

A

Town of Bedford
September 17, 2019
Zoning Board of Adjustment
Minutes

regular meeting of the Bedford Zoning Board was held on Tuesday, September 17, 2019 at the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH.

Present: John Morin (Chair), Gigi Georges (Vice Chair), Sharon Stirling, Kevin Duhaime, Melissa Stevens, Len Green (alternate member), Neal Casale (alternate member), Karin Elmer (Planner 1)

Absent: David Gilbert (alternate member)

Chairman Morin called the meeting to order at 7:01 p.m. and introduced members of the Board.

1. **Approval of Minutes:** August 20, 2019

MOTION by Mr. Duhaime to approve the minutes of the August 20, 2019 meeting of the Bedford Zoning Board of Adjustment as written. Mr. Casale duly seconded the motion. 4 abstentions (Gigi Georges, Sharon Stirling, Melissa Stevens, and Len Green who were absent from the August 20, 2019 meeting) - Vote taken - all in favor. Motion carried

2. **Applications:**

Chairman Morin reviewed the rules of procedure, and swore in those who would be giving testimony this evening.

1. **Jeffrey & Shirley Ginn** – Requests a variance from Article IV, Section 275-28.A in order to construct a garage addition with finished space on the second floor 31.4 feet from the edge of a wetland where 50 feet is required at 49 Colonel Daniels Dr., Lot 31-6-13, Zoned R&A (Continued from August 20, 2019)

Mr. Ginn and Earl Sanford of Sanford Surveying and Engineering addressed the Board. Mr. Sanford reviewed the plans showing Mr. Ginn's existing house with a 2-bay garage on the north-westerly side. Mr. Ginn has a project car and a large SUV, and he would like to build an additional 2-bay garage. They've worked the site to try and find a way to build it that would be conforming and have had difficulties trying to do that; so, what they are proposing is to attach the 2-bay garage directly to the house behind the existing garage. It will be a 24x24 addition that will have a room above it that Mr. Ginn would like to use as a library that would connect directly into the house, so there wouldn't be any stairway. They went to the Conservation Commission and had a lengthy discussion and they were o.k. with knocking it in half. That doesn't work well for Mr. Ginn because he really needs the 2-bays. The Conservation Commission discussed putting the garage away from the house northerly and taking out trees to put it there. Unfortunately, what

wasn't discussed at the Conservation Commission was the value of the tree buffer that goes north of this property, which is a major consideration. The group reviewed a GIS plan of the whole community where Mr. Ginn resides. Mr. Sanford said that #49 is the subject parcel and there are wet channels running through that make it somewhat of a wildlife sanctuary even though it has no easements on it. It is about 160 acres that is shown on the GIS plan, and there is a huge wetland across the road from Mr. Ginn's property. To get between areas the path of choice is for the wildlife to come in through the tree-ed in area Mr. Sanford thinks it would be less of an impact in the big picture environmentally to tuck the addition right in back of the house rather than to separate it and have to take out trees that are in what he considers to be a fairly valuable buffer from an ecological standpoint that provides continuity between two large wetlands.

Chairman Morin asked if the site (31-612) next door was a buildable lot. Ms. Elmer indicated there was actually house on that site. Mr. Sanford said that house has a driveway that is not much of a deterrent for wildlife to cross.

Mr. Sanford and the group reviewed aerial photos of Mr. Ginn's neighborhood to view the tree line. The tan line on the aerial photo is what Mr. Ginn and Mr. Sanford are proposing this evening: A garage addition in the open on the lawn up to the edge of the wetland. The area with the red lines around it is the location that would be more confirming, but they are making the argument that the site they are proposing in the tan lines is more ecologically friendly, it is in the open, and it's on the lawn. Part of the intent is not to have the creep of lawn that tends to go with the house. There is no intention of that lawn ever expanding. There are several advantages to putting the garage within the tan lines: 1) It's in the open, 2) No tree cutting is necessary, 3) It's compact with the house, 4) All utilities would be run directly from the house, 5.) It is somewhat , smaller because there doesn't need to be a stairway to the second floor because you are able to come right off the existing house, 6.) Utilities and heating would be more economical than trying to do a separate building.

Ms. Stirling asked if putting the garage addition in the tan lines had been proposed to the Conservation Commission. Mr. Sanford indicated that the Conservation Commission was pushing to have them put the garage addition separate from the house within the red lines. Mr. Sanford was not present at the last meeting; however, and the wildlife corridor aspect of the tree-ed area was not explained. Ms. Stirling asked if the Conservation Commission recommended that the garage be 1-bay and Mr. Sanford indicated that is correct that they recommended making it a 1-bay garage or else putting a 2-bay garage addition that was separate from the house (in the red lines). She asked why Mr. Ginn and Mr. Sanford wouldn't go back to the Conservation Commission to present their new proposal for review before coming to the Zoning Board. Ms. Stirling indicated that the Zoning Board relies on the Conservation Commission's expertise. Chairman Morin and Ms. Elmer indicated that the Conservation Commission proposed putting the garage away from the house in the area indicated with red lines, and their recommendation was to make it a 1-bay garage rather than a 2-bay garage. Ms. Stirling asked if they had explained the new information about "less of an impact" to the Conservation Commission. Mr. Sanford indicated he wasn't at that Conservation Commission meeting, but there was a lot of discussion that related to the use and things that weren't related to environmental issues.

Mr. Casale said that Mr. Sanford had used the words "more confirming" for the new location which kind of signifies that it is not conforming - - so he asked, "Does it conform, or does it not?" Mr. Sanford said the wetland was curling around and the

Conservation Commission said they would be o.k. with some relief on this location, only it would not be as much relief. Mr. Casale asked for clarification that it is not confirming where they have it, and there is no way it can be conforming if you move it closer to the house. Mr. Sanford said the only way it could be conforming would be to move it out front and take out a bunch of trees. He said the Conservation Commission was on board with some leniency. Mr. Casale asked if there were any numbers about how far that area is from the wetlands compared to the new proposal in front of the board this evening. Mr. Sanford said there were numbers sited – he said that they were looking for a little leniency and the Conservation Commission said to go in a little bit from the side to make it work and they were ready to make a recommendation. Mr. Casale asked if he knew the difference in impact between what is in red and the alternate site that is being presented today (in tan lines). Mr. Casale asked, “It’s not conforming, so what is the difference?” Mr. Sanford looked at the plans and made an approximation that it would be 5-feet into the 50-foot wetland setback. So, the setback would be going from 50-feet to 45-feet instead and there would be another 4-feet needed into the side setback which leaves enough room to turn vehicles and have access. Ms. Stirling was glad that Mr. Casale asked for that clarification because she felt it was significant and clarified that it would go about 5 feet, and then about 2-3 feet in the back versus 31-feet. Mr. Sanford said that was correct. He said that there are two lines indicating wetlands on the plans and that Dick Vaughn did come up with one line for the wetlands in 1998. Mr. Sanford has respect for his work. Mr. Sanford is a wetland scientist and when he went out to mark the wetlands he came up with a different line, but there is an upland ridge that runs in between Mr. Vaughn’s line and Mr. Sanford’s line. Mr. Ginn said that the contractor had buried stumps there. So apparently the contractor left some space between the wetland as a buffer in burying stumps, Mr. Sanford surmises that the contractor probably had it nicely mounded when he left the site but it settled, and the water has settled in over the last 20 years making the area a wetland because it is now a little depressed area unto itself. If you look at the original setback line that Mr. Sanford surveyed in 1999, when he reset the flag the wetland line had moved out. It took him awhile to justify what had happened, but he believes it is because the land had been disturbed. He showed a photo to indicate the upland area and the lower area that has become wetland. He thinks the lower area is a manmade situation. The photo (taken in the past week) also shows 2 bears walking through that area which indicates the tree cover has more value than the setback on an open lawn when it comes to providing a valuable buffer to the wetlands, which is the case they are trying to make tonight.

Mr. Sanford showed another photo of the area and 2 deer were walking through it. Mr. Ginn said the area where the deer are walking is the same area the Conservation Commission recommended for the site to build the detached garage (in the red lines). Mr. Ginn said that the deer live in there, and they are there 7 days a week with their babies. They are always there. If he isn’t allowed to tuck the garage into the back of the house the detached 24x24 garage would have to go right where the deer live. Mr. Sanford thinks it would be more environmentally friendly to keep all of the trees and to tuck the garage behind the house.

Mr. Casale asked to see the aerial photo of the property (with the red and tan lines) and asked if a 24x24 cut made out of the trees, given the number of trees in that area is not very significant. Mr. Sanford said it is more of a hit to the environment to remove trees next to the wetland that curls around. Ms. Stirling said the problem is that the Zoning Board is bound by regulatory statute that exists. “That is what we have to wrestle with,” she said. In her opinion it doesn’t really help their case to be explaining it this way

because “it is what it is” – a 50-foot setback is what it says is required. Chairman Morin said another thing they look at is how much encroachment is in the area. In looking at the addition on the plan it seems they are looking at 75% of the building being within the setback. Mr. Sanford said that is correct, but if you play “the statistics game” there is 1 ½ acres of protected area around that wetland and of that 30,000 square feet, Mr. Ginn is only asking for 500 square feet which is less than 2%. Mr. Casale said you could argue the same thing with the trees – “it’s a small footprint compared to the entire wetlands, so 24x24 out of that volume of trees is kind of the same as what you are saying”. Mr. Sanford said that you would need to get machinery out there, so it is not like you could surgically insert 24x24 addition because typically you need another 8-feet. Mr. Ginn interjected that although the tree cover looks thick, they are Majestic Oaks in there, and the majority of what you are looking at in the photos are the trees that would need to get cut down. There is a lot of brush in there and a small number of Majestic Oaks which are located right where the detached garage would have to go. Mr. Sanford showed another photo of the side view showing the Majestic Oaks that would be torn down if the detached garage were to be built. He said that they are also trying to support the town’s master plan that states to keep the rural character, and he thinks large trees like that add to the rural character and they are excellent cover for wildlife, and there is no cover that will be destroyed if they put the garage in the back attached to the house. Having taken Rick Vanderpool’s Wildlife Corridor Seminar and walking out and actually seeing all the effort they are making to try and to protect not just wetland, but what is connecting and what you can do to keep that vegetation in place and allow corridors to be maximized. Although it’s true that it is not a big hit to remove those Majestic Oaks, when you remove them it will certainly change the neighborhood’s appearance.

Mr. Green said it was stated that the Conservation Commission said they would be o.k. with a 1-bay garage, but Mr. Ginn said that wouldn’t work – he asked why. Mr. Sanford said Mr. Ginn has 4 vehicles that he needs to house and they are trying to do the best with where the house is located and the cards they have been dealt. If they cannot do the 2-car garage it does not work to go to 1-bay in the back, so the second choice would be to do a detached 2-car garage. Ms. Stirling asked if the roped off area in the photo is where the detached garage would go and where the footprint of that would be. Mr. Sanford said that was correct. Mr. Duhaime asked if 2-stalls could be put in front rather than the back. Mr. Sanford said there are windows and dormers and it would significantly alter the façade of the home which is very tastefully done architecturally. The front yard is also very nicely landscaped. He said they explored putting it in the front, but architecturally it did not fit.

Ms. Stirling asked to see a photo of the entire front of the house. Chairman Morin said utilizing what the Conservation Commission recommended was 24x12, but when you look at the setback – we are now talking 43-feet and probably at least half - or more than half of that building would be within the setback. “Yes, undeniably,” Mr. Sanford said. In looking at a photograph of the house, putting the garage in the front would require blocking off windows. Mr. Ginn said the whole side of the house in front is windows, and although they looked at doing this, the whole interior of the house would be destroyed because all of the windows are there. After looking at the photo Ms. Stirling said she had a better understanding what they are trying to do. Mr. Sanford said that what they are proposing would be unseen because it would be directly behind the house.

Mr. Sanford said they would like the opinion of the Zoning Board, but if the board feels they should go back to the Conservation Commission and make the same argument and

describe the corridor and wildlife in back...Mr. Ginn interjected and said that there is a ravine running through the back of the property where the animals come down through the side and then go across the street to his neighbor's house that has a corridor that goes to a massive wetland. The animals transit back and forth through the area and Mr. Ginn would like to not disrupt them if he could and he would also like to not cut down the beautiful trees. The corridor does not just end at his property it is a corridor to the massive wetlands on the other side and there is a tremendous amount of wildlife,

Ms. Stirling's preference is that Mr. Ginn and Mr. Sanford go back to the Conservation Commission with this information and get their opinion. She knows this would set them back further into delay, but speaking for herself, that is her preference. Ms. Georges agreed. She said her concern is that it is not in the Zoning Board's purview to speak to the environmental impact and their argument hinges on that. She feels they are putting themselves to a disadvantage at this board by doing that because it's not in the Zoning Board's purview. The board can obviously take into consideration the character question and then they obviously make their decision based on the regulations but the board is bound within that and she feels that the board's hands are tied on this environmental argument.

Chairman Morin asked if they would be interested in doing that. Mr. Sanford said they would hate to lose time. In his own opinion he thinks the red square would be harsher on the environment than the tan lined area. Ms. Georges said we don't have the capacity to say whether it is more or less environmentally friendly - the Conservation Commission does with their recommendations. If they were making a different set of arguments the board would be willing to tackle it. She personally feels her hands are tied and she is not equipped to say if it is more or less environmentally friendly nor does she have the authority to say it is or isn't. Chairman Morin feels that is why people go to the Conservation Commission first for their input, so he is steering in the same direction that it would probably be a good idea to attempt that first and then come back to the Zoning Board.

Mr. Sanford indicated they wish to table. He said they have 2 potential solutions and they would like to use the one that has the Conservation Commission's blessing, and one that they will attempt to get their blessing on, as the Zoning Board has recommended. Mr. Ginn indicated he was in agreement to table.

Mr. Duhaime asked if they explored making it a single-double door garage that still holds 2 cars but is narrower than having two full doors. Mr. Sanford said they talked about it and it squeezed them down a little bit, but for the architecture in that neighborhood it seemed like it would fit. He said that abutters have come to speak this evening, and that would be up to them. Chairman Morin said more information from the Conservation Commission which will be a really big piece for the Zoning Board and he would rather hear their information fresh when they come back. Mr. Sanford said they would be more than happy to get the Conservation Commission's opinions and input they can utilize from here.

Chairman Morin opened the floor for testimony from the public.

Mr. Rick Harris lives directly across the street from the Ginn's. He said there are a lot of wildlife that go through the area where the trees are, and it would be a shame to cut down the trees. He thinks putting a separate garage on the Ginn property would be somewhat

of an eyesore to the neighborhood. He thinks putting the garage behind and attached to the house would be of no impact because you don't even see it from the street and that would be the best solution, as he sees it. He said that deer, bears, and "you name it" go through his yard to the treed area.

Chairman Morin officially tabled the variance to the October 15, 2019 Zoning Board meeting and this will serve as notice to all involved.

2. **Eric & Gwen Taranto** – Requests a variance from Article IV, Section 275-28.A in order to construct a deck 35 feet from the edge of a wetland where 50 feet is required at 21 Esther Dr., Lot 6-36-18, Zoned R&A.

Eric & Gwen Taranto – Requests a variance from Article V, Section 275-34.G(3) (b) in order to construct a deck 16.8 feet from the side property boundary where 20 feet is required at 21 Esther Dr., Lot 6-36-18, Zoned R&A.

Mr. Eric Taranto and his contractor John Reblufski made a presentation to the board. Mr. Taranto prepared a presentation to explain the project and the variances they are requesting. The Tarantos would like to replace an existing elevated deck that exists behind their home. The existing deck is approximately 221 square feet. It is in disrepair and needs to be replaced because it is unsafe to be on it. They would like to extend the deck out further from the home and wrap it around the rear of the house. When they looked at the survey they realized that their newly proposed deck had a variance on the side lot as well as the variance into the wetland setback. They went to the Conservation Commission and asked for their recommendation. Originally the stairs on the drawing went out into the wetland setback an additional 8-9 feet. There was a lot of discussion and the recommendation was to stay within 7-foot encroachment onto the wetland setback and try to find a place to put the stairs that would not encroach any more on to the setback. As they looked at the drawing further they were really happy to find a place to fit the stairs and not encroach anymore on the 7-foot, and not encroach anymore on the side variance. So, this is what they are asking for based on the recommendation.

Mr. Taranto shared photographs of the home and current deck with the board. The deck exists over a rock patio, and the proposed deck would exist over the lawn. It will not go out into any wooded area. He indicated that it would wrap around some of the windows on the home. The primary reason to wrap around is to gain access to 2nd and 3rd story windows with a ladder so they can properly maintain the back of the house, gutters, cleaning, etc. It would also be a nice addition to have a nicer deck that is more usable.

He showed a photo of the view from the existing deck near to the abutting property where they are asking for the sideline variance. On each side of both property lines it is wooded and you can barely see the abutting home through the trees. He does not believe any variance into the side property will have any impact to the abutter on the side lot. The neighbor would barely be able to see the deck especially when the foliage is there, and in the Fall and Winter they may be able to see through the trees a little bit, but not really substantially see it.

He showed a photo of the view from the back-property line looking into the house from the rear. It is the best photo he could find from the Pulpit Rock area toward the area of the deck, and the house can barely be seen through the woods in the rear of the property, nor can the deck be seen.

He showed a photo of the view from the front of the property where the street is. You would not be able to see the deck from the front of the street either, so there is no visual impact to the neighbors from there and they wouldn't be able to see the deck. The stairs to the deck will not be replaced but will be moved.

Mr. Taranto is asking for 2 variances: 1) A variance on the wetland setback. He shared drawings to show the wetland setback area on his property and the area of the deck that will encroach on the setback. The furthest encroachment is 7-feet. If you compare the area of encroachment to the total area of the setback it is less than 2% of the wetland setback and it's 16% of the area of the proposed deck itself. It is an elevated deck so if you look at grade level the only encroachment would be the cement pillars to support the deck and he believes it has zero impact to the wetlands. It won't affect the water flow either positive or negative throughout that area. 2.) A variance 20-feet from the side of the property. He is proposing to encroach the wetlands at the furthest point of 3.2-feet. A small triangular area plus the stairs would encroach, as well. The area of encroachment is 35 square feet and 3.5% of the proposed deck area. Mr. Taranto believes we altered our deck design and location of the stairs in compliance with the recommendation from the Conservation Commission to not exceed the furthest point of the wetland setback by more than 7-feet. He or a contractor would really need 12-feet of deck area in order for to safely place a ladder and get access to the top of the house so that he can perform required maintenance over time. It is very costly to rent a lift to replace windows or place siding up there and do whatever maintenance is required in the back of the home.

RE: The requested variance to the back area:

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. Taranto said granting of the variance would not be contrary to the public interest because there are no diminutive impacts that the deck causes. There is no additional water flow or diversion and there is no lessened water flow because the deck is there.

2. The spirit of the ordinance is observed because:

Mr. Taranto said it protects the functions and values associated with the wetland resources. The ordinance recognized that the unique burden of the wetland property the owners have. The proposed deck area will be placed entirely over a lawn area with little buffer value. Construction of the deck will not diminish the wetland areas value or functional capability.

3. Granting the variance would do substantial justice because:

Mr. Taranto said the ordinance recognizes the unique burden that wetland homeowners experience as de facto stewards of lands protected for the benefit of the public. Granting of the variance will allow Mr. Taranto to construct a deck that would otherwise be allowed by right if not for the wetland setback.

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

Mr. Taranto said there is no visibility of the deck to any of the surrounding properties. The deck will not allow vantage points to adjacent properties as they are shielded by the trees. Construction of the deck will not result in increased stormwater nor quantity or decrease in storm water quantify and the down gradient wetland areas recede out of the subdivision and into the open space.

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. Taranto is living in an existing home; he has to replace the deck anyway; and he has to put in a deck that is consistent with the surrounding neighborhood as well as being able to maintain the 3rd store area of the home.

(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:

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

Mr. Taranto thinks it is reasonable because it encroaches less than 2% on the wetland setback area and it is less than 17% of the proposed structure that is encroaching onto the wetland setback 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:

RE: The requested variance to the side setback area:

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

Mr. Taranto explained that the location of the proposed deck is an extension of the existing deck, so to speak, and will only have limited visibility from the road and would still provide sufficient separation distance between the neighboring structure.

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

Mr. Taranto said the deck as proposed in its configuration will keep in the character of the neighborhood and the zone.

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

2. The spirit of the ordinance is observed because:

Mr. Taranto said the spirit of the ordinance is observed because the abutting parcel/residence is more toward Esther Drive so the encroachment is not encroaching closer to where the abutting parcel/residence is located. Construction of the proposed deck will not extend into areas that are not currently maintained from a lawn standpoint.

3. Granting the variance would do substantial justice because:

Mr. Taranto said the variance would do substantial justice because it allows a deck in keeping with the character and value, as said before, and the encroachment is literally 3.2 feet at the furthest distance into the side lot variance.

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

Mr. Taranto said the proposed deck does not impact the abutters property values at all as they will not be able to see the deck or view the deck, and the deck will not be an eyesore. He said, “We are going to construct the deck out of materials that are consistent with the character of the neighborhood itself – so it will be earth tones. We are going to take great care to blend it back into the wooded area that we have.” Mr. Taranto said one of the nice things about why they bought the home is because they enjoy going out into the backyard and seeing the wooded lots and being able to sit out there and enjoy being in the woods, so they are not going to disrupt that with this deck.

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. Taranto said location and orientation of the existing home makes it very difficult to replace and extend the deck without encroaching on the side lot variance because the home is angled onto the lot and otherwise there is a weird angle coming off that area and it is difficult to stay within it. He also has a door that leads right out there and it would be very tight to walk out that door and hit a railing right as you walk out the door.

(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. Taranto said that he has no limited visibility from any of the right of ways and the construction of the deck will not adversely affect any of the abutters.

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

Mr. Taranto said the proposed use is reasonable because he would only be encroaching 3.2 feet on the side variance. The deck will not be a living space and will function more as an accessory structure.

(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 asked a question about the existing stairway on the existing deck which Mr. Taranto mentioned would no longer be there. He asked to look at the plan again and asked why he doesn't just move the stairway in a tad and make it level with the edge of the house to go straight back. In looking at the picture of the doors to be used, it looks

like it is a double door, so there is 6-8 feet there and the edge could come flush with the house going straight back and the whole issue could be eliminated. Mr. Taranto agreed they could. The contractor, Mr. Reblufski said the issue he has there now is that the deck that is there now is that it is rotting and the rail sections have come apart because the drainage where the steps are now are just a bunch of boulders. The front yard drops down severely and catches water. Even with the proper 12" sonotubes going down in that area and the way the builder did that – in Mr. Reblufski's 30 years of experience he foresees future problems with the stairs. Chairman Morin corrected him and explained that they are removing those stairs which he has no issue with and is not advising that they be located in that area. Chairman Morin explained by pointing out on the plans where he suggests putting the stairs in line with the house, so it is a straight line going back and if you look at the setback line you are almost to the point where you won't even need a setback or maybe only a foot or so. Mr. Taranto said he understood what Chairman Morin was suggesting and said the intent of the new deck is that the line would be more flush with the house as Chairman Morin described. He think they would still need a little sideline setback, but it would definitely be less than the 3.2 feet we are asking for now. Mr. Taranto said he is open to making the suggested changes.

Chairman Morin opened the floor for other questions from the board.

Mr. Casale asked how old the house is. Mr. Taranto said he believes it was built in 2005. Mr. Casale asked how long he has lived in it. Mr. Taranto answered it will be 5 years in November. Mr. Casale feels it is a huge deck and the deck is wanted for doing things for safety that may occur once or twice in the lifetime of a house: Siding (which may never happen); windows (every 20-30 years). Mr. Casale indicated that Mr. Taranto mentioned hiring a contractor which would cost a lot less money than making a large deck. He asked if Mr. Taranto would agree that A.) This is pretty large and B.) The majority of the argument for this is that it is for safety reasons to do things to the house which are very infrequent. Mr. Taranto disagreed on a couple points: 1.) The gutters have to be cleaned every year. Mr. Casale asked if he had done that, or if he had hired people. Mr. Taranto said he hasn't done it yet and what he is starting to see is that the gutters are clogged and when it rains hard the water comes straight off the gutters and goes straight down, so the gutters are not really doing what they are supposed to do. Mr. Taranto raised point 2.) The size of the deck is because he is a 6'7" person and when he stretches his arms out it is almost 7-feet; and 3.) He did look at options to not extend it all the way across and from a financial standpoint by using standard length product of 12-feet was more economical to have the deck be 12-feet out from the house because it is a standard board length that can be purchased and no special cutting is required. Mr. Casale said he is not the only house in town that has 3-stories that either a homeowner or contractor would have to navigate, and he asked if Mr. Taranto had ever checked to see if contractors are able to do that. Mr. Taranto said that some of the windows in that area are degassed and he got a contractor to come out and give him a quote on replacing those windows and found out that to rent a lift so the contractor could get up to replace the windows would cost around \$1,000 a day. Mr. Casale asked if they told him that they would not be able

to do it with ladders and that they would need special equipment. Mr. Taranto agreed. Chairman Morin said probably a lift or staging would be required. He said he has a walkout basement and his wife tends to go up a 40-foot ladder to get to the gutters and won't let him go up the ladder anymore.

Mr. Duhaime asked what material would be under the deck. Mr. Taranto said crushed stone under a portion of it and grass under the rest of it. They would like to keep it grass and crushed stone or have permeable pavers that are able to drain the water. They would not pave under the deck. Chairman Morin says grass won't work under there based on his experience. It won't last.

Chairman Morin opened the floor for testimony from the public. There was none.

MOTION by Ms. Stevens to go into non-public input for deliberation purposes. Mr. Duhaime duly seconded the motion. Vote taken – all in favor. Motion carried.

RE: The wetland setback

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:

Ms. Stirling does not think it will not do that.

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

Ms. Stirling, Mr. Green and Ms. Georges all said, "No".

2. The spirit of the ordinance is observed because:

Ms. Stirling thinks the balance between maximizing the use of your property versus protection of the wetlands here it is not a huge encroachment, so she thinks he made the adjustments the Conservation Commission recommended and she thinks it's fine by that standard. Mr. Green said if the deck is already in distress a major repair needs to be made one way or the other and now seems to be the appropriate time.

3. Granting the variance would do substantial justice because:

Chairman Morin thinks it would be fine for a deck. We are not talking about a building. The water and rain will filter throughout the deck and throughout the surface, unlike if it were a building which would collect all the water and send it down. Mr. Green added that it does not look like it would be intruding onto a neighbor's property either. Chairman Morin agreed that it would be fully behind the house.

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

Chairman Morin indicated we haven'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 unfortunately he doesn't know too much about other houses in the area, but having a walkout basement with that type of height, some distances they

spoke to in the grading and how it comes to the back makes a difference and a deck won't affect the area negatively as a building would. Ms. Stevens agreed that the characteristics of the footprint are much different with a deck than they would be for a building.

(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 and Ms. Stirling both think it seems reasonable.

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

Chairman Morin said the proposed use is reasonable for the deck.

(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 Ms. Georges that the Zoning Board of Adjustment approve the variance request from owners Eric and Gwen Taranto for a variance from Article IV, Section 275-28.A in order to construct a deck 35-feet from the edge of a wetland where 50-feet is required at 21 Esther Drive, Lot 6-36-18, Zoned R&A per our deliberations. Ms. Stirling duly seconded the motion. Vote taken - all in favor. Motion carried

RE: The side setback:

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 and Ms. Stirling indicated it would not.

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

Ms. Stevens said there was no testimony of that.

2. The spirit of the ordinance is observed because:

Ms. Stevens said we are only talking about 3.2 feet at the most. Chairman Morin said it could even go down a little if they bring back that side measurement. Ms. Stevens says it is not a significant deviation. Chairman Morin agreed.

3. Granting the variance would do substantial justice because:

Chairman Morin said the small side is not going to affect the neighbors, the property, or anything else, it just happens that the house is at a tilt on the property and building area and we are only dealing with 3-feet or so. Ms. Stirling agreed.

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

Chairman Morin said there was no 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 we are talking about just over 3 feet. Ms. Stevens said in the footprint of the house itself is a little bit different than what we typically see, so we are not talking about just putting a plain rectangle around it on the back of the house.

(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:

Ms. Stirling said the purpose of having the 20-foot is to provide a buffer, but we are not talking about a huge difference and given the picture showing the neighbor it is not going to impact them. Chairman Morin said the neighbor is also not here and we have not received any testimony from them to the contrary.

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

Chairman Morin said it is reasonable to put up the deck in that one small little section.

(iii) 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 asked if there was anything specific from the Conservation Commission on this. Ms. Elmer indicated there was not.

MOTION by Mr. Duhaime that the Zoning Board of Adjustment approve the application by Eric and Gwen Taranto on the request for a variance from Article V, Section 275-34.G(3)(b) in order to construct a deck 16.8-feet from the side setback boundary where 20-feet is required at 21 Esther Drive, Lot 6-36-18, Zoned R&A per our deliberations. Ms. Stevens duly seconded the motion. Vote taken - all in favor. Motion carried.

MOTION by Ms. Stirling to go back into public input. Ms. Georges duly seconded the motion. Vote taken – all in favor. Motion carried.

3. New Business

Chairman Morin shared that this would be Vice Chair Georges' last meeting because she has a lot of important things coming up, so she is resigning.

Ms. Georges thanked everyone, and particularly her fellow board members and Chairman Morin, for the honor of serving over the past few years because it has been such a pleasure, and she has really enjoyed it. Hopefully when her other duties allow and abate a little maybe she can come back. She would be honored to do it again.

The next meeting will take place on October 15, 2019.

4. Adjournment

Motion by Ms. Georges to adjourn the meeting at 8:14 p.m. Ms. Stirling duly seconded the motion. Vote taken – all in favor. Motion carried.

Respectfully submitted,
Tiffany Lewis