

Town of Bedford
Zoning Board of Adjustment Minutes
September 20, 2022

A regular meeting of the Bedford Zoning Board was held on Tuesday, September 20, 2022, at the Town Meeting Room at BCTV, at 10 Meetinghouse Road. Present were Neal Casale (Vice Chair), Bob MacPherson (alternate member), Alex Kellermann (regular member), Sue Thomas (alternate member), Dave Gilbert (regular member), Kathleen Ports (Associate Planner), Becky Hebert (Planning Director). Absent were John Morin (Chair), Len Green (regular member).

I. Call to Order and Roll Call

Vice Chairman Neal Casale called the meeting to order at 7pm and introduced members of the Board. Mr. MacPherson and Ms. Thomas will both be voting members this evening. Vice Chair Casale chaired the meeting in Chair John Morin's absence.

II. Approval of Minutes: August 16, 2022

MOTION to approve minutes from August 16, 2022, was made by Ms. Thomas. Mr. Kellermann duly seconded the motion. Roll call vote was taken - all in favor. Motion carries, minutes are approved.

Mr. Casale stated the following:

Rules of Procedure: Please silence all cell phones. That would include me. We will have a presentation from each applicant. They will introduce themselves to the Board and present their application, including the five criteria necessary for a variance. Board members then may ask questions of the applicant. We will have public input after and those in favor of or opposed to the variance giving comments or asking questions direct to the Board. If you do speak, we ask that you give your name and address first. I ask that there be no debate between the parties. After public input for or in opposition of the variance, we will give the applicant a chance for rebuttal and summation. It doesn't look like we have, at least right now, anybody for that. All applicants will be heard in order of notice. The Board will go into nonpublic input to deliberate and vote after each application. You can wait for the vote tonight, or you can call the Planning Office after 8:30 tomorrow to find the result. We won't need to take a recess, so that's a moot point. Regarding Rehearing's, any party has 30 days to request a rehearing from a decision of the Zoning Board of Adjustment. The Board has 30 days in which to respond to such requests per RSA 677:3, tomorrow being day one. All requests must be in writing and must contain new evidence. Please point out any errors you believe the Board made in this decision.

Regarding the granting of a variance for the applicants concerning the variances that we have in front of the Board this evening; I will not go through the five criteria at this time. We're going to ask each applicant to go through their application and address the criteria as part of their presentation. That way we have it recorded. For a motion to pass this evening, there must be at least three affirmative votes. I'm going

to ask anyone who's going to speak this evening to please rise at this time to get sworn in. Honorable counsel is exempt. Do you swear to affirm that the testimony you're about to give in these hearings will be the truth, the whole truth, and nothing but the truth? Thank you.

III. Old Business & Continued Hearings: Discussion of HB 1661 and overview of change to ZBA rules of procedure.

Vice Chair Casale stated the Planning Staff had a package for us in regard to House Bill 1661. Ms. Hebert are you okay if we move that to the end so that we can take the applications first? Ms. Hebert replied yes, we can go into more detail on these changes after you hear your applications, but I wanted to make sure the Board didn't have any questions about the changes to state law with regard to the Zoning Board's voting procedures on applications. Vice Chair Casale said we're going to ask, and you probably read it anyway, but just to remind everyone, instead of the usual we're either for or against as per our deliberations, we have to be more thorough than we have been in the past. I'll add some more things that usually the Chair doesn't add; I feel may be helpful in us following this. It'll add a little bit of time, not a ton, but on top of that, on each of the applications in the staff reports, there's a template on the draft motion to approve or to deny. We're going to ask that you follow that. So again, no more of the as per our deliberation. If you could follow that for each one. Ms. Hebert added the Board needs to include findings of facts with each decision it makes. The staff report now reflects that change, and we can go into the other changes affected by HB 1661 after you get through your application review. I wanted to make sure the Board was aware of that going into the meeting so that we're adopting the new voting procedure with these applications on the agenda tonight. Vice Chair Casale replied OK. Any questions right now? OK, we'll start with agenda item number one.

IV. New Business:

- 1. Kelly Martin – Request for a variance from Article III, Section 271-22A. Table 1. Table of Dimensional regulations to install an in-ground pool within 16.5 feet of the rear setback where 25 feet is required at 73 Bedford Center Road, Lot 14-8-2, Zoned R&A and within the Historic District overlay.**

Mr. Kelly Martin presents his application stating: Good evening, Kelly Martin, 73 Bedford Center Road. And bear with me as I make this presentation. I'll start with the certified plot plan to give you an idea of where the proposed pool would go and in relationship to the variance I'm seeking as far as the rear setback. That'll kind of give you an idea of the property that we're speaking about. I think this is where I'm supposed to start. As I said, I'm looking for a variance to exceed the 25-foot setback. Going over the criteria,

- 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:**

Because the essential character of the locality will not be affected, and that no visual above-ground structure is to be erected. So, there will be no vertical wall to inhibit sightlines.

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

The variance won't be contrary to the public interest as it will not violate the rear setback objective to an unduly or marked degree.

2. The spirit of the ordinance is observed because:

As the proposed pool location does not significantly diminish the goals of the setback intent. And again, that's referring to a vertical structure sightline.

3. Granting the variance would do substantial justice because:

Granting the variance would allow applicant to add fundamental value to home while causing no hardship devaluation to adjoining properties. Substantial justice is done since there is no gain to the general public which could outweigh the loss to the applicant in these circumstances.

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

The values of the surrounding properties are not diminished as the proposed pool is a customary amenity placed in a remote setting on the lot. In addition, the property is located within the village setting of Bedford on an undersized lot. All attempts are being made to contain within the confines of the property while allowing the applicant the ability to improve the property.

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:

Current zoning rules impede applicant from enjoying full value of the property that would be realized by making proposed improvements on a non-conforming lot.

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

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

The pre-existing non-conforming lot predates zoning and is within the Historic District overlay zone yet is required to adhere to the setback requirements of a modern fully compliant lot. The proposed pool location allows mowing and maintenance access to the northeast corner of the property in that the access on the east is limited by the property line. The proposed pool location is within clear view from the main living area of the house, which enhances the safety and increases convenience.

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

The proposed pool is effectively an accessory structure without vertical massing, such as a detached garage, shed or outbuilding. The proposed location allows an adequate distance from the home to allow any future maintenance and/or repair. The proposed pool location does not affect the public nor the direct abutters use and enjoyment of their property.

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

We have the plot plan that I mentioned. I'm just going to go through a few photos to give you kind of a little reference. The house is right just up the street. This gives you an idea of the property. The lot line

on the right-hand side, the easterly corner is right off the side there of the barn. This gives you an indication of the backyard. These two stakes here are where the pool setting would be with this one actually staked out at 15 feet to give you an idea of how far off the back property line is. This isn't probably a good picture as far as that goes. But it gives you an easterly view of the proposed back edge of the pool. This is the view of the back property looking from east to west. It gives you an indication of the front side of the pool here and here in its proximity to the house.

Vice Chair Casale asked Mr. Martin, can you better describe where the pool is going to be? I don't know what you mean by front side. Maybe some others don't understand. So, maybe you could use your cursor as the best way and just show us roughly the outline of where the pool would be? It might be more helpful. Mr. Martin replied OK. Yeah, that's probably a good point. If you're looking here at this view, looking from the left side of the back of the yard towards the right, these stakes here and here would represent the closest to the house. That distance there.

Vice Chair Casale asked so the pool will be to the right of those stakes in the picture? Mr. Martin replied the pool would be to the left. So, towards the chairs, towards this area. Vice Chair Casale asked alright, so, you're moving that patio in essence to put the pool in. Mr. Martin said yes. It's 14 feet wide. This isn't a good picture but basically this pool would go this way and then up like so. The edge of the pool would be right around where these chairs are. Vice Chair Casale said OK. Thank you.

Mr. Martin continued explaining on this particular one, these stakes here and here represent the side of the pool closest to the house. It's tough to see, but there's a stake here and here which represents the side closest to the back property. It kind of runs through the edge of that fire pit. Vice Chair Casale said OK. Thank you. Mr. Martin said good call out. Thanks. Vice Chair Casale replied no, thank you. You did a nice job. It's always helpful to have pictures and diagrams. Mr. Martin said well, I'm stumbling here, but I'm giving a... Vice Chair Casale said so aren't I.

Mr. Martin explained this picture probably tells the best story. These stakes here and here—there's two, one right after the other. This is the edge closest to the home. And this is staked out with a setback of 15 feet off the property line. This dot here and this dot here represents the pool if I kept that 25-foot setback, bringing it a little too close. In all transparency, it is right around that 10 to 11 foot off the house, which is kind of the what the minimum they that they recommend. So that gives you an idea of where the setback would bring the pool. This is a picture with my back up against the house and I'm looking out at the pool. This post and this post represent the edge of the pool closest to the house. With this one and that one is actually in a flowerpot because that was the easiest place to put it, would represent the edge furthest away. The intent of moving it out is relief for the house, for any future maintenance and or construction that might happen. And then given this back lot. The property line is right along this masonry wall here, and kind of goes straight across to just in front of this old what we call the icehouse. Our intention is to maintain pretty much the visual of the natural landscaping just the way it is. With the 15 feet, that'll allow us to keep that and still have access around the pool with mowers and to use the pool. I think that picture kind of gives you an indication from the house looking out. It's kind of what we're dealing with. So, I believe that's the last picture. And then this last one, I'm not really sure, what it is.

Ms. Hebert suggested you could open the plot plan. Mr. Martin said OK, so that's the one we started with. That gives you an idea now of looking down what it looks like. I asked Meridian when they did it to kind of draw it with the intent of what I needed. Really for functionality between this corner of the house and this edge of the pool. So, they came up with whatever math they use, 16 and a half feet. So,

for basic ease of figuring, the variance that I'm requesting is the 15 feet which would be the maximum required to construct the pool and still have access on this side to this, what we call the Northeast corner, and allow also access along this side. So, it's kind of splitting the middle is what we're trying to do. As I said earlier, there is no access to this corner of the lot from this edge of the property the eastern side of the property. Being non conforming, I think they have the property line at 1.3 feet, plus or minus. It's a little tight on that side. So, the idea is that we don't quite know what it's going to look like, but we know we've had to. There's a lot of old trees on the property that kind of are constant maintenance and constant pruning just to keep them back. So, the idea again as far as putting the pool there is allow not only usability of the pool, but also to allow continued maintenance and be able to protect the value of the home. That's pretty much my presentation.

Vice Chair Casale asked if there were questions from the Board. Ms. Thomas asked what do you abut on the backside of your house? Is that the cemetery or is there... Mr. Martin replied no. This property here, and I'm going to try to do the best explaining, this is. Ms. Ports suggested Mr. Martin go to the first tab to open up the ZBA packet to show the aerial view. Ms. Thomas stated it wasn't in the packet. Mr. Martin stated I'm going to try to explain it as best I can. If you're looking at my house, the property to the right, which is right on the corner of Bedford Center, that's a flagpole lot. It borders on Bedford Center. Ms. Thomas added that's where Donald Street and Bedford Center meet. Mr. Martin replied yes, and so their property is a flagpole. Their property goes directly behind our home and so there's no structure. It basically just goes back to I don't know. Ms. Thomas said OK. Well, it's basically your next-door neighbor's lot. Ms. Thomas said oh, OK, so this is where the pool is going. I see. Mr. Martin said so, you have a picture of it? Ms. Thomas said yes. Mr. Martin continued as far as visual issues from their home, it's not a problem. Ms. Thomas said yes, that's what I was wondering was what's behind and what would be near it. OK.

Mr. Martin stated I think you have a copy of the abutter's letter as far as that goes. Ms. Thomas replied we do. Mr. Martin said OK. Speak to them as far as the game plan, but our line of sight is very important that we maintain that, and it's very important obviously for them, is to maintain that line of sight which is lucky enough because their house is just forward enough. So, that pool won't really be visible, it actually is behind their attached garage if you will. So, it's kind of a perfect little setting as far as putting a pool in there and not affecting any abutters. We're pushing it, if you're looking at the property, we're trying to because it's in the Historic District, we're kind of pushing it towards the back of the house. You won't be visible from the view or from the front view, so it's kind of trying to maintain that visual of the historic the community.

Mr. Kellermann asked are you planning to remove any vegetation in the back? I know it's close to a few of those trees. Mr. Martin replied the only vegetation that'll be moved is there's several really large trees. One fell on my house this Spring. They're reaching their climax. They're just big ol' rock Maples. There's three or four that are on their way out and then there's a couple that are more towards the property line, and they're about that big that are being removed just because they're growing out and over the house. I went to the Historic District. I think there were 9 trees in total all the way that around the property that need to be removed and/or aggressively pruned. As far as the underbrush and the intent around the stone wall and everything really, it's a unique lot for us because our entire property is within the stone wall and there's really very few trees within. It's kind of very unique. But it's great for us, because there's a ton of vegetation all the way around the property to maintain the privacy as far as that goes. Mr. Kellermann said thank you.

Vice Chair Casale asked can you go back to the plot plan please? This relates to number 5 on the criteria for a variance and that's unnecessary hardship. Can you explain as a rule out why the pool cannot go northwest? Now you had mentioned a couple things in your, I'm doing it from memory, on the criteria that you needed access to that side of the lot for maintenance and so forth. It appears like you have almost 50 feet and you are limited because you have a septic on that side with at least like driving over that with trucks. So aside from that, you mentioned the Historic Commission and they probably wouldn't like the pool in that area. So, I have a question for planning about that. Can you just tell me based upon the other things that you had mentioned in your criteria, why the pool can't fit in that nice square where it says roughly .524 acres, so heading it northwesterly? Mr. Martin replied yes. Right here where the cursor is, there is actually a septic tank. It's a little different septic setup here. There's a tank over here, and then there's a secondary septic feed with a tank right there. Vice Chair Casale asked that they didn't put on the plan? Mr. Martin confirmed they didn't put on the plan. Vice Chair Casale asked is that, for Planning Staff, is that unusual? I would think. Ms. Hebert replied that is a little unusual not to have the operable septic system shown on the plan. Vice Chair Casale asked is it operable? Mr. Martin replied oh yes. The tank being here, I have to be 10 feet off with the pool. So, as we drive it this way, if the setback would bring the pool to here if you're looking at the front corner. So, if we drove the pool this way it would start to encroach on that 10-foot set back off that tank. So that's one. The other problem I have is I'm trying to, with the variance, it's allowing me to get around the pool both front and behind to get to this corner of the property because I don't have 25 feet setback on that side. If I ever have to get back there with any type of equipment or whatever, going around with that one edge, it's not going to happen.

Vice Chair Casale asked can you explain why, again, for argument's sake, why if the pool can't go where those numbers are so you have the acreage and the square footage, why you can't go around that side of the house? And again, this is a rule out because to me this is glaring why the pool can't... How come the pool can't go there? Mr. Martin said right, so why the pool can't go in this area? Vice Chair Casale said you explained about the septic tank which we're at a little bit of a disadvantage here because we have to take your word for it, and it's not on the plan. But aside from that though, let's say there is a septic tank as you state. How can you not get equipment around the home when you have 50-55 feet roughly on that side of the house? Mr. Martin replied I can certainly get around this side of the house coming around where it says 4.82. And if I were to bring the pool forward to maintain the 25-foot setback, it would allow me to get behind the back of the pool. The problem is the front of the pool bringing it forward. Any work that might have to be done or the maintenance on the home would moving it forward to about this point here would curtail or just make that maintenance if I had to get any... Ms. Thomas stated if I can, I think I know where Mr. Casale is going on this. If you took the whole pool and moved it up into the dotted lines in that corner up here. Vice Chair added or even just roughly. And I'm just having trouble understanding this. If you move the pool—basically you're going up and then to the left—why you still don't have plenty of room to work on your house? And again, you had mentioned getting around to the backside, so like the bottom corner where you see 1-inch pipe laying flat, how you still can't do that? Again, this is a rule out. Mr. Martin replied yes. I think the hardship, or not really hardship, but I think, and I guess I'm kind of going back to one of the five criteria is like the pool is an amenity and a value to the property. Not to allow it to be directly behind the house for direct use coming out of the house, would be the hardship that I would say, hey listen is it possible to get it behind the house so that it's a direct access there? And number two, from our perspective we've tried very hard to, because we're in the Historic District, which is, I'm not going to say that's a hardship because we purchased the house. But we've tried very hard to improve the property with a historic sentiment and to put a pool and a fence over there so it's visible is not what we're really trying—we'd like to stay away from that if all possible. The way it's kind of drawn here is that it would allow us to take that fence and go directly to the back straight across so that visually we're not impacting you. I mean the great thing about the Historic District is I think we're finally getting

the point where there's people that are coming in and I think it's going in the right direction. Vice Chair Casale said OK, fair enough. Where the deck is, that smaller part of the home between the deck and the porch—what is that? What is that part of the house? Mr. Martin replied that's a little bump out on the house and that's the dining room you walk out. This little bump is a screen porch. There are doors on the back of the house from the dining room going directly out to this screen porch right there. Vice Chair Casale said alright, thank you. Does anyone else have any questions? There were no other questions.

Vice Chair Casale said I have a question for Planning. I wasn't able to access the minutes to the meeting. Maybe you can just tell me in general because I haven't attended any of their meetings. I'm safely assuming that that the Historic Commission would not want the pool, even if you had a terrific fence, to extend beyond the line of the home. Would that be fair to say or am I overreaching? Ms. Hebert replied no, that's fair. The Historic District Commission looks to see if modern amenities like pools or solar panels, even sheds can be screened from view, from the public right-of-way. And this is right in the heart of our Historic District. Vice Chair Casale said excellent. OK. Thank you. There were no further questions from the Board or from the public. Vice Chair Casale asked for a motion to move to nonpublic input.

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

Vice Chair Casale stated we'll go over the five criteria. So, like I said, I might be a little wordier than Mr. Morin normally is to try to help us out with this new House bill.

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. Gilbert sees no evidence of that. Vice Chair Casale agrees. Mr. Kellerman thinks it would be helpful recognizing the variance helps preserve the view without a fence protruding. Vice Chair Casale agreed.

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

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

2. The spirit of the ordinance is observed because:

Vice Chair explained the basic spirit of the ordinance is to prevent overcrowding and asked the Board if this was an issue. Mr. Kellerman noted the shape from the aerial view, looking at the abutting property, there is a large portion of that where there is no structure and it's just vegetation back there. There is not a concern of having one home right on top of another affecting that buffer zone. Ms. Thomas agrees. Vice Chair Casale notes it's not a building that we're talking about, it's an in-ground pool.

3. Granting the variance would do substantial justice because:

Vice Chair Casale said this is that weighing of benefit to the applicant versus the harm to the general public. Anybody have any comments about that? So basically, would it do substantial justice? Ms. Thomas stated I think he has a non-conforming lot, so we're putting it in and it's going to stick within the Historic District guidelines too. So, a way of giving him a pool while maintaining the character of

the area. Mr. Gilbert said I don't see an issue with it. Vice Chair Casale agrees adding and of course the regulations refer to a minimum of an acre and a half which he has a one third of that. And as he had mentioned, where we're asking him to abide by the same setback as someone with a minimum of 1.5 acres. So, I'm in agreement that would do substantial justice.

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

Board agrees there is not any 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:

(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. Thomas said I think again, looking at his lot, if the house was built with current zoning, it would be in the center of that lot. The pool would be right behind it, and we wouldn't be here probably at this point. So, I think because of the time his house was built with the zoning laws that they had then, not allowing this is a hardship to him because it's a non-conforming lot. Vice Chair Casale agrees adding certainly he has special conditions. He's in the Historic District and as I suspected, they would not want a pool, if at all possible, to be beyond that house line. I think he does have a special condition of the property.

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

The Board agrees in this application, the proposed use is reasonable.

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

Criteria not applicable, addressed in subparagraph (A).

Vice Chair Casale read a letter from an abutter of the property:

This is in support from Deirdre Menard, 69 Bedford Center Road. To the members of the Planning Board, I'm writing to share my support for the setback variance requested by my abutting neighbors Julie and Kelly Martin, 73 Bedford Center Road. The Martins have explained to me that they're requesting a variance to change the current setback from 25 feet to 15 feet, specifically at the area abutting my property, where they plan to install an inground pool and surrounding decking. As I understand the project, their plans do not require any easement or any changes to or on my property. If the plans presented to you are consistent with that understanding, the variance to the setback requirement has my full support.

Vice Chair Casale stated sorry for not mentioning that when I asked for public input. Ms. Hebert had a question for Mr. Martin saying the plot plan and the application states 16.5 feet, but you had mentioned

15 feet in your presentation. The Board may need clarification on that exact dimension because it is exact. If you get 16.5 feet, you can't put the pool 15 feet from the lot line. Mr. Martin replied right. My thought process, and probably wasn't the correct one, is that if I asked for 15, then I could put it at 16.5 or 17 and not violate that setback was my thinking. That's kind of what I went for. If you're asking me where exactly it's going to be, my intention is that the pool is at right around 16 feet from the lot line. My convoluted thought processes is the property line is it's rod and chain. It's a stone wall. It's not very difficult to pinpoint, but it's not an exact science through there. My thought process is asking for 15, make sure that I'm off that for safety. Vice Chair Casale said OK, so before we entertain a motion, I'd like to get a motion for public input.

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

Vice Chair Casale stated I just want to clarify we need the exact size. We're voting on 16.5 feet from the rear property line. Just so you're aware that's what we're voting on so that's what it has to be. Mr. Martin replied OK. So that's what it is. OK, thank you. Ms. Hebert explained it is an exact dimension with the Zoning Board. You don't have that kind of wiggle room. Mr. Martin said OK. Sorry about that.

MOTION by Mr. Gilbert to go back into nonpublic input. Ms. Thomas duly seconded the motion. Vote taken – All in favor. Motion Carries.

Vice Chair Casale asked do we have a motion? And the one thing I want to mention, and I don't think I changed it in the new business, when I talked about the variance it has down there 271-22A, should be obviously 275. Ms. Thomas said in the packet with the new wording, it's correct. Vice Chair Casale agreed, it's correct. You OK, great.

MOTION by Ms. Thomas that the Board grant the variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to permit construction of an in-ground pool within 16.5 feet of the rear setback where 25 feet is required at 73 Bedford Center Road, Lot 14-8-2. This motion is supported by the following findings of facts:

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

The motion was seconded by Mr. Gilbert. Vote taken – All in favor. Motion Carries.

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

Vice Chair Casale said the variance has been approved and you're all set. Mr. Martin replied OK. Can I add one more thing? I just want to say, Kathleen, thank you very much. Your team down at the Town Office—to help the rookies that come forth—your patience is fantastic! I just wanted to say thank you very much. You guys are really good down there and I appreciate all the help. I didn't want to sway the voting. Vice

Chair Casale said you're telling us something we already know. They are terrific. Mr. Martin added they are fantastic, and I really do appreciate it. Vice Chair Casale said thank you and he proceeded to invite Mr. Mann to present his request.

2. John Mann – Request for a variance from Article III, Section 275-21.F(1)(a)[2], to permit a Level II home occupation within a detached garage where such use is required to be within the primary residence or attached garage or barn, at 112 Wallace Road, Lot 32-23, Zoned R&A.

Mr. John Mann presents his application stating: Hello, good evening and I'll say thank you ahead of time because they were amazing. They helped me a lot. I have a home business that was originally in the basement of my house, but we've grown a bit and we've kind of relocated it. And that's what we're asking for the variance because the garages that we use are detached from our house. The home was built in 1958. And I guess at that time, that's the way they built houses. They didn't have attached garages, so we carried that forth when we added a second garage. Currently I think we're within the square footage allowed for an in-home business, but because we're detached is our big issue. We operate an in-home business, it's guitar-related musical instruments. We sell primarily online through the internet. There are some in-home or on-location sales, but that's only a very small percentage of our business. I think the actual number is it's like 92 percent online and 8 percent is done in person. Basically, we're getting orders either through the phone or through the Internet, packaging them up and shipping them out through UPS. The other 8 percent roughly is people will ask to come visit and all that is by appointment only.

Mr. MacPherson asked most of the time you are coming from say UPS to your building? Mr. Mann replied yes, they'll come by and if we have packages, they come by and pick them up. Mr. MacPherson asked and how often? Mr. Mann replied typically once a day. We operate from Tuesday to Saturday. Mr. MacPherson said thank you.

The small garage is 332 square feet and that garage, which is the original garage with the property, is where we keep all of our small parts inventories. They're on shelves and on some peg boards. That's where we pick the product out, put it in a box and ship it out. The larger building is a two-story building. We utilize part of the second floor as a small showroom area and a stock area for the actual guitars. The balance of that room is primarily a private music space. My wife and I and a bunch of our friends play music, and we use that as a rehearsal area. We use 295 square feet of the upstairs for that use. The second floor is 1,000 square feet total. We're using approximately one third of it as the guitar storage and showroom area. We did originally have the business in the basement of the house. It's finished off, but the main access to that area is the old bulkhead stairway. It's been finished off, but it's still a very typical very steep staircase that you would have in a bulkhead. So, it's really not conducive for either customers or employees to be going up and down that stairway. I would consider it more of a safety hazard at that point. There was a large part of us saying, well, let's get this upstairs and on ground level or upstairs in the top building. That's what we're looking to do. This is an overview picture of our property. The house is where it says 112. That's our residence. Directly behind, that is the original small garage, and then this building is the larger garage that we built. To give you an idea of size, it's like a four-car garage. And that's the front of the house, the view. As you can see, we've done our best to maintain to look at the property and not make it like you're going to Walmart or something. Correcting my number, it's not 92 percent, it is 88 percent. Sorry. Ten percent inside sales and 2 percent is repair work where occasionally customers will drop off an instrument to be repaired. I have a person who comes and picks

them up and takes them to his business, repairs them and brings them back. He typically does that once a week.

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:

Due to the age of our residence, built in 1958, our garages are unattached. We operate during normal business hours and have maintained the property to keep the look and the feel of it as it was prior to operating the business. The business is 100 percent indoors. We do not generate any traffic, noise or trash, and thereby we do not disturb any of our abutting neighbors.

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

Our business is primary Internet and telephone based. Walk-in customers are by appointment only. As our business does not generate any additional traffic, noise, or trash, there's no threat to the public. If a customer plays a few guitars, the volume is kept at a low level and windows are always kept closed as we have heat and air conditioning.

2. The spirit of the ordinance is observed because:

We see approximately 0 to 6 customers a week, which is no more than a typical home with family and friends would have visiting. Again, in-store customers are by appointment only between 10:00 AM and 6:00 PM. We always strive to maintain the appearance of the property as a residence. Most of our abutting neighbors do not even realize we operate a home business. I'd like to add in fact all of the abutters I went and visited prior to tonight's meeting and only two of them knew that we had a business and they're directly adjacent to us. It's because we've had a friendship relationship with them. Vice Chair Casale stated just for the record, that's not in your application here. I just want to make that clear for the record.

3. Granting the variance would do substantial justice because:

That would allow us to continue to operate our business in the current manner with no disruption or harm to our neighbors. There is no harm to the public. Due to the age of our home, the original garage is detached. The basement is not a modern basement. It has lower ceilings and a steep bulkhead.

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

We maintain our property at or above the standards of our neighbors. The business will be operated in existing construction structures. No new construction is under consideration.

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:

As the business grew, we needed more space with better access to street level, primarily for shipping and receiving. I'll make a note of that before when it was in the basement, all the packages would be packed downstairs and when UPS came, we would have to carry them all upstairs through that bulkhead door. Vice Chair Casale requested Mr. Mann stay with the application for the record and that he states additional information when finished reviewing his application.

Mr. Mann agreed and continued. In spite of the fact that our existing garage buildings are not attached to our house, we felt it was a better choice to move our operations out of the basement and into the garages. Access to the basement is through an enclosed bulkhead stairway, which is steep. The basement area has lower ceilings than a modern construction, and the house is only a modest size. It's 1,456 square feet. The garages are both insulated, sheet rocked and heated with forced hot water, and we can actively use it year-round.

(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 stated previously, 88 percent of our business is Internet telephone sales. Only 10 percent is in-store purchases, and the remaining 2 percent is repair service. We average only between zero and six customer visits per week, including repair drop-off and pick-ups. All are by appointment only. In addition to that, UPS makes delivery and pickups once per day. We have a trash dumpster back in the back corner of the property and trash removal is once a month. We have two full-time employees, and we meet all other criteria required to operate a home business.

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

The neighborhood is not impacted by the existence of our business. As I'm retired, the business allows me the opportunity to earn additional income to supplement my Social Security. We have operated this business full time for several years without any issues from our neighbors or Town.

Vice Chair Casale asked is there anything else you'd like to add? Mr. Mann replied I mentioned earlier that I had gone and visited all the neighbors. I did bring along with me a letter that I gave to each one of them. Is that something you'd like to see? Vice Chair Casale replied yes, thank you. Mr. Mann continued, and I was able to personally meet with six out of the seven. Ms. Thomas asked the Planning Board, and they were all notified by your office too, right? Ms. Ports replied yes, we received one phone inquiry from an abutting neighbor behind the property and they expressed no concerns. Ms. Thomas said thank you.

Vice Chair Casale stated we don't have anybody in the audience. Anything else you'd like to say? Mr. Mann replied I think I've said it. Vice Chair Casale said OK. Any questions by the Board? Mr. MacPherson stated you indicated that the second floor is used for band rehearsals. Do you generate much noise from the area? Mr. Mann replied no, we're very careful about that. We've never had a complaint from anybody. Mr. MacPherson said OK. Thank you. Mr. Mann added in regard to that we're all roughly my age. I'm 68. Some of them are a little younger, and we're well past playing loud music. Vice Chair Casale commented and you're probably no louder than the traffic on Nashua Road coming from the high school. Anyone have any other questions? There were none from the Board.

Vice Chair Casale said I just have one quick question. On your website, there was a picture of someone doing repair work. You stated in the application the repair work is mostly, although you left the opportunity open that there may be some that is done at the home or in your garages. Can you just talk about that? Mr. Mann replied right. There is a workbench that I have set up there and there are times that people will come in and it's something quick or an emergency thing. Some musicians will come in on a Friday afternoon saying I have a gig tonight. Can you fix it? Vice Chair Casale said OK. So, it's very

limited. Mr. Mann replied usually, it would be me doing it and occasionally if the service guy happens to be there, he usually comes on Friday and brings everything back. Vice Chair Casale said OK, so again the statement is the bulk of your repair work happens offsite. OK, thank you. Mr. Mann added he's an independent contractor, unemployed. Vice Chair Casale said OK, thank you. Any other questions? Anything else you'd like to say, Sir, before we go into deliberation? Mr. Mann replied I think I'm done. Vice Chair Casale said OK. Thank you.

MOTION to go into nonpublic input for deliberation was made by Ms. Thomas. Mr. Gilbert duly seconded the motion. Roll call vote taken – all in favor. Motion carries.

Vice Chair Casale stated so we'll go through the five criteria.

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. Thomas said no, the buildings are already there. Mr. Gilbert said I see no evidence of that at all. Vice Chair Casale said and in his picture of the front view, you can't even see the other buildings. And it doesn't sound like there's going to be too much of an increase in traffic that people would say is something going on there?

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

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

2. The spirit of the ordinance is observed because:

Vice Chair Casale said of course we don't want a business operating in a residential area that could change the character or infringe on rights or property values of neighbors. Do we have any evidence of that? The consensus of the Board is there is no evidence and the spirit of the ordinances is not observed in this case.

3. Granting the variance would do substantial justice because:

Vice Chair Casale said that's that scale again. Does his benefit of having a business outweigh the harm of the public? The consensus of the Board is it does. Vice Chair Casale expounded so against the balance—his right to have a business, versus, harm to the public being, do we accept a business operating in a residential area which could affect values, the character of the neighborhood, etc. Mr. Gilbert added there's no evidence of that as none of them have said that they are against it. As he said, some of them don't even know it's there. Vice Chair Casale said on top of everything else. Mr. MacPherson questioned the issue of what if the number of employees was expanded to ten or fifteen? Ms. Thomas mentioned if that happened, he could be in violation of the permit. Ms. Hebert explained a Level 2 home occupation does go to the Planning Board for a Home Occupation Permit. The details of the operation of a home occupation gets further review by the Planning Board. Mr. Kellermann added and just given the size of the space; I don't think that's a huge concern. Vice Chair Casale said, and it appears that most of his sales if anything are not happening there and then that's not going to necessitate for guitars anyway, at least I don't think, a lot of employees.

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

Board agrees there is not any evidence 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:

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

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

Vice Chair Casale asked are there special conditions of the property that would warrant the variance? Ms. Thomas said well, the buildings were already there. He bought a house with a detached garage. It doesn't sound like the type of house where you can use your basement, which would be the easiest cleanest thing to do. Vice Chair Casale agreed and said there is evidence, the Planning Department went over there and observed firsthand the condition of the stairway and they felt that it would not be good for business.

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

Vice Chair Casale said given the conditions of the property, in fact, you can't limit. The fact that you can't use the basement adequately for what he wants to do. Would that be a reasonable use of the unattached garages? Ms. Thomas said I think it's a reasonable use. Board agrees.

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

Criteria not applicable, addressed in subparagraph (A).

Vice Chair Casale asked if anyone had a motion.

MOTION was made by Mr. Gilbert that the Board grant the variance from Article III, Section 275-21.F(1)(a)[2], to permit a Level II home occupation within the detached garages at 112 Wallace Road, Lot 32-23. The motion is supported by the following findings of facts:

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

Ms. Thomas duly seconded the motion. Vote taken – all in favor. Motion carries 4-0.

MOTION by Mr. Gilbert to go back into public input. Ms. Thomas duly seconded the motion. Roll call vote taken – all in favor. Motion carries.

Vice Chair Casale stated so the variance passes, Sir. Mr. Mann said thank you so much to the Planning Department They were awesome. Couldn't have done it without them. Vice Chair Casale said it's a broken record and invited Ms. Hebert to review House Bill 1661.

Discussion on House Bill 1661:

Ms. Hebert stated I just wanted to go over House Bill 1661. We talked about it a little bit at the beginning of the meeting. This bill was known as the housing bill, and it was recently signed into law this past summer. The bill includes several changes to how New Hampshire's land use boards, including Historic District Commission, Zoning Board, Planning Board, will process and review applications and conduct business. I'm just going to hit very quickly on the highlights of the changes that impact the Zoning Board, and we can have a little Q&A afterwards if you have questions.

Optional board member training/testing:

Ms. Hebert said the bill included a section regarding optional board member training. Initially, the board member training was going to be mandatory and during the legislative process, the bill was modified to be optional board member training. But New Hampshire Office of Strategic Initiatives Planning Division (OSI), the State Office in Concord that oversees planning on the state level, is required to provide training opportunities for board members. They have also developed a test that board members may choose to take. You can test your skill. There's no requirement to take the test. I provided in your staff report a link to the training resource and the test if you're interested in pursuing that. The test is based on your Zoning Board Member Handbook, which OSI also writes and develops for Zoning Boards across the State. Our Planning Board members have taken a shot at the test and the material, and they said it takes about an hour from start to finish for a time commitment. So, take a look at it. It's totally up to you whether you want to dive into the deeper review or the test.

Notice of Land Use Board Fees:

Ms. Hebert said the law also included a new mandate for communities to create a Notice of Land Use Board Fees. Although the Town of Bedford was already posting all of our land use board fees, with our application materials for associated Boards and applications, we now have an official notice that's posted in response to this bill consolidating all those fees into one location. The fees also include any building permit fees that might be charged for new construction.

New Requirements to Support Decisions:

Ms. Hebert continued as we discussed earlier, HB 1661 specifies that all land use boards need to provide specific findings of fact to support decisions, whether it's granting or denying an application. It's important to clearly explain why the Board made the decision they did, either through your deliberations and in these findings of facts. We can no longer depend on your deliberations alone; we discussed earlier in the meeting. You can't just say we approve per our deliberations, because you're not providing the findings of facts that HB 1661 is now requiring.

Vice Chair Casale stated Ms. Hebert, as you said earlier, it's more important particularly on those that are contentious. And if we deny a variance, we have to be even more particular as to why we're denying it and not just say as per our deliberation. We have to have concrete... Ms. Hebert stated there are consequences if a Board fails to provide clear findings of facts. And if the decision is appealed to Superior Court, the court may grant an automatic reversal and remand back to the land use board in question. That can be avoided by following the new rules and providing those clear findings of facts. The stakes are

a little higher for denials because the court does have the option of just simply reversing and remanding the decision because the Board didn't follow procedures established by state law. This went into effect on August 23rd, 2022. This is technically our first meeting where we're using these new procedures.

Mr. Kellermann asked looking at the new template that we have, I see for when we're denying the placeholder for adding reasons why. But it seems like when we're approving, it's very similar to what we have done previously. We phrase it differently. We don't say per deliberations. Ms. Hebert replied I think you can always add more findings of fact, but I think because we didn't want to predispose you to one decision or reason in the staff report ahead of your review of the application, stating why the application you feel meets the five criteria, when you feel like it's important to elaborate on that, please do. Because the more facts you provide to support your decision, the stronger your decision will be if it's appealed.

Vice Chair Casale said if I could add what helped me, and I just did it this time around because of being the chair and not being able to rely on John for everything like I think a lot of us do—I know I do—is I just printed out the criteria and left blank spaces and what each criteria really means and then I put notes on every single one and I made copies. So, I'm going to make a copy for every variance request, and I'm just going to fill in the notes. So, if I provide a motion, then I'm going to read the pertinent stuff right from this. Ms. Hebert replied that's a great idea. We could develop a template for a findings-of-fact worksheet that we'd just attach to your staff reports and you can fill in the blanks as you go through your deliberation. Planning Board is a little different where we do develop full motions in advance of the meeting, but we don't do that with the Zoning Board for obvious reasons. You're quasi-judicial and we don't want you to prejudge the application in your review. If that's helpful, we can develop a worksheet. Vice Chair Casale said I like it because I just find that as I take notes on the paperwork, that kind of gets lost in the shuffle, and then by the end of it when it's time to give a motion, alright, well, why did I support it? And this makes it nice and neat, exactly why or why not. Ms. Hebert said OK. Give it a try and revisit it in a couple of months after we've gotten used to the new process. If you have any suggestions, feel free to reach out by e-mail and we'll see if we can make any tweaks, either to the application form or your staff reports.

Mr. MacPherson asked Ms. Hebert what about abutters? This meeting we had some of the abutters come in in favor of. And what if, on the other hand, we could have abutters who said no, we don't agree with this. Is that considered a fact—abutters stating that they are pro or con about an issue? Ms. Hebert replied I don't think the mere fact that they oppose the application is enough of a finding of fact. I think their reasons would have to support one of the five criteria for granting of the variance. So, the mere presence of an opposition isn't enough of a fact, but what they say may support your reasons for either approving or denying a variance. Mr. MacPherson clarified for or against. Ms. Hebert said yes, for or against. Vice Chair Casale added it is evidence but take it in the totality of everything that we hear. Ms. Ports said right. If it's a home occupation and people are driving fast or something and an abutter is experiencing that or observing that, and they share that, I guess that could be a safety or a public health threat. Board members agree. Ms. Hebert added a noise issue for public health or threat—various testimony from abutters is going to add to your review and add to the facts on the record. And then there is a blanket statement that wraps in your minutes and anything that's discussed during your deliberations and includes that information as part of your findings of facts—a little more formally than you've done in the past.

New Statutory Timeline for Review of Applications:

Ms. Hebert continued HB1661 also introduces a new statutory timeline for the review of applications which the Zoning Board did not have previously. The Zoning Board now has 90 days to review and make

a final decision on the application unless the applicant agrees to an extension. So, if an applicant postpones and it's initiated by the applicant, they're agreeing to an extension of that 90-day clock. Otherwise, the Zoning Board would need to make a decision within that timeframe. Also new, if the Board finds that it lacks sufficient information to make a decision on the application, the Board can deny the application without prejudice and the applicant may reapply for the same relief. This procedural change and the new timeline needs to be included in the Board's Rules of Procedure and along with the staff memo, I attached a redlined version of your Rules of Procedure with the updated language to include the 90-day clock and the ability of the Zoning Board to deny the application without prejudice. Normally you can't reapply for the same variance unless there's been a substantial change.

Mr. Gilbert asked if we deny a variance, that applicant has 90 days to reapply? Ms. Hebert replied no, they start the clock a new when they reapply. Mr. Gilbert said OK, and then if an applicant agrees to an extension, is that 90 days? Ms. Hebert replied if they agree to an extension, it would be a set time that the applicant, whether they agreed to extend to the next meeting, it might be 30 days. Mr. Gilbert said we would define it at that moment? Ms. Hebert said yes, and we'll keep track of these clocks as you review applications. If you have an application that continues or postpones because of the amount of public testimony you receive or you're working through the deliberation of an application, we'll remind you if you're getting close to the 90 days and we'll remind the applicant too. So, it's something that staff will keep track of.

Public Hearing to amend the Rules of Procedure:

Ms. Hebert continued the change to your Rules of Procedure was included in the back of that staff report and we're recommending that you set your Rules of Procedure for public hearing at your November 15th meeting, just to give us enough time to do the postings and review the Rules of Procedure with the Town Attorney and get everything ready to go.

MOTION was made by Ms. Thomas to hold a public hearing at its November 15, 2022 meeting on the proposed amendments to the Rules of Procedure. The motion was seconded by Mr. Kellermann. Vote taken – all in favor. Motion carries.

Financial Bond Requirement:

Ms. Hebert said there's a fee shifting aspect of HB 1661 which allows Superior Court to require a financial bond from the appealing party when an appeal is filed with regards to a Zoning Board decision, and the court may award attorney's fees and legal costs to the prevailing party. Fees cannot be awarded unless the court determines that the appealing party or land use board is acting in gross negligence, bad faith or malice. That's the summary of the changes that affect the Zoning Board and I'm happy to answer any questions. Mr. MacPherson asked can you talk about the November 15 meeting? Is that in lieu of our regular meeting, or in addition to? Ms. Hebert replied it's during. It would be at your November 15 regular meeting. You would take under other business the amendment to your Rules of Procedure. Mr. MacPherson said oh, OK. There were no other questions.

V. Adjournment

MOTION: Mr. Gilbert moves to adjourn the meeting. Ms. Thomas seconded the motion. Roll call vote was taken – ALL IN FAVOR. Motion carried 4-0.

Meeting adjourned at 8:21 pm.

The next meeting will take place on October 18, 2022.

Respectfully submitted,

Sue Forcier

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