order to deliver on that vision. Thank you.

Chair Morin said thank you. With that, I will take a motion to go into non-public input for deliberation.

MOTION by was made by Ms. Thomas to go into non-public input for deliberation. Mr. Green duly seconded the motion. Roll call vote was taken - all in favor. Motion carries.

Chair Morin said alright so let's go through the application. Ms. Ports questions whether an alternate needs to be appointed as a voting member. Chair Morin says Ms. Thomas was appointed at the beginning of the meeting.

Chair Morin continued alright, so application number one is for dealing with the buffer required in the RA zone of lot 10-55-5. First item.

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 and Chair Morin state they don't see any evidence to that.

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

Consensus of the Board is no.

2. The spirit of the ordinance is observed because:

Chair Morin comments we're talking about a buffer that was put in due to the fact of what was located in the area between a commercial property, the residential property, and it does say there's got to be a buffer. Changing things around a little bit, it's, I don't think the buffer is really that important as in to where it is, how it's going to work. So, does it meet the spirit? I think it does in this aspect. Mr. Casale and Mr. Gilbert agree.

3. Granting the variance would do substantial justice because:

Ms. Thomas said considering it's a land-locked piece of property, to gain access to it I think this is probably the best way to go about that. The Board agrees there's no negative effects.

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

The Board agrees there is no evidence for 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 clarifies this is dealing with the buffer between the front piece and the Grand piece where the road would go through. Ms. Thomas comments it would be a hardship if it wasn't granted because there is otherwise no access to the back lot and it's not affecting those two lots. They're all part of the same project ultimately.

(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:**

Board agrees it would be an unnecessary hardship.

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

The Board agrees in this application, the proposed use is 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:**

MOTION: Mr. Casale moves that the Zoning Board approve the request for a variance from Article III, Section 275-21 F(2)(a) for impacts to the existing buffer between the commercial use on Lot 13-40-1 BVI Grand Hotel and the R&A zone on Lot 10-50-5, on Olde Bedford Way, Lots 13-40-1, 13-40-2, and

10-50-5 as per our deliberations. Ms. Thomas duly seconds the motion. Roll call vote was taken – ALL IN FAVOR. Motion carried 5-0.

Chair Morin continued alright so second application. This is dealing with the market rate elderly housing where affordable housing is required.

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

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

The Board agrees it would not affect the essential character of the locality.

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

Consensus of the Board is no.

2. The spirit of the ordinance is observed because:

Mr. Green says when developers come, they're supposed to make accommodation for this housing. This is not being done in this case. No evidence for anything has been presented other than this is not what the developer wants. Mr. Casale agrees with Mr. Green that it's against what the ordinance requires. Mr. Greiner said it eloquently, all developers are held to it. Mr. Greiner has been before us, and he knows we have held him to that. I don't see where there's any need not to do the same in this particular project or this particular request. Mr. MacPherson added when you talk about the ordinance, it seems to me the affordable housing applies more to multi-unit housing. I don't believe nine units fits into that. Chair Morin said you've got to go by the way the ordinance is written. I don't think it specifically says... Mr. MacPherson said I'm just talking about the spirit of the ordinance. Again, I don't see where this is something that meets that spirit in my opinion. Mr. Gilbert said I can't argue with what they're saying. Ms. Thomas said I can't argue with what they're saying, but I agree with Bob that this small development, I think, meets the character of that area and I know we're talking about the spirit of the ordinance, but what does that mean? What does the spirit, it's a very interesting word, I think. Chair Morin said we can thank the State for that. They came up with these questions.

3. Granting the variance would do substantial justice because:

Mr. Gilbert said it would provide substantial justice for the abutters and what they want. It would do substantial justice for the developer. Those are the only two I can think of. Ms. Thomas added I think listening to Jim Lamp, an abutter, and knowing the area, I think it does, and just the Bedford Village Inn, which everyone in Bedford I think holds kind of high. It's a place we're all proud of that this, actually, to allow the owner of that to do this, it fits into that whole footprint, I think. It's what the abutters want. I would hate to see more units developed on that piece of land. Mr. Green said whether we hate to see it or whether we don't hate to see it. This is a quasi-judicial Board. It's not a Board that has to vote to say you've done a nice job, so we'll make this exception. There has to be certain, specific reasons. The affordable housing aspect is a very specific reason. It should only be looked at under very strict scrutiny. There's a legal definition of what strict scrutiny is. Affordable housing, to me, is one of the things, if we are going to not allow it, it's got to be looked at strictly as to why. I don't think it meets this. I understand it's the position that every decision in this case does

not bind and control any other case. That is absolutely accurate, except, as counsel I'm sure is well aware, that Superior Court cases' decisions do not affect other Superior Court cases. However, when I was sitting on the bench, you would look to see what were other marital masters doing. You would try to build up a consistency. Now is it binding on others? The answer is no. But it sure as heck gives a good argument if other people are denied saying hey you gave it to Mr. A. You gave it to Mr. B. Why are you denying it to me? So, while it is technically not binding on us and each one is considered separate, the body of the work—and I just would make an analogy, and this is not the same thing—if you remember there was a case in Manchester. It was a criminal case on the Black Lives Matter where one defendant got a suspended sentence, and one defendant was sent to jail. The Court basically was told redo it. It did because it was not treating two people at the same event equally. While it was not controlling, it still has an affect and people look at what we do and to make sure we're not favoring one person over another just because he has a good track record. He is the same as anybody else and the fact that he has a nice business is not the important factor for us to consider when we're making a quasi-judicial decision.

Mr. Pollack attempts to add to his testimony and Chair Morin stops him as the Board is in non-public mode.

Chair Morin said the one argument I would have with you, Len, is that when we deal with cases, each application is different. It's not the same incident where two builders come in dealing with the same place. We're dealing with two different locations. Every decision we look at is independent. Every application we look at is independent. Every decision we make is independent. That's why, I think, the nice part of this Board is we have five members who vote. It's a, you know, we do have those weird times when we only have three members that are able to make it, but we've got a full Board. Every person on this Board has to make a decision based on what is out there. I understand where you're coming from.

Ms. Thomas said I would like to clarify that, first of all, I've never met Mr. Carnevale, even though we've both lived in Bedford a long time. We've never met each other. I'm not talking about how he runs his business. I'm talking about how this fits in with the character of that area and that development and this will be part of it, and I think it fits in well to that as opposed to a bigger multi-unit complex. That was what I was talking about. I just wanted to clarify, and I understand how we work. Thank you. Mr. Green added you're right that it's not controlling. But people can look and say why did this person get this? The Board agrees that happens all the time. Chair Morin said he stops it right at the beginning. Mr. Green said I understand that, but it still creates issues, and our higher-level courts are starting to take a higher look. Chair Morin said that's what they get paid the big bucks for. We're just those volunteers that sit in here try to read through everything the best we can. Alright, next item.

Mr. MacPherson said Mr. Chairman my point also is, this Board, I think, when you're talking about justice and that's the subject at hand right now, we've heard from an abutter who has got a lot at stake here. I think we need to listen to the abutters. There's really not a lot. Also, a resident who feels that this would bring justice, I guess. I think it's very important that we take into consideration, from a point of view of justice, what these taxpayers are telling us or asking us. Thank you. Chair Morin said just to say, we've heard from two abutters and then one non-abutter, so? Mr. MacPherson said interested citizen, yes. Chair Morin continued so, from two abutters, we've got one on each side, so it's very challenging. We've got to go with... it is nice when we have a full house and we're getting all

kinds of input, but sometimes it's not fun when it's a full house. Alright, so are we done with that one? The consensus of the Board is yes.

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

The Board agrees they haven't heard anything on 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'm kind of up in the air on that....if I've heard any hardships or special conditions of this property, which would make this a hardship if it's not given due to the elderly housing requirement. Mr. Casale said I'm not ambivalent. I'm a no. I don't see where it's a hardship. Mr. Green said I agree. We were given no financial facts. When somebody says it affects the values of abutting property, we usually ask where are the facts? Where's the proof? We're accepting this or they're making this without giving us any facts as to how putting two or three units at a lesser price would affect the financial viability. Without those facts, I don't see how we can say it's a financial hardship.

(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 I don't see it as a hardship.

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

The Board agrees in this application, the proposed use is reasonable. Mr. Green said it's a question of whether the variance is 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:**

MOTION: Mr. Green moves that the Carnevale Spa Association LLC and Bedford Carnevale LLC request for a variance from Article III, Section 275-21 B(2)(a)(1) to allow a market-rate elderly housing development where affordable housing is required for 25 percent of the housing units on Olde Bedford Way, Lots 13-40-1, 13-40-2, and 10-50-5 be denied. Mr. Casale duly seconds the motion. Roll call vote was taken.

Ms. Thomas – no

Mr. Green – yes

Mr. Casale – yes

Chair Morin – no

Mr. Gilbert - no

Motion was defeated 3-2.

MOTION: Ms. Thomas moves that the Zoning Board of Adjustment grant the request for a variance from Article III, Section 275-21 B(2)(a)(1) to allow a market-rate elderly housing development where affordable housing is required for 25 percent of the housing units on Olde Bedford Way, Lots 13-40-1, 13-40-2, and 10-50-5. Mr. Gilbert duly seconds the motion. Roll call vote was taken.

**Ms. Thomas – yes
Mr. Green – no
Mr. Casale – no
Chair Morin – yes
Mr. Gilbert – yes
Motion carried 3-2.**

Chair Morin said, alright, third item. This is for the non-cluster development in a residential.

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 Board agrees it would not affect the essential character of the locality.

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

Consensus of the Board is no.

2. The spirit of the ordinance is observed because:

Mr. Casale said I think so. The attorney talked about it being a footnote and I really think it is a footnote. Just by looking at that layout and looking at the individual property and then that one home down in that lower right corner, it almost looks like it just kind of blends well together and that's the way it was set up, as if it were one, contiguous lot. Chair Morin said and just to remind everybody, this is only on that lot, where that single piece is on the residential lot. I fully agree with you with that too. Ms. Hebert said just a reminder that you're looking at a specific plan and layout and design, and that's important to note if this is the layout that you're basing your decision on.

3. Granting the variance would do substantial justice because:

Mr. Gilbert said absolutely. Chair Morin added it gives them the opportunity to utilize that property, being such a small lot, but being able to utilize it in the whole piece.

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

The Board agrees they haven't heard any 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 said the one thing that does distinguish this piece of property when we're dealing with this one piece of property is it's commercial all the way around, except for across the street. It does have that to 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 I think it was mentioned earlier about the way this is set up and we'll be specific in that we do say something in this motion about if it's approved, the basic layout that we were given. Anybody else on that piece? Mr. Casale asks do we want to, I assume that they're okay with that, holding them bound to this plan as was mentioned, that it's conditioned upon that? Board agrees "as presented" would be proper. Ms. Hebert said I would advise the Board the plan hasn't been fully engineered, so as presented in concept. Attorney Pollack commented we would be fine with that condition. Thank you.

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

The Board agrees, the proposed use is 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:**

MOTION: Mr. Gilbert moves the Zoning Board approve the request for a variance from Article III, Section 275-21 B(3) and Section 275-21-A, Table 2, Table of Uses, footnote 33, to allow a non-cluster, elderly housing development including driveway access, one elderly housing unit, and associated improvements on Lot 10-50-5, in the R&A district where elderly housing is not permitted unless designed as a cluster residential development, on Olde Bedford Way, Lot 10-50-5 as presented in concept. Ms. Thomas duly seconds the motion. Roll call vote was taken - all in favor. Motion carried 5-0.

MOTION by Mr. Gilbert to move back to public input. Mr. Casale duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.

Chair Morin said, alright, our next two items are Celeste Prud'homme. Number four would be a request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations to allow an in-ground swimming pool 7 feet from the abutting street where 35 feet is required at 33 Palomino Lane, Lot 45-62, zoned General Residential. And the second is a request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations to allow an in-ground swimming pool 28 feet from the front yard where 35 feet is required at 33 Palomino Lane, Lot 45-62. Go ahead, introduce yourselves.

Tom Fini testified: I'm Tom Fini, good evening, Mr. Chairman, Board members. I'm Tom Fini, practicing commercial real estate broker here in our community for about 25 years. I'm here to assist Celeste Prud'homme in her request for these variances. She is the owner of the subject property at 33 Palomino Lane, Map 45, Lot 62. Celeste wishes to install an inground swimming pool at her residence. In order to do that, she is requesting two variances from Article III, Section 275-22A, Table 1, to construct an inground swimming pool seven feet from the side street, which is Mack Street, where 35 feet is required and 28 feet from the front street, which is Palomino Lane, 35 feet is required. The lot is approximately a quarter of an acre with a house situated somewhat in the middle of the lot and serviced by public water and septic, and it is within the GR zone. This section of our community is often referred to as "The

Pines.” When the current setback requirements in this zone are applied to the lots in this area, it can create a challenge for many of the residents to enjoy a legal and reasonable accessory use of their property without the benefit of the variances that we’re asking for here tonight. The swimming pool company recommended the west side of the lot as the most viable location for the pool for multiple reasons. I think one of the things I read said east side, but it is clearly on the west side of the lot. We do not believe granting the variance will alter the character of the locality or diminish the value of neighboring properties. Many residents in The Pines area have successfully installed swimming pools on their property. It is a prevalent, reasonable use and compatible with the stated goals of the ordinance to promote health, safety and the general welfare of the inhabitants of Bedford. We sincerely appreciate the opportunity to address the Zoning Board of Adjustments in this matter. Chair Morin said so if you could go through the applications, that would be helpful. That way we have all the information in the record.

Variance is Not Contrary to Public Interest.

Mr. Fini said the variance is a request from Article III, Section 275-22A of the zoning ordinance to permit the installation of an inground swimming pool with a side setback of 7 feet where 35 feet is required from a side street. The side street, Mack Street at Palomino is a dead-end street that services four home sites. The facts supporting the request. Granting the variance would not be contrary to public interest because the variances would not alter the character of the locality or threaten public safety or wealth here. Many residents with similar-sized lots and setback requirements have installed swimming pools on their property. It is a prevalent and reasonable use of one’s domicile. The swimming pool would be installed by a reputable firm that will adhere to the state and local code regulations to protect the public health, safety and welfare of the general public.

The Spirit of the Ordinance.

The spirit of the ordinance is observed because every effort to place the swimming pool within the setback limits has been considered. The pool designer and installer has other installations in Bedford and he has carefully considered where placement of the pool would have minimal intrusion into the setback zone and the lowest effect on the abutting properties.

Substantial Justice is Served.

Granting the variance would do substantial justice because many neighbors located on the same street and within the immediate area enjoy a similar use. A swimming pool is a legal and reasonable use of one’s property. It is a gathering place for family and friends to assemble and enjoy each other’s company. The CDC documents that swimming is the fourth most popular sports activity in the US and a good way to get a regular, aerobic physical activity.

Values of Surrounding Properties not Diminished.

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

1. The swimming pool will be placed in the right, front corner of the lot with streets along the front and along the side.
2. Swimming pools are a legal and reasonable use of one's property and not detrimental to properties within the vicinity.

Literal Enforcement of the Ordinance Would Result in Hardship.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Many parts of the GR zone are in areas of Bedford, in this area referred to as "The Pines." These homes were legally built on small, city-sized lots. Changing of the zoning regulations over the years has presented great difficulty for many of the residents in this area to accommodate accessory uses without requesting a variance. Granting a variance for this would be a reasonable and justified request.

Chair Morin asked do you want to do the second application also, please? There are two different applications.

Mr. Fini said there are. I didn't know if we could take them collectively since it's the same pool, same lot. Chair Morin said if that's how you would like to present them, that's fine. Mr. Fini replied I think so because one without the other, we still wouldn't be able to install the pool. Ms. Thomas said, and his answers are the same.

Chair Morin said so, questions from the Board, Sue? Ms. Thomas answered no, I'm good. Thank you. Mr. Green said just one question. You said that this house is served by a leach field. Where is ... I don't, maybe I'm missing it on the ...? Mr. Fini answered yes, it is in the back of the property. Mr. Green said okay, so this literally is the only place where you could put it because you couldn't put it on top of a leach field. Mr. Fini said you couldn't. You could consider possibly the other side. It would be a little bit tight or the back corner, but it would make more sense to put it here.

Mr. Casale said so it makes the most sense here. What doesn't make the most sense to me is that you've got a kidney shape for starters, which is in two areas encroaching further into this. Without the "pool guy" we'll call him here, it's kind of hard unless you can address some of these questions. This is a mid-sized pool according to the research I have done. The pool could be smaller. Can we address, perhaps, the ability, is there an ability to shrink this pool so it's more in conformance? It probably never will be, but why it's in the middle of the property versus abutting up against the home on the east side? So, a couple of questions—dimensions, location of the pool? I always hate to... I like to see a kind-of a plot plan of where the septic is. I guess we'll have to just take it at face value that there's no other area on this property, but I don't have the benefit of seeing that. If we take it where it's at, can we do anything else to be more in conformance? Mr. Fini said the pool designs go from 20 to 40 as one of the standard size pools, even though I consider that somewhat larger. This was cut down by two feet to 18 feet. After the measurements and the actual plot plan came through, it was reduced another two feet. It was shrunk each time to a smaller footprint. The original, I think, was 38 feet in length and that was cut down to 33 feet. It could have been longer had, if you add up all of the footages on that side lot with 110 feet. You could see where the pool could fit and not intrude on either one of the front or back setback. We ran into a problem because there were overhead electric lines. The idea of putting a pool under an electric line didn't seem to make much sense. I talked to one of the code compliance offices here and he

did some research for me and looked up and he said you know you could do it, but I wouldn't be warm and fuzzy even if the changes are remote that a wire would come down. I'm not sure you'd want to be swimming under one, and I kind-of agreed with him that it didn't really make much sense. That was the reason for moving the pool forward. I did check with Eversource to find out if they would be willing to do something with the line and they said they would. In that Pines area, it's very easy to dig. They would be willing to move that line. Until we found out the telephone pole is on the wrong side of the street. It's on the west side of Mack instead of the east side. That would require cutting the street, doing a while different type of operation which didn't seem to make a whole lot of sense and cost effective which is why we need to push that forward a little bit to ask for that second variance. Your other question about the distance from the house, on the right-hand side the area there is about six feet in that vicinity. If you had a four-foot walkway around the pool, it will leave an additional two feet where some stones could be there. It would be kind-of hard if the walkway were right up against the house. It just would be a really inconvenient thing to do. Ms. Prud'homme said you need it for drainage. Mr. Fini said yah that's true we didn't mention that, yah. Mr. Casale said shape? So, you had said, what are you familiar with as far as an average pool size? You're saying about a 20 by 40? Mr. Fini answered well I base it, for example, on one of my friends who is over on Bayberry. His normal pool is 20 by 40. I had him do some measurements for this particular thing because I wanted to see how wide footpaths were, what the coping distances were, because we wanted to squeeze this as tight as it could possibly be. When we measured out his pool, it was a typical 20 by 40, which looks like a pretty standard pool in many yards. Mr. Casale said thank you.

Mr. Gilbert said I'm looking at your map with your outline on the grass and you're in a box. You have nowhere to go. This is it. The wires on one side. The septic on the other. Six feet from the house. That's it. That's all I've got is you've done what you can within what you've been given. That's a much better picture than what I've got. Yah, you're right there. Mr. Casale said I agree with what's just been said. No further questions. Ms. Thomas said so you would have a required fence around it. So, I drive by here every day to go to work. I looked at it today as I was driving home. It is wide open to Palomino so they would have ... but there are a lot of houses with big white, my mother used to call them everybody was boxed in, so you'll have a big fence on Palomino so we wouldn't see the pool obviously driving down and then on Mack too. Ms. Prud'homme said yes. Ms. Thomas said okay.

Chair Morin said part of my question was are you removing all those trees along Mack or is the fence going to be just inside it? Ms. Prud'homme answered the fence is going to be inside it. Chair Morin added okay, because I drove by too and I saw that. Ms. Prud'homme said it's a nice privacy buffer. Chair Morin agreed oh yah. It's a beautiful line of trees. Ms. Prud'homme said that's why I did it. For a natural barrier. Chair Morin said okay. I'm good. Any other questions? Any last items before we go into deliberation? Mr. Fini said no. I think it pretty much speaks for itself.

MOTION to go into non-public input for deliberation by Mr. Green duly seconded by Mr. Casale. Roll call vote taken - all in favor. Motion carried 5-0.

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:

Chair Morin said I don't see that at all.

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

Board agrees with a fence around it, no.

2. The spirit of the ordinance is observed because:

Chair Morin said in normal circumstances it would be and we've had a lot of people come into this Board from this area. Everything is so small and so tight. It's amazing. I think the spirit is still being observed.

3. Granting the variance would do substantial justice because:

Board agrees others in the area have utilized their properties in this manner.

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

The Board agrees they have not heard any 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 notes where they're on two streets, that's 35 feet on each side. It just shrinks the property down to nothing when you really look at literal enforcement.

(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 notes we've talked about it. It's awfully hard to fit things into some of these properties in that area. It gives them the opportunity to utilize that space.

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

The Board agrees, 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:

MOTION: Ms. Thomas moves that the Zoning Board approve the request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations to allow an in-ground swimming pool 7 feet from the abutting street where 35 feet is required at 33 Palomino Lane, Lot 45-62, zoned General Residential. Mr. Gilbert duly seconds the motion. Roll call vote was taken – ALL IN FAVOR. Motion carries 5-0.

MOTION: Ms. Thomas moves that the Zoning Board of Adjustment approve the request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations to allow an in-ground swimming pool 28 feet from the front yard where 35 feet is required at 33 Palomino Lane, Lot 45-62. Mr. Gilbert duly seconds the motion. Roll call vote was taken – ALL IN FAVOR. Motion carries 5-0.

MOTION by Mr. Casale to go back to public input. Mr. Morin duly seconded the motion. Roll call vote taken – ALL IN FAVOR. Motion carries 5-0.

MOTION by Mr. Casale to adjourn the meeting. Ms. Thomas seconded the motion. Roll call vote taken – ALL IN FAVOR. Motion carries 5-0. Meeting adjourned at 8:53 p.m.

The next meeting will take place on October 19, 2021.

Respectfully submitted,

Sue Forcier