

Town of Bedford  
August 18, 2020  
Zoning Board of Adjustment  
Minutes

A regular meeting of the Bedford Zoning Board was held on Tuesday, August 18, 2020 via the Zoom meeting platform.

Present: John Morin (Chair), Kevin Duhaime (Vice Chair), Melissa Stevens, Len Green (regular member), David Gilbert (alternate member), Elizabeth Jude (alternate member), Karin Elmer (Planner 1), Rebecca Hebert (Planning Director).

Absent: Sharon Stirling, Neal Casale (alternate member)

**I. Call to Order and Roll Call**

Chairman Morin called the meeting to order at 7:00 p.m. and introduced members of the Board and Staff. In accordance with the right to know laws all members present indicated they were alone in the room while on this Zoom call.

Ms. Elmer read the following statement:

- *Due to the Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Zoning Board is authorized to meet electronically.*
- *This meeting is being conducted using the Zoom platform. All members of the Board have the ability to communicate with each other during the meeting, and the public has access to listen and participate by dialing 929-205-6099 and entering the Meeting ID # 94597428619 and the meeting Password 418251. Instructions regarding remote access to the meeting have been published in advance and are available on the ZBA agenda, which is posted on the Town website.*
- *There is no physical location for the meeting, which is permissible pursuant to the Governor's Emergency Order. Town of Bedford is providing public access to the Zoom meeting by telephone, and the meeting will also be broadcast live on BCTV's Channel 22.*
- *Members of the public may email staff at planning@bedfordnh.org to ask questions during the meeting or notify us of technological issues. If you have joined the meeting using Zoom, you may also ask questions when the Chair opens the hearing for public comment through your phone connection.*
- *All votes will be taken as a roll call vote.*

- *If there are technological issues during the meeting, the Chair will recess the meeting and we will try to correct the problem. If the issue continues, the application will be postponed, and the meeting will be adjourned.*

Ms. Elmer reviewed the agenda.

Chairman Morin stated the following: This will serve as notice to those participating and may wish to speak that you are required to tell the truth, the whole truth and nothing but the truth.

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 said request(s). (Per RSA 677:3) Tomorrow being day 1. All requests must be in writing and must contain new evidence. Please point out any errors you believe the Board made in its decision.

Chairman Morin reminded everyone that by State law when a motion has been made it will take 3 affirmative votes for that motion to pass.

## **II. Old Business & Continued Hearings**

- **None**

## **III. New Business**

### **1. Thomas Hamel – Request for a variance from Article IV, Section 275-28 in order to construct an in-ground pool 41.8-feet away from the edge of a wetland where 50 feet is required at 201 Campbell Road, Lot 16-8-7, Zoned R&A.**

Chairman Morin noted that before getting into the application the board must first determine if circumstances have changed significantly to warrant acceptance of this application. Per Fisher vs. Dover when a material change of circumstance affects the merits of the application has not occurred or the application is not for the use that materially differs in nature and degree from its predecessor the Board of Adjustment may not lawfully reach the merits of this petition.

Chairman Morin asked if any members of the board would like to speak to this.

Mr. Green asked if other than the Conservation Commission changing, if this was the same thing that was rejected a couple years ago. Chairman Morin said it is the same exact plan that was submitted, denied, and denied for rehearing.

Mr. Green asked for clarification that nothing factually had changed, and what had changed is that the Conservation Commission now gives its approval as opposed to an objection. Chairman Morin indicated that is correct.

Mr. Green asked if there is any case law that says that is sufficient for a new application coming forward. “Not that I am aware of,” Ms. Hebert answered explaining that you need to determine a material change, so if you feel like the additional improvements constitute a material change you could vote to accept the plan. If you feel like it is not

enough of a change from the plan you've already reviewed and denied you would decline to accept the plan.

Mr. Duhaime said he would like to get the highlights of what changes were made in order to get the Conservation Commission's revision of the approval.

Ms. Elmer provided a summary since she was the Staff liaison for all of all the various renditions of the plan. She explained that early on in May 2018 Mr. Hamel went before the Conservation Commission and the Zoning Board of Adjustment with a larger pool that was only 22-feet from the edge of the wetland. At that meeting he also provided a Plan B which would move the pool a little further away from the edge of the wetland to 38.6-feet. At that time, the Conservation Commission did not support the application. In July he came back to the Zoning Board and he had a new variance application with 41.8-feet from the setback. He had also met with the Conservation Commission prior to that and they again did not support that application. Due to it being a wetland setback, and not having the Conservation Commission support the board voted that it was not a material enough change to warrant a new application. At the end of last month Mr. Hamel went back to the Conservation Commission and made a lot of the changes the Conservation Commission had suggested during their earlier reviews of the application in 2018. In other words, if the pool did not meet the setback he put in devices to further protect the wetland from any damage the pool may cause to the wetland itself by adding rain gardens, deep root plants, stone areas for drainage, and last month the Conservation Commission did give their support to that setback.

In looking at the plan Chairman Morin said it didn't look like those items were added to the plan. Ms. Elmer indicated they were not on the plans but were part of his narrative and part of the Conservation Commission minutes. If that is something this board would like to see, she said the Zoning Board could table this and ask to see them included in the plan if that makes them feel more comfortable. Chairman Morin indicated sometimes it is challenging going through minutes trying to pinpoint everything and not being able to see it on paper. It's hard to know where any of those items are and he is sure it was detailed and talked about with the Conservation Commission, but it is awfully hard for us to know exactly what is going where and those types of things to make a decision to even hear this application.

Mr. Duhaime asked for clarification that what we need to decide is between the old one marked 22-feet and the new one, and we have to determine whether that is substantially different from the 41.8-feet plus the rain gardens, plus the approval of the Conservation Commission? Chairman Morin said the only change is the Conservation Commission recommending it. The plan itself is the same plan that was denied 2-years ago. The only change in information is the Conservation Commission.

Mr. Duhaime said the one we voted against was 22-feet? Chairman Morin said, "No" and explained that was what it started out with, but it went to the same plan that we are looking at today. Mr. Duhaime said he understood.

Mr. Gilbert said if everyone doesn't feel comfortable deciding today, we would want to go back and read the Conservation Commission report. If that would make everyone happier, it is probably the way to go. He thinks there are changes he has adhered to make it a viable thing to go forward, but that is just his opinion. He would ask everybody to take a look at the Conservation Commission and see what they detailed in order to be

more definite about your position. Mr. Gilbert read it and said he personally does not have a problem with it and said, “there really is nowhere for him to go on the pool size and he is kind of stuck”, but if everyone wants to see what the Conservation Commission said, that is appropriate.

Chairman Morin said that he read through it and understands what they said, but it would be a lot easier to understand if he can see it on paper where everything is going to be so that way we know for sure and have something concrete to go by if we decide to hear this down the road. He would like to have a definite plan on paper to back us up. Mr. Gilbert said that is where he is too.

Mr. Green said his concern is that the rule is set in place so that people can't keep coming back with changes that are not substantive to the Zoning Board. He asked if this is correct. Ms. Hebert said that is correct and explained that it is done so you don't keep hearing the same application over and over again and the applicants get one chance to make their presentation. Mr. Green said the only thing that is different about what we see now before us is that the Conservation Commission didn't like the proposal 2-years ago but is o.k. with it now. Mr. Duhaime noted that they did add rain gardens and things like that so it is not technically the same plan. Ms. Hebert advised that she thinks you should be looking at the physical improvements to the site. She noted the Conservation Commission did review that, but it wouldn't be a change to the plan. You need to be looking at a physical change to the plan whether it's a change in the setback distance or an improvement on the lot, or some circumstance on the lot that is making this application different. Mr. Green's thought is if there is no physical difference to the plan, then it is the same plan and cannot be considered as a matter of our rules regardless of who else agrees to any change. He said that our rules don't bind them, our rules bind us and that's what we've got to go along with them.

Ms. Stevens asked Ms. Hebert what would be considered as a substantial change to the lot. Ms. Hebert said it really is up to the Zoning Board. It needs to be a change to the application to request something that makes it materially different from the original application and it can be varied somewhat depending on the context of the site and go through those items that make it different from the application. In this case, it sounds like it's the additional improvements he is proposing to build along with the pool. She said it is reasonable to ask for those to be shown on the plan. If you don't think it is enough of a change you could discuss this further and act on that tonight.

Ms. Stevens indicated she would like to see the improvements on the plan, because even if we agreed we would have a motion that would be quite lengthy to insure that we are including all of the improvements, so she would like to see them put on the plan.

Chairman Morin said it was interesting....in looking at the Conservation Commission minutes their motion was conditional upon rain gardens being installed at each corner of the pool that encroaches the wetland setback, but it doesn't give any size, depth, or specifics. It is general as to the location of the rain gardens. He brought up the idea of tabling this to get a more detailed plan so that we have something to go off of.

Ms. Elmer said the Zoning Board could ask the applicant to have them show on the plan and have the wetland scientist describe why he made them that size. She said the Conservation Commission wouldn't necessarily know by looking at it either they would have had to have the same part of the motion.

Mr. Hamel came on his phone and said that he heard and understood the conversations that the Zoning Board was having thus far. Chairman Morin said that they were in the same thought pattern of having a more detailed plan and something from the professional you used for the landscaping to provide an explanation of what the rain gardens are going to do, how big they are, and specifically what is going to happen with them.

Mr. Hamel said the reason they are not showing on the plan is because there were 6 different locations proposed for the pool before they decided on the final one that he is seeking approval for tonight. Until the pool is put in there is not an exact location for where he can say he is going to put the rain gardens because it will be dependent on the slope of the yard. When using a rain garden, you want to have it on a down slope where the water will be channeled into the rain garden to allow the water to seep into the ground rather than going into the wetlands. Mr. Hamel discussed with his wetland scientist, Josh Green, actions he could take to proactively mitigate water going into the wetlands and instead of putting in barrels or trench drains he came up with something that would fit in with the environment and at the same time be just as efficient, if not more efficient than the rain at removing any chemical that may be in the pool water. Until the pool is put in it is hard to tell the size of what you are going to put in or the exact location. The rain gardens will be located somewhere where the back 2 corners of the pool are encroaching the wetland setback. Chairman Morin said he understands a specific location is tough, but would like to see some generalized areas given on a plan and something in writing from the wetlands person that Mr. Hamel dealt with explaining why it is recommended to use these and approximately where they will go. Right now, looking at his plan and reading the Conservation Commission minutes does not give the Zoning Board a lot to go with.

Chairman Morin asked if Mr. Hamel would have an issue with the Zoning Board tabling this until next month. Mr. Hamel's concern is that he has tried to go through here for the third time and he has tried to incorporate what was said in 2018 when he met with the Zoning Board and what the Conservation Commission said and that is what led to the redesign and plot plan that he is presenting tonight.

Chairman Morin explained that the Zoning Board's rules are very specific and say that if you have been denied before it is very hard to get "that second shot at the apple". With the Conservation Commission you can go back as many times as you want, and it makes it very difficult for us, so we are giving you the opportunity to give us as much detailed information as possible because at this point he is unsure which way the vote would go if we went forward tonight in hearing the application. We are trying to give you every opportunity to give us as much information as you can.

Chairman Morin again asked if Mr. Hamel would mind tabling to next month. Mr. Hamel said he would have to check his availability. He also said the wetland scientist he used is no longer with the same company and he is unsure where he is located, so he would have to try and locate him or have his redesigner try and locate him. He asked if what the Zoning Board is specifically looking for is a generalized area of the rain gardens and the approximate size and asked if there was anything else. Chairman Morin said that the board would also like some information about what the rain gardens will do. Mr. Hamel agreed to table until next month.

**MOTION by Mr. Gilbert to table this application until next month at the September 15, 2020 Zoning Board meeting. Mr. Duhaime duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.**

Mr. Hamel said he would do his very best to have the plot plan in time for September 15<sup>th</sup>.

**2. Christopher Girasole – Request for a variance from Article III, Section 275-22.A & Table 1 in order to construct an in-ground pool 17.5 feet from the side property boundary where 25-feet is required at 20 Braeburn Court, Lot 7-21-10, Zoned R&A.**

Mr. Girasole introduced himself and indicated he was alone in the room.

Ms. Stevens recused herself from this application. Chairman Morin indicated that Ms. Jude would be voting on this application.

Mr. Girasole indicated that he is requesting a variance because the proposed location for their pool is 17½-feet from the side lot line where 25-feet is required. He cannot move the pool 8-feet laterally away from the cul-de-sac on Braeburn Court because his pool guy indicated that there are a few issues: 1) There is a very deep change in grade in the slope of the ground which would make construction more complicated and require large retaining walls, and 2) There are some very large rocks and a question of whether they could be ledge which would mean a grade change and also jack up the cost, and 3) If this pool goes through he will already be removing some large trees on his lot so that the pool is not in a shaded area and does not have acorns falling into it. If he was to move the pool over 8-feet laterally away from the cul-de-sac it would take away any of the privacy that exists between the 7-14-43 lot and his lot, and potentially running into the issue of having large trees whose trunks are on their neighbor's lot but have branches that hang into Mr. Girasole's lot over where the pool would be. He would prefer to avoid this. Mr. Girasole said that the neighbors that abut him on the other side in lot 7-21-11 (Brenda and Steve Robinson) sent a letter to the Zoning Board indicating that they are completely fine with this.

It was a shock to Mr. Girasole when the surveyor came out and there was a wooden post in his yard indicating the lot line is in what is recognized as the Girasole's property now. They already have a fence at least 10-feet into the Robinson's lot along with a mulch bed and shrubs that the Girasoles care for. The house is 20-years old and they are the original neighbors. The recognized boundaries (as opposed to the actual lot lines) are well-over 25-feet away from where the pool would be and the Robinsons are fine with it and there would be no privacy issues from their standpoint. He feels it makes sense to put the pool there rather than open up a can of worms with another neighbor they don't really know and with whom they may have issues with in regard to tree removal, as well as ledge and other issues.

Photos of the property were reviewed.

Q: Mr. Green asked if he has to put up a fence which is not on his actual deeded property if that would create a whole different issue if there is no lot line adjustment?

A: Ms. Elmer indicated that would be between him and the neighbor.

Q: Mr. Green asked, “Wouldn’t he have to get approval for the fence?”

A: Ms. Elmer answered, “No, they are not considered structures.” “Only if it went over 6-feet, I think,” Chairman Morin mused. Ms. Elmer indicated he was correct.

Q: Although Mr. Girasole said his relationship with his neighbor is good, Mr. Green said his concern is if there is a change of neighbors – what happens then?

A: Ms. Elmer said the matter would be between the two parties and it is not a zoning issue.

Mr. Girasole mentioned “boundary by acquiescence” which states if something has been recognized for 20-years in the State of New Hampshire it trumps the actual lot lines. He indicated his house is over 20-years old.

Mr. Girasole reviewed the criteria for his application.

**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:**

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

Mr. Girasole said that granting the variance would in no way alter the essential character of the neighborhood or my residence. Granting the variance would in no way threaten public health safety or welfare because the pool would be greater than 25-feet from our existing fence.

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

Mr. Girasole said the lot line in question as marked by the surveyor actually fell within what has been recognized to be our property since the house was built in 2000. While the pool would be 17.5-feet from the side lot line it would be greater than 25-feet from what has been our recognized side lot line including an existing fence surrounding our property.

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

Mr. Girasole said the official lot line is not consistent with what both we and our neighbors have long recognized to be the boundary of our property. Not only is there a fence roughly 10-feet past (lateral to) the lot line, there are trees and mulch beds on the far side of the fence that we currently maintain.

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

Mr. Girasole said the pool would not be visible from neighbors’ houses. The proposed pool would be an inground pool with hardscaping and pavers that are aesthetically

pleasing. It would likely increase the value of our home, thus indirectly increasing sale value of surrounding homes when they look at the comps and what they sold for.

**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:**

**(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. Girasole said our house is 20-years old and New Hampshire law is that if a boundary of your lot has been recognized by you and neighbors for this period of time, then the recognized boundary is considered boundary by acquiescence. This becomes the legal boundary rather than the original lot lines.

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

Mr. Girasole said there is no other place on our property where a pool could be placed due to the location of our septic tank and an existing patio, and he's already addressed the issues he would have in trying to move the pool 8-feet over towards the other lot.

**(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:**

Mr. Girasole again mentioned that his neighbors had submitted a letter and have no objections to the proposed location of the pool.

Ms. Elmer received two letters which she read:

- 1) The letter from Steven and Brenda Robinson of 24 Braeburn Court read: "We have been notified by this board that our neighbors The Girasole's have requested a variance to install an inground pool. The essence of this subject variance is to place a new inground pool 17.5-feet from our property line versus the standard 25-foot setback. We offer full support with no objections to the placement of the pool."
- 2) The letter from Michael Chergey read: "I am responding in regard to a hearing you have tomorrow. My neighbors, the Girasole's, are looking for a variance to build a pool 17-feet from our property line at 7 Cardinal Court (Lot # 7-14-42) We would like to keep the pool distance 25-feet from our property line. We recently had a baby. We'd like as much privacy as possible. We are fine with the pool 25-feet from our property line but would like to keep the distance so we can enjoy our privacy."

Ms. Elmer indicated she thinks they misunderstood what the variance was for and thought it was from their property line.

Chairman Morin opened the floor for questions from the board.

Mr. Green stated that even though a petition to acquire title is not technically a ZBA issue, he thinks it should be clearly understood that if we approve this, it has nothing to do with declaring whether the Girasole's have any rights to property beyond their deeded lines and that he does at his own risk, he gathers, without consulting a property law attorney. Chairman Morin indicated he had done a little research on that today and was thinking the same thing.

Mr. Gilbert stated the letter from the neighbors not in objection/the most affected goes a long way. Because of the property and the slope, he does not see how it could be moved. If he wanted, the only thing he could do is change the shape of the pool, but he doesn't know how that affects that patio back there. Mr. Gilbert doesn't see any issues other than that.

Mr. Duhaime had no questions or comments.

Q: Ms. Jude asked to clarify if the reason the pool wouldn't be moved north is because of the slope, and there is a ledge there; or he is assuming there is a ledge there and does not want to move the rocks.

A: Mr. Girasole said he doesn't know for certain. "He" just mentioned there are several large rocks over there in the mulch and he was concerned it may be a sign of things to come underneath and it may increase the chances that there could be ledge. His biggest concern is with the privacy. He said he doesn't know if that is the neighbor who wrote the letter asking for more privacy. Ms. Elmer indicated it is not. Mr. Girasole then mentioned the issue of completely eliminating the natural privacy trees between their lot and our lot and if it might be an issue from them – that is my biggest concern, as well as the expense of trying to completely change the slope and bringing in fill to build something up to that steep grade.

Chairman Morin opened the floor for questions or comments from the public. There were no phone calls and Ms. Hebert indicated no emails had been received.

**MOTION by Mr. Gilbert to move into deliberations on this variance application. Mr. Green duly seconded the motion. 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:**

Mr. Duhaime thinks a pool in a backyard is pretty typical.

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

Chairman Morin does not see it doing that at all. Ms. Jude thought they had a fence around it too – Chairman Morin indicated that they will need to have a fence around it.

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

Mr. Green indicated it seems that it is a very strange shaped lot and he is unsure how you would put in a pool if you don't come close to one of the boundaries. Chairman Morin said, "Especially on that side of the house. It makes a very thin triangle by the plan, so it does make it challenging."

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

Mr. Duhaime said it allows a pool. Chairman Morin indicated it is a balancing act of being able to utilize their land and trying to meet in the middle with the ordinances.

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

Chairman Morin indicated we have not heard expert testimony on this issue.

**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:**

Chairman Morin mentioned as Mr. Green had just said, this property is unusual in its building area, especially on the open side where the pool could go. It gets very narrow, as was brought up in testimony between the slope and possible rocks and ledge that could be an issue.

**(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:**

Chairman Morin thinks the points concerning the property and the issues have been brought up already.

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

Chairman Morin said it is reasonable to have a pool.

**(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 by Mr. Duhaime that the Zoning Board of Adjustment approve the application from Christopher Girasole on his request for a variance from Article III, Section 275-22.A & Table 1 in order to construct an in-ground pool 17.5 feet from the side property boundary where 25-feet is required at 20 Braeburn Court, Lot 7-21-10, Zoned R&A per our deliberations. Mr. Gilbert duly seconded the motion. Roll call vote taken - all in favor. Motion carried 5-0.**

**MOTION by Mr. Gilbert to move out of deliberations on this variance application. Ms. Jude duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.**

**3. Circle Drive Associates, LLC – Request for a variance from Article IV, Section 275-27 in order to fill approximately 2,511 square feet of wetland for the construction of a workforce and elderly housing development on South River Road, Lots 35-98-5 and 35-98-40, Zoned PZ.**

Ms. Stevens was no longer recused and indicated she would be voting again on this application.

Jon Levenstein, the attorney representing Circle Drive Associates for this application for a variance introduced himself. He also introduced Jim Gove, a wetland scientist who will be speaking later in the meeting on the value of the wetlands and some other items. Attorney Levenstein explained that there is an application before the Planning Board scheduled to be heard later this month for a mixed residential/commercial development. The commercial development is going to be in the portion of the property adjacent to South River Road. He said the property is unique in the sense that Sebbins Brook runs throughout the property and basically bisects it into two separate portions – one of which is in the back where the residential housing is proposed. There will be multifamily buildings: Two workforce housing buildings and one elderly housing building. On the other side of the brook they plan to put in commercial development during a future phase of the project (it has not been designed yet, but he showed where it would be located on the plans the group was viewing).

He said the project, as they are proposing it, requires that a small wetland (a little over 2,000 square feet) has to be filled and the portion that is listed as “Wetland Fill #3” on the plans.

Attorney Levenstein explained the history of what has taken place: They’ve already gotten a wetland permit to fill that wetland from the State Department of Environmental Services (DES). Even though they have that permission from DES they still have to get a variance to allow for the fill. There are two other crossings that were permitted by the DES. Those are both part of the road and there is no requirement that they get a variance for those and can be dealt with by the Planning Board.

Attorney Levenstein explained we are here today to discuss filling Wetland #3. Mr. Gove explained the value and what the wetland is. He explained that the area was excavated at some time in the past, and it was dug down and has side slopes where material was cast to the sides. In digging down the water table was intersected. He does not know why it was dug, or for what purpose – but it is essentially a created area. The hole fills up with water in the Springtime and drains out by Summer and goes totally dry. A little bit of vernal pool activity was found, such as 2 wood frog egg masses which were found during their study. A typical functioning vernal pool has 40-100 egg masses. Mr. Gove said this puts it into context why they are saying that this is a low-functioning area. It really doesn’t have any other functions. It doesn’t provide any significant groundwater recharge, (inaudible) storage, or any other wildlife habitats. That is why they are considering it to be low functioning. He said this layout was approved by the DES saying that it is, in fact, the least impacting alternative. He said it sits in the middle of the site, so no matter what happens there, this would be impacted and it turns out that the

Environmental Protection Agency (EPA) agreed that this was the least impacting alternative. Mr. Gove said that the EPA sent a memo to DES on January 15, 2020 and on February 11, 2020 is when DES issued their permit.

Attorney Levenstein discussed what happened at a previous Conservation Commission meeting and their decision. The Conservation Commission recommended that this variance not be granted. He provided a letter to the board basically explaining what they feel happened and the significance of what happened at the Conservation Commission meeting. Even though the Conservation Commission is invited to comment on the application for filling of a wetland, he said the reason why the Zoning Board should still vote to grant the variance in spite of the Conservation Commission's recommendations, because they went before the Conservation Commission three times to discuss filling of this wetland and there was also a site walk with members of the Conservation Commission where they were shown this wetland area and the crossing areas as well as a 4<sup>th</sup> wetland they were considering filling at one point, but after the first meeting with the Conservation Commission and prior to application with DES they shifted the buildings and were able to make the project smaller so that they wouldn't have to fill that wetland – which was quite significant and near the property line with the State's Everett highway comes in. By shifting everything over and making fewer buildings and changing the design they were able to eliminate any effect on that 4<sup>th</sup> wetland and not even come within that wetland setback. Attorney Levenstein thinks their plan meets what the goal of the wetland ordinance is, and what the State wetland ordinances are.

Attorney Levenstein thinks what happened with the Conservation Commission is that instead of addressing what the effect of filling this wetland is and what the ramifications would be of filling this wetland they took the whole project and gave their opinions on a myriad of issues that have nothing to do with this variance request and have nothing to do with filling this wetland. There was large amounts of discussion on wildlife trails and what the effect of development would be on wildlife; but, as the EPA and DES say, Wetland #3 will have no effect on wildlife, or what happens with deer on this site. Attorney Levenstein thinks the Conservation Commission was not looking at this particular application for a variance, and instead were looking at what their feelings were as to the development as a whole, and frankly, he doesn't think that was in their purview to comment on those things, even though those minutes will probably go to the Planning Board and the Planning Board may see fit to look into some of those things. If you read the minutes of the Conservation Commission, a lot of the things they discussed were that they felt more opinions were needed and more studies needed to be done, and probably disregarded the fact that the DES went through a full vetting of this project. Attorney Levenstein also provided the Zoning Board with a copy of what the DES guidelines are when they are granting an application. Virtually everything the Conservation Commission was questioning about “whether this or that had been done” were in the guidelines of what the DES actually does. So, he thinks that despite their good intentions, the Zoning Board should disregard the Conservation Commission's view that this application should not be granted.

Mr. Gove was at the last Conservation Commission meeting and stated what was difficult for him was that there has been a shift in members. He explained that when we met with the Conservation Commission the first time we were given direction about what the Conservation Commission wanted to have protected, where they wanted the buildings moved away from and what we should do. They specifically said they understood that this particular area is right in the middle of things and it is going to be impacted no matter

what; so, it was a bit of a shock when we came back and had other members who were not their originally for this discussion. The members who had been present originally noted that they had done what the Conservation Commission asked them to do, but the newer members seemed to think that this was all new and that it would be needed to look at everything again. It was very discouraging to him, because they had done what was requested of them by the Conservation Commission and changed the plans, and now all of a sudden it was like a whole new ballgame again which was difficult.

Attorney Levenstein reviewed the criteria for the application. He noted that he had also supplied a copy of Section 275-24 of the zoning ordinance that sets forth what the purpose is of the provision that requires that a variance be granted or obtained. If the Zoning Board looks at that and compares it to what the DES looks for he thinks that basically they are looking for the same thing with the exception of a possible provision within the zoning ordinance that provides that the board should look at the unequal and unique burden of wetland property owners and minimize restriction which may be placed upon such properties. Other than that, the purposes are exactly the same between what the DES is looking for in granting a permit and what the Town is looking for in allowing wetlands to be filled.

**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:**

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

Section 275-24 sets forth the purpose of the ordinance as it applies to wetlands. The filling of this very small wetland will be entirely consistent with this stated purpose and therefore not contrary to the public interest. The wetland in question is a previously excavated pit that is a low value vernal pool. It is a man-made depression that sits on top of granite ledge. It fills seasonally with melting snow and rain and dries up in the Summer. There is no connectivity with Stebbins Brook. Filling it will have no effect on those items that the ordinance seeks to promote.

Permitting the fill, will allow the site to be developed in a manner that maximizes the amount of green space and recreational areas in the development. There will be no threat to public health, safety or welfare. Additionally, because the wetland is situated upon rocky ledge, blasting on the remainder of the site will likely fracture the ledge on which this small depression sits.

The Wetlands Bureau has already issued a dredge and fill permit for the wetland having determined that it was of little value.

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

The spirit of the ordinance is observed because in addition to those items previously set forth in item 1, allowing the variance will be within the spirit of the ordinance as it acknowledges the unequal and unique burden of wetland property owners and will minimize the restrictions that may be placed upon such properties. See 275-24 I.

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

It will allow the site to be developed in a manner that maximizes the amount of green space and recreational areas in the development. It is not contrary to the stated purposes of Article IV and in fact will be an acknowledgement of the unequal and unique burden that wetland property owners and will minimize the restrictions that may be placed upon such properties.

The wetland is of little or no value with regard to the reasons why wetlands are in fact protected. The Wetlands Bureau has acknowledged this by granting the owner a dredge and fill permit.

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

The wetland is a very small portion of a very large parcel that is being developed. It is not in close proximity to any abutter. It has no connectivity with the abutting properties, does not connect with underground streams or Sebbins Brook. Filling it will have no effect on the water supply to surrounding properties. It has no aesthetic value.

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

The wetland in question, though small in size, prevents the development of a large portion of the property because of where it is located. If the property was developed around the wetland the amount of green space that could be preserved and the area for recreational uses would be greatly diminished. The fact that Sebbins Brook bisects the property makes the property unique in that it has a whole area that is disconnected from the front portion, which makes it more amenable to putting residential development in the rear and commercial development in the front. .

**(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:**

As previously stated, the granting of a variance to allow for the filling of this small wetland does not contradict with any of the stated purposes of the ordinance as set forth in Section 275-24. In fact, denying the variance will violate Section 275-24 I. which recognizes the unequal and unfair burden of wetland property owners and which promotes minimization of the restrictions which should be placed on these properties.

Even if the variance is denied, once construction and blasting of ledge begins, it is likely that the granite ledge upon which the wetland sits will be lost.

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

It allows the site to be developed in a manner that maximizes the amount of green space and recreational areas in the development. It is not contrary to the stated purposes of Article IV and in fact will be an acknowledgement of the unequal and unique burden that wetland properties have.

Even if the variance is denied, once construction starts the wetland will likely be lost because the blasting of ledge will cause underneath the wetland to be fractured. The Wetlands Bureau in granting a dredge and fill permit acknowledged that filling the small wetland is not unreasonable.

**(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:**

The wetland in question, though small in size, prevents the development of a large portion of the property because of where it is located. If the property was developed around the wetland the amount of green space that could be preserved and the area for recreational uses would be greatly diminished.

Even if the variance is denied, blasting will destroy the wetland once construction is done and the Wetland Bureau in granting the dredge and fill permit acknowledged that filling the small wetland is not unreasonable.

Chairman Morin opened the floor for questions from the board in a roll call manner.

Mr. Duhaime, Ms. Stevens, Mr. Green, Mr. Gilbert, Ms. Jude and Chairman Morin all indicated that they had no questions.

Chairman Morin opened the floor for questions or comments from the public. Ms. Hebert indicated there was no one from the public on the phone and that no emails had been received in regard to this application.

Q: Mr. Duhaime asked what the ramifications would be if this didn't go through to the development. He asked what it would impact. He can see that it would affect parking spaces and things like that, but he's sure it's more than that.

A: Attorney Levenstein said the plan would have to be greatly revised. There would also be a problem with the 50-foot setback from the wetland if the wetback is not granted a fill, and they would have to get a variance to allow building within that 50-foot setback. He asked Ms. Hebert for confirmation of that. Ms. Hebert indicated that is correct, but you can pave and grade the land within the 50-foot setback, so that would be the 50-foot setback for the structure. She brought up the plan and indicated the area in question. Attorney Levenstein indicated they would have to do a redesign because they would be losing 7-8 parking spots which the wetland would affect. He said it would require reconfiguration of some things and may or may not be that the 50-foot setback would come into play, but primarily it is a wetland of very little value. Mr. Gove added that the only value this wetland has is the very limited vernal pool function, and as soon as the area around it has the natural cover removed then that wetland no longer functions as a vernal pool because the wood frogs that lay the eggs are only there for a couple of weeks

in the Springtime and then they move into the forested area next to it and live out their lifecycle until the following Spring. Essentially as soon as the developed property is built around it this area truly loses all function. It could be avoided, but the question is, “Why?” because essentially, as soon as it is developed around it, it no longer functions at all.

Ms. Hebert recalled hearing something at the Conservation Commission meeting about the blasting and some ledge that is in that area and asked Mr. Gove about it. Mr. Gove stated that is correct, and they know from doing all of the tests out there that this wetland actually sits between two domes of ledge. In other words, if you looked to the east and west on either side of the plan you see these knobs which are bedrock. He said that we also know that as soon as construction starts on this area, even if this wetland was not touched at all, we will have blasting that will take place in order to flatten out those domes. As soon as that happens, the fractures will break the bedrock below it and it will drain out. If we avoided it, but still built something there as soon as the domes were blasted it will no longer be a wetland because the hydrology will be altered. There will be a significant impact to the hydrology of that area just by the very fact that we have to remove those domes of ledge.

Q: Ms. Stevens asked if the particular area that would affect the wetland to be blasted, needs to be blasted because parking spaces are needed or is the blasting happening for the building.

A: Mr. Gove said that this particular plan doesn’t show the topography, but the roads come in and there are buildings around the area of Wetland #3, so if you envision that Wetland #3 sits in a valley and in order to keep everything at grade and be able to go in there you basically end up having to blast the ledge on either side of it. That is why he is saying that Wetland #3 will be impacted by that construction because you can’t build anything going up and down over the top of the domes of ledge which are more like hills of ledge.

Q: Ms. Stevens asked if the blasting needs to occur to pretty much get on to the site?

A: Mr. Gove said in order to be able to access at grade the road and the buildings so that they are all at the same level so that you don’t have crazy parking lots or buildings that are trying to go up an 8-12% slope you have to blast.

Ms. Stevens said her only thought was if they still needed parking, instead of putting parking in that area to put a garage on the right side of the bottom building where there is parking. That is why she was wondering if the blasting was happening just to get that parking space level.

Mr. Gove said, “No, it’s actually for the entire development.”

**MOTION by Ms. Stevens to move into deliberations on this variance application. Mr. Gilbert duly seconded the motion. 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:**

Chairman Morin said that personally he does not see this changing the essential character of the locality. After reading the Conservation Commission notes he agrees with some of the testimony that was given that they were kind of all over the place. Looking at the specific area and the information given and that the State has given a permit to this area he does not see an issue with it. Again, we are dealing with the central area of locality, but he has no issue with this piece.

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

Mr. Green said it is not likely. Chairman Morin agreed.

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

Chairman Morin said the spirit of the ordinance is to try and preserve as much wetlands as we can. Looking at this application and the number of wetlands on this property, we are talking about just over 2,000 square feet and he doesn't see that diminishing the wetlands in this area if that is filled.

In looking at the entire development Mr. Duhaime felt the fact that there are no additional variances with the amount of wetlands that are surrounding these buildings at least shows the development was put- in in good faith to minimize the impact to the wetlands in surrounding areas.

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

Chairman Morin thinks it would do substantial justice to the developer, because as Mr. Duhaime has just said, the amount of work that they have done on the plan has resulted in us only dealing with one variance even though it is a large property area with a lot of wetlands. It definitely helps when we have this kind of information.

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

Mr. Green indicated that there is no evidence of this.

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

Chairman Morin said there are definitely a lot of wetlands surrounding it. As brought up in testimony it is kind of split in half by the brook and they are having to put in a couple of little bridges and culverts in order to keep the brook moving.

**(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. Gilbert thinks if we denied it, it would be a hardship in the sense that you wouldn't be able to maximize the amount of green space and recreational areas in the

development. When they fracture the rock it really isn't going to be a wetland anymore, so he feels denial of the variance would be an unnecessary hardship. In his opinion it should not be denied.

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

Looking at the whole project, Chairman Morin said he definitely thinks it is reasonable because it is just a 2,000 square foot area.

**(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 by Mr. Gilbert to approve the variance request from Article IV, Section 275-27 of the zoning ordinance to permit the filling of approximately 2,511 square feet of wetlands for the purpose of developing the site for workforce housing and elderly housing, per our deliberations. Mr. Green duly seconded the motion. Roll call vote taken - all in favor. Motion carried 5-0.**

**MOTION by Mr. Gilbert to move out of deliberations on this variance application. Mr. Duhaime duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.**

**4. Aaron & Sarah Stone – Request for a variance from Article III, Section 275-22.A & Table 1 in order to construct a deck 10.5 feet from the front property boundary where 35-feet is required at 3 Linwood Way, Lot 32-22-1, Zoned R&A.**

Aaron and Sarah Stone introduced themselves and indicated they were alone in the room. Mr. Stone said they are looking to add an elevated deck to an existing paved area of their house. It would double as a carport. The area where the deck/carport would go was shown to the board on Google images of the home.

**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:**

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

Mr. Stone said granting the variance would enhance the look of the house and neighborhood. He said, "There are only four houses on our street. It is a small dirt road. Generally speaking, especially during the wintertime I have a portable garage that we put up to keep the snow off our vehicle, and I can tell you that it is quite the eyesore, so this would be a vast improvement and an affirmative one, nonetheless."

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

Mr. Stone said, "We reside on a private dirt road of only 4 houses. The building of a deck would not restrict light, air or sightlines. It would not affect the traffic or cause a distraction. Our house is at the corner of Wallace Road and Linwood Way. The house is

set back from Wallace Road about 160-feet and there's woods and all sorts of stuff back there; so, it is considered a corner lot. I guess it is not an official corner lot, and as I said before, it is a dead end road and it is already far enough off the road and there's barely any traffic there as it is, so placing any sort of structure – especially an open structure like a deck – would be looking toward our backyard, as it is and it wouldn't restrict any sightlines coming up Wallace Road.”

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

Mr. Stone said it would improve the look of the property and neighborhood. It would provide an alternative entertainment space outside his house as well as a covered parking spot. Mr. Stone said they bought the house as a fixer-upper 8-years ago and they are still “fixing and going”, but this would be quite a substantial aesthetic improvement, and on top of that, provide an extra covered parking spot. One of the spots in the garage could only fit a Mini-Cooper in it because of a stairwell that goes into the house. We have a car and a half right now, so having that extra covered spot would be a great timesaver, especially in the wintertime.

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

Mr. Stone said the proposed deck is designed to look original to the house and not like an afterthought. It will remain far enough from the roadway to not interfere with sightlines of traffic on Linwood Way or Wallace Road. It's not shown in the pictures, but in the front there is a miniature porch with nice white columns. That same look would be carried over to the deck so it all looks like a cohesive unit and not like something tacky.

**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:**

Mr. Stone said as a corner lot we are already at a disadvantage with the extra 10-foot setback requirements. He said, “On the property itself, being a narrow dirt road, it appears we have a whole lot more space than the property line shows. We had it surveyed 2-months ago, in order to find all of our property markers and we were quite surprised where the lot lines were and where the setbacks would be. Again, that portion is already paved; it's already being used as a parking spot; and it would just make it a nicer looking parking spot.”

**(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. Stone said, “Looking at the other neighbors' properties and their plot plans, it seems like theirs were already much better thought out than ours. There houses seem to be centered in the property and have a little more leeway to do what they want. Looking at ours, it's situated in the southwest corner of the lot, so there is a whole lot

of dead space and no other real practical spot to put this. The septic is in the back yard and in the front yard there is a significant drop-off. Being a corner lot and having that extra 10-feet of setback we are at a disadvantage already. To make the home more appropriate for our needs and aesthetically appealing to us and the neighborhood I think it is a great idea.”

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

Mr. Stone said it is already a paved area. A builder told him that the maximum size the deck could be is 14x24. Mr. Stone said that doesn't necessarily be the size of the deck – it could be a little more narrow if necessary. 14x24 is just the maximum size a builder would recommend and that's why they included that figure. There is no other reasonable or suitable location for it.

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

Chairman Morin opened the floor for questions or comments from the board.

Mr. Duhaime, Ms. Stevens, Mr. Green and Chairman Morin had no questions.

Q: Mr. Gilbert asked if the porch is being accessed from the second story and not having a staircase in the back outside, or will you have both?

A: Mr. Stone said that part hasn't necessarily been set in stone yet. It depends on the builder recommendations. There is a potential access point from the second floor – there's a room over the garage that could have a spot or there could be a stairwell. Being a police officer, for security purposes he would honestly prefer not having more access points to his house for the bad guys, so he would prefer no stairs – but its whatever people are willing to let him do.

Chairman Morin opened the floor for questions and comments from the public.

Tom Scribner of 120 Wallace Road (abutter) said as the neighbor on Wallace Road he is directly across from The Stone's so he can see their home easily and it certainly would not be a problem for him if they were to put this up onto their house. In addition, he will validate that they do have a 2-car garage but one of the stalls is so narrow that they couldn't really park a vehicle in it. Since Sarah is a schoolteacher and Aaron is a police officer, especially in the winter it is important that they both have ready access to their vehicles, so Mr. Scribner said he is all for it – no objections.

Mike & Laurie Peterson of 9 Linwood Way introduced themselves. Mr. Peterson said he is of the same accord as Mr. Scribner and said he has no problem with it for the same reasons. He said especially since Aaron is a police officer and needs to be getting to his job and not spending time clearing off his car in the winter. He doesn't think it will take away from anything and will improve the look of the property, so he is in agreement with it. Mrs. Peterson said she completely agrees with both Mr. Scribner and her husband. She thinks if this variance is granted it definitely would not alter the essential character of their neighborhood and it would certainly improve the function of their home and their property, so she fully supports this and would ask the board to do so, as well.

Ms. Hebert indicated there were no other callers in regard to this application and no emails were received.

**MOTION by Mr. Gilbert to move into deliberations on this variance application. Mr. Green duly seconded the motion. 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:**

Mr. Green said it doesn't appear that way. "No, not at all," Chairman Morin replied.

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

Chairman Morin said he doesn't see that happening either.

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

Mr. Gilbert thinks it is.

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

Mr. Green said that he doesn't have any other place to put his car. Chairman Morin commented that even though they think they are saving time on cleaning off the vehicle they are still going to have to shovel off the deck when there is enough snow on it, so the work will still be there.

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

Chairman Morin indicated we hadn't heard any expert testimony of that.

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

Chairman Morin said, as they specified, in looking at the way the house was put – it was kind of crammed on that one street side, and plus being a corner lot you also have two streets that you have to be 30-feet away from, so it makes it challenging.

**(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:**

Chairman Morin said again it is the scale of trying to help the homeowner and protect the town, and it looks like where it is going to be, what it is going to be is very reasonable in that area. All their neighbors have basically come forward to say they are in support of it, so that makes our job a little easier.

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

Chairman Morin said it is reasonable to have some coverage over a vehicle.

**(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:**

**5. MOTION by Mr. Duhaime that the Zoning Board of Adjustment approve the application from Aaron and Sarah Stone for the request for a variance from Article III, Section 275-22.A & Table 1 in order to construct a deck 10.5 feet from the front property boundary where 35-feet is required at 3 Linwood Way, Lot 32-22-1, Zoned R&A per our deliberations. Mr. Green duly seconded the motion. Roll call vote taken - all in favor. Motion carried 5-0.**

**MOTION by Mr. Gilbert to move out of deliberations on this variance application. Ms. Stevens duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.**

**IV. Approval of Minutes of June 16, 2020**

**MOTION by Mr. Gilbert to approve the minutes of the June 16, 2020 meeting of the Bedford Zoning Board of Adjustment as written. Mr. Green duly seconded the motion. Roll call vote taken - all in favor. Motion carried 6-0.**

The next meeting will take place on September 15, 2020.

**V. Adjournment**

**Motion by Mr. Duhaime to adjourn the meeting at 8:57 p.m. Mr. Green duly seconded the motion. Roll call vote taken – all in favor. Motion carried 6-0.**

Respectfully submitted,  
Tiffany Lewis