

Town of Bedford
Zoning Board of Adjustment Minutes
October 18, 2022

A regular meeting of the Bedford Zoning Board was held on Tuesday, October 18, 2022, at the Town Meeting Room at BCTV, at 10 Meetinghouse Road. Present were John Morin (Chair), Sue Thomas (alternate member), Alex Kellermann (regular member), Len Green (regular member), Dave Gilbert (regular member), Bob MacPherson (alternate member), Kathleen Ports (Associate Planner). Absent was Neal Casale (Vice Chair).

I. Call to Order and Roll Call

Chairman John Morin called the meeting to order at 7pm and introduced members of the Board and stated Mr. MacPherson will be a voting member this evening.

Chair Morin stated the following:

Rules of Procedure: We will have a presentation by each applicant. Public input for those in favor and in opposition will have their opportunity to speak. I'll ask that there be no debate between the parties. All testimony should come to the Board. If the applicant would like to do a summation, they may. All applications will be heard in order of notice. The Board will go into a nonpublic input session to deliberate and vote after each of the items. You can wait for the vote tonight or call the Planning Office after 8:30 tomorrow morning. I'm going to ask everyone here to please silence your phone, so it doesn't interrupt the meeting as we're conducting it. 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 has made in its decision.

For the criteria for granting a variance, I will not go through the five criteria at this time. We ask that each applicant go through their application and address the five criteria as part of the application process. For a motion to pass, it must have three affirming votes. I'm going to ask anyone that's here tonight who wishes to participate to stand and be sworn in. Honorable counsel is exempt. Raise your right hand. Do you swear that the testimony you'll give during these hearings tonight is the truth, the whole truth, and nothing but the truth? Thank you very much.

II. Approval of Minutes: September 20, 2022

MOTION to approve minutes for the September 20, 2022 meeting was made by Ms. Thomas. Mr. Gilbert duly seconded the motion. Chair Morin and Mr. Green abstained from the vote. Roll call vote was taken - all in favor. Motion carries, minutes are approved.

III. Old Business & Continued Hearings: None.

IV. New Business:

1. **Dan Heath – Request for a variance from Article III, Section 275-21A. Table 2. Table of Uses to allow the operation of a short-term rental in a secondary detached home where such use is not allowed at 434 Donald Street, Lot 44-60, Zoned GR.**

Mr. Dan Heath Presents his application: Good evening, Chair, members. My name is Dan Heath. I live at 434 Donald Street in Bedford. I'm here before you this evening to request a variance as stated. Skipping through the staff report, we come to the first item here in the presentation, the aerial view. You can see the neighborhood which 434 Donald Street is in. This shows the property right here. The blue is the pool. Back behind the pool is a small guest house and this is the home that I'm proposing to use for short-term rentals. The variance application requesting a variance to Article III, Section 275-21 for the purpose of operating the short-term rental in the general residential zone of Bedford. As a short-term, rental of the home will provide privacy for friends, family, visiting guests to enjoy a home environment and quiet surroundings. It comes with a full kitchen so they can prepare healthy meals, and there's a private fenced yard for children and pets if necessary. I'm proposing to do this on a 1.1-acre parcel of residential land in an area mostly of half-acre parcels, located along the South side of Donald Street, just east of the intersection of Donald and Savoy Streets. It is a general residential zone and the property further identified as 434 Donald Street. It's bordered by private property and a cemetery on one side to the west and south, a commercial property to the south, a residential property to the east and residential properties across the street on Donald and including a residential rental directly across the street. There are four structures on the property, and they include a 1900 square foot main home, a secondary 900 square foot detached home which we call the guest house, a two-car detached garage and a three-car detached garage. The main house and the garages are used as my personal residence and garages.

The neighborhood currently is about 20 percent commercial. When you look at just Google Maps and just looking at Google Maps and the residences and businesses that are within 1,500 feet of my residence. You've got 20 percent commercial use. It's on a busy collector street with speeds that are supposed to be 30 miles an hour, usually in excess of that. The guest house, approximately 900 square foot is a detached home. I call it a two-bedroom. Counsel has cautioned me that it may not actually be a legal two-bedroom because of the window that's in there in the basement area. Something that I'll have to deal with, but regardless, it has a fenced backyard, on-site parking for two vehicles behind the home, and it has been used for a short-term rental. The guest house is situated on the property 200 feet south of Donald Street, is 12 feet east of the western property line, 40 feet west of the eastern property and 200 feet north of the southern property line. The properties on the east and west are separated by fences, buildings and green spaces. The properties on the south are separated by green space and trees. Ingress and egress to the guest house is down a single wide 12-foot-wide driveway from Donald Street, and it goes past the main house past the pool area to two uncovered parking spaces provided at the back of the home. There's the fenced backyard and the patio deck that leads from the main level down to the backyard. There are no communal areas outside the guest house that's visible to other properties, adjacent properties, and the guest house itself has only minimal visibility to adjacent properties, while all areas are clearly visible to me, the owner.

The guest house really isn't suited for long-term rental. The main level of the house is divided into 4 rooms: a living room, the eat-in kitchen, bedroom and the bathroom. The living room is furnished with a reclining loveseat and recliner, 2 end tables, large screen TV. The eat-in kitchen is provided with a dining table, 4 burner stove, refrigerator, microwave and one row of upper and lower kitchen cabinets. The

bathroom is the single vanity, tub, shower, toilet combination. So once the kitchen is stocked with the typical kitchen appliances and dishes, it leaves one upper cabinet and one lower cabinet for food items. The main level is heated with propane and cooled using a window air conditioner.

It also has a mostly unfinished basement, which has been divided into 2 rooms, a finished bedroom and the unfinished basement. The unfinished basement portion contains an abandoned oil tank. A huge heating type element looks kind of like an Apollo spacecraft. The thing is huge. The laundry area has a washer and dryer, and there's a small, finished bedroom that has direct access to a door leading to the exterior. It's furnished with a queen-sized bed, side chair and night table, and it has a medium sized closet. Again, I've been advised by Council this bedroom may not actually be a proper bedroom due to window size. Because of that, it can't be rented as a two-bedroom home. The lower level is heated with a small gas furnace and electric heaters. With the minimal inside and outside storage, it makes it more ideally suited for short-term use than long-term use. Long-term tenants require space for storage of food items, seasonal clothing, hobbies, sporting equipment, personal decorations, memorabilia, etc. And those areas are severely constricted in this home. There's no garage provided. Parking is outside in the parking spaces. There's no outside storage areas. The market for short-term rentals is good. As we have found, visitors to the area come, they're mostly middle-aged visitors. They're visiting elderly family, attended graduations, weddings, funerals, family gatherings and then there's those that are relocating to and from the area who have sold a home or come to buy a home. And they'll stay anywhere from 3 days to we've had two that have stayed for four weeks. But that's been the exception. There's no other resource available for those visitors that provides the means with a full kitchen, cooking facilities and all of that at reasonable rates.

Although the home is available for those desiring the longer stays, there just hasn't been much demand for it. Actually, the home has been listed for rent for months now, looking for long-term tenants and have yet to even get an application. One of the problems that I've run into when people are looking for long-term rental is there's no garage. And so, with the minimal storage, the fact that there's no garage and it is a small home, they're just like I say, the demand is not there. And we believe that renting—the short-term rentals—actually gives us more control over the property and more control over the tenants. If we have a problem, they can be removed from the property fast and therefore not affecting, you know, neighbors and the neighborhood. Allow long-term occupation, should they become a nuisance to the neighborhood and fail to pay the rent, it tends to blight the area, helps to devalue properties and decrease security from the neighborhood as well as the onsite property owner.

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:

Granting it would not adversely affect the aesthetics, traffic volumes, traffic flows, noise volume of surrounding properties. It also doesn't affect capacity in schools. There's no demand on some of our public services. This is, again, the area is in transition. There are ten businesses within 1,500 feet of this property in either direction. And like I said, it includes the residential rental directly across the street. It sits on a busy collector street with average speeds greater than 30 mph, higher traffic volumes than a standard residential street. It's a small, detached home that's pre-existing, has seen continued use since the 50s, and it would not affect the current use. Because it's on a 1.1-acre residential lot, it sits at the back of the lot and so therefore it's not easily visible from the street or adjacent properties. There's ample parking available, so it's not going to affect parking for residents in the area. We screen all the guests that come in. We enforce all noise and use regulations for the property as defined in the rental rules. And we do the screening primarily from requests by Airbnb who does the prescreening of all of

the users, but then we screen them as well. We look to reviews for those applicants, what their intended use is, how long they intend to stay, whether they have children, pets, etc. We look at all of those items and then of course there's a continued monitoring because we're in very close proximity. We can see exactly what's going on. We see that as they utilize the communal areas and as they enter and exit the property via the only means of ingress and egress which is directly alongside our house. I go on here to list the known commercial uses which include The Creative Scissors at 399 Donald Street, Dixieland Florist and Gifts at 414 Donald Street, The Sports Shack at one Lawes Avenue, Rastech, Inc, at 21 Curtis Lane, The Saint Joseph Cemetery on Old Bedford Road, The Saint Hedwig Cemetery on Old Bedford Road, The Bedford Nursing and Rehab Center at 480 Donald Street, Rainbow Child Development Center at 3 Rundlett Hill Drive, Bubbles and Bows at 48 Derry Street and a residential rental at 433 Donald Street.

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

We don't believe that granting the variance would threaten public health, safety or welfare because the guests are screened by Airbnb criteria and then we use the guest ratings again, purpose, number of guests, the length of rental, etc., their proposed use. They pay deposits and damage deposits, and we have damage insurance to create an incentive for the guests to be respectful and take care of the property and take care of the area. Security and quiet hours are enforced from 8:00 AM to 9:30 PM. Violations can result in removal from the property, financial loss and or sanctions by Airbnb. We do provide smoke and carbon dioxide and fire extinguishers. Firearms are not allowed. The owner, myself, I've served in various law enforcement capacities as well as managed public and private properties for private and governmental interests, and I believe I'm well suited for performing compliance on the property, compliance with state, local, and house regulations and rules. From my location at the front of the property and my regular use of the property living on the property, guests that use the property are regularly monitored. I maintain regular communication with adjoining property owners. Guests are separated from direct contact with neighbors by proximity, and the green zones, fencing, and buildings.

2. The spirit of the ordinance is observed because:

I believe the spirit of the ordinance is observed because the residential use is consistent with current and historical use of the property and the neighborhood. There are currently commercial and residential rentals in the immediate area. No additional traffic over the allowed use would be created. No additional on-street parking is required. Noise is controlled. The number of visitors is limited, and the use wouldn't be readily apparent as a short-term rental. All activity occurs on site, out of sight from neighbors. Neighbors that I've talked to, all the neighbors around me, they're supportive of their proposed use as proposed. I enforce the house rules and quiet hours and guests not complying with those rules may be suspended from Airbnb privileges, lose their deposits and be asked to vacate the property.

The use will not use parking designed for residents and there's no loss of parking spaces for the residents that live in the area. All activity takes place on the larger parcel, well away and out of view of others. And the communal areas are on the back of the property, fully screened by woods and in the pool area, screened by a larger home and solid fencing. All activities are screened and monitored by the onsite owners. And again, my experience in park management and law enforcement I believe to be ideally suited for compliance.

3. Granting the variance would do substantial justice because:

I believe that granting the variance would do substantial justice because the unique and special attributes of this property do not lend it to serving the purpose of the ordinance in any fair, substantial manner. And that a more reasonable use is a current short-term use managed and monitored by on-site management with the skills and sensitivity to do so. The property has the minimal interior and exterior storage. There's no garage, and the neighborhood is already mixed-use. The home has currently existed since the 50s. There's no change in design in the neighborhood. The residential rentals and commercial operations currently exist. It perpetuates residential use on this property for guests and family in the local area. The home already exists, requires no additional capital investment to use in the proposed manner. There's no construction. It lacks inside storage desired by long-term tenants, has no covered parking, no outside storage—this kind of repeats—uncovered space reserved for two parked vehicles. The bedrooms, small closets, lacks sufficient space for dressers. Yeah, there's no dressers, there's not even room for dressers once you put the beds in there, so there's no dressers or armoires, so there's really no storage for clothing. That really makes it difficult for long-term use. Efforts to rent it for long-term tenants again unsuccessful, although it's been listed for months. I believe that the proposed use more closely conforms to the attributes of the property than the long-term rental required under the ordinance and would fill a clearly demonstrated need by those with ties and relationships in the area. It doesn't satisfy the long-term rental.

I believe that we've clearly demonstrated historically, by historical use, and by the efforts to advertise for long-term rentals, that is just doesn't work well in this area and this property. It's a unique property, and it really is. It fails to substantially serve the purpose of providing the long-term rental because of its unique properties. It's not a destination property where people come to for vacations. It's not adjacent to recreational opportunities. No lakes or ski lifts or whatever. It's a convenience property for people that have connections to the area. It serves the needs of the local community by providing short- to intermediate-term lodging for friends and family of local residents. And it does that in an unobtrusive manner. It effectively conceals the nature of the use on a larger-sized property, and it's screened by the green spaces, buildings and setbacks. And it does so in a transitional neighborhood with existing commercial uses and managed by persons with property management and compliance skills to make it successful.

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

The values of the surrounding areas I don't believe will be diminished for the following reasons. The current use is not readily visible or apparent to adjacent properties. It has not created a nuisance or demand on public services. Its use may not exceed 4 persons and no more than two vehicles, so there is no measurable increase in traffic or demand on services. Municipal water, septic, electric, propane and fiber Internet are all provided. Quiet hours, visitation and holding of events are closely monitored. And the short-term rental provides an opportunity to maintain the home. The neighborhood is already in a transitional state. There are known alternative dwelling units in the area not included in the 10 businesses we've already mentioned. And it does include the residential rental that's just across the street.

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:

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 home has existed like this since the 1950s, so it's not a new construction. It's already there. It doesn't change the neighborhood. It's well-suited for persons seeking temporary housing to care for and attend family events for local residents while having a need to provide specially prepared meals. It also meets the needs of persons moving into and out of the area and find themselves between housing due to a sale or purchase of a home. It provides all the basic necessities as well as some creature comforts as cooking spices, bottled waters on arrival, coffee, dedicated Internet, wide screen TV, reading materials, guidebook, etc. But it does lack sufficient inside storage that's desired by long-term residents. And again, no covered parking, no outside storage other than an uncovered space reserved for two parking vehicles. The bedrooms have small closets but lack sufficient space for a dresser or armoire for storage of under layers and other clothing items. As I mentioned, minimal storage for food. I don't know about most people. We shop quite a bit. One cabinet for food doesn't work for us. Those that come in and stay in the property, don't really have that much food because they're not staying that long, so it hasn't been an issue. The efforts to rent long-term tenants again has been unsuccessful. There just hasn't been demand. And we have the proximity for on-site owners to monitor the property and make sure that rules are abided by, and it deters parties and other miscreants.

(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 property and use have been ongoing since before the ordinance. Denial of the variance would require an alternate alteration of the current use. No demand for long-term rental, small homes with no storage has been found. The property is unique and has special attributes that don't lend it to serving the purpose of the ordinance in any fair, substantial manner. And it's actually more reasonable to use as a short-term rental managed and monitored by on-site management with the skills to do so. It's available for anybody that wants to rent it for 30 days or more. I mean, if somebody wanted to rent it. And we'll always hold it out for that. There just hasn't been any.

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

There's a demand for the short-term lodging in the area for persons moving in and out and to attend family events. It provides a location for them to keep a small amount of food, clothing, necessities to maintain a healthy lifestyle, medical requirements in a quiet and secure setting in a manner not available in the area. Minimal storage doesn't affect the short-term use. In the short-term, rental closely aligns with the intent of providing housing resources to family and friends in the area. It is the current use in a mixed-use transitioning neighborhood, and it's offset from neighbors and bounded by large green areas and physical barriers on several sides. The proposed use provides a close scrutiny of visitors and guests to the property while ensuring minimal visual, audible or social impact on the neighborhood.

(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:

Due to the minimal storage area for food, personal items, clothing, and the fact that it's just not well-suited for long-term occupancy. There's no apparent demand for the small home without a garage, as long-term rental traffic volumes, noise levels and demand for public services have minimal impact over a

long-term occupancy who could have children in school and those types of things. Security and compliance are monitored by on-site owners, enhanced by physical barriers, and all essential utilities and services are provided to provide a safe and sanitary use of the property. Screening is completed for each guest using multiple sources to ensure a safe and compliant guest. Screening includes, but is not limited to, identification of the guests reviews by prior hosts, verification of identity, ability to pay rental rates and deposits, intended use, communication, number of guests and pets. I assert that the use is reasonable on this unique larger parcel in a transitioning neighborhood but requires approval of the variance request to proceed lawfully.

We have next a copy of Duval survey which shows the property. It shows Donald Street on the left-hand side. Going back, there's a driveway, as you can see, going back between the main home and existing garage on the left, the pool on the right. And then to the existing house, which is the guest house, and it's in about the middle of the property. And going back further, that's all-green space on the right and we have a three-car garage on the left and then more green space. It's pretty open. You can see pictures here which show the view of 434 Donald from the street. You can see the main house and you can see the two-car garage on the left. You can't even see the guest house. The picture on the right is an additional view from the front which is taken a little bit more from the west and, again, you can see the neighbor's property, which he's got a lot of green space on that site as well. Still, you can't see the guest house. And then moving a little bit further to the east where we have the rock wall. You can look and you can barely see the main house. Again, you can't see the guest house, so the guest house is just totally screened from the street. The overhead shows where the location of the guest house with the red arrow there, and it shows how far back that is. And back behind the pool area and you notice that to the right where it looks like they're striped parking, that's the three-car garage on the property. To the left, you can see all the trees. That goes back to my neighbor's property. And we have trees around the bottom part of it as well. There's a commercial computer-type business back behind the three-car garage and back behind the rest on the bottom of the page here is cemetery property currently really not in use, just a green zone. We have a neighborhood shot. If you look at it closely, you can see the red heart, which says Bedford Retreat. That's the location 434 Donald Street, and it identifies the Sports Shack in blue, and the Dixieland Florist. I think it's a hair salon across from there. The residential rental is directly across the street. The rehab center is just down to the left there on Donald Street. It's not indicated here in blue, but it shows that there are a number of other commercial operations within this residential zone. I don't know how long this neighborhood has been transitioning, but a lot of these businesses have been there for some time. In fact, the prior use on Donald Street when we bought the property, he was using it for commercial purposes and indicated that it was commercial property. And we didn't believe that we've actually turned this more to a residential property and we just have the little house that we want to do the short-term rental and everything else is going to be private use. We have written support here from three neighbors, which you should have in your packages as well. Does the Board have any questions for me?

Ms. Thomas did not have any questions. Mr. Kellermann asked on the garages, one thing you were you made note of was for long-term rental, there's no covered parking for people. It looks like you have two garages though on the property. What's preventing you from tying those to the rental? Mr. Heath replied desire. I bought the property because I wanted the garages. I have a number of vehicles, and I have hobbies, woodworking hobbies and so forth, and I wanted the garages for that purpose. Mr. Kellermann continued and asked when did you buy the property? Mr. Heath replied I bought the property in February, and I moved in in March of this year. Mr. Kellermann asked did you know that it was not zoned for short-term rentals in Bedford? Mr. Heath said no, I did not. As a matter of fact, the research I did, I did not find anything restricting that use. Mr. Kellermann asked approximately how

many nights in an average month would you say you rent it out roughly? Mr. Heath replied I guess it really kind of depends on the month. Right now, it's lower. A lot of that might be because I've changed now to a 30-day minimum and with that 30-day minimum, I haven't booked any bookings. Prior to that, I was booking it fairly consistently, so probably 20 days a month. Mr. Kellermann said that's all I have.

Mr. Green asked in that basement bedroom, which may not be effective, you said there was direct access to the outside from there? Mr. Heath said yes. Mr. Green continued so it's not like somebody has to go through the house to get out if they were in the basement. Mr. Heath said correct. I would call it a daylight basement. Mr. Green asked what's a daylight basement? Mr. Heath replied a daylight basement is a basement that opens to the exterior to outside. There's a door actually leading to the outside. It actually opens at the parking area. Mr. Green asked so it's not underground. Mr. Heath replied it's not underground, no. Mr. Green said thank you.

Mr. Gilbert did not have any questions. Mr. MacPherson asked who monitors the quiet hours and you talked about noise and things like that. How is that being monitored? Mr. Heath replied I monitor it, Sir.

I live on the property right there. Mr. MacPherson asked 365 days a year, you're here? Mr. Heath said yes. This is my principal residence. Mr. MacPherson said OK. Thank you.

Chair Morin asked is there any anyone from the public who would like to speak on this application? Go ahead, step up to the microphone name and address please and then go ahead.

Mr. George Muir Testified: My name is George Muir. I live at 438 right next door. I see no problem with what's planned because they're quiet as church mice over there. I haven't had any noise whatsoever at any time. No commotion, nothing. You don't even know they're there because nobody over there has been rowdy. Not even Dave. I see no problem with it at all. I think it's worth letting them do.

Chair Morin said thank you. Any last items before we get deliberate on the application? Mr. Heath stated well, it's significant to note that Mr. Muir is my closest neighbor. He is not experiencing any disturbance, which just goes to show that we really are monitoring, and we're controlling the environment so that there are no adverse effects on my neighbors. It is our desire to be good neighbors. But we would like to use the property to the extent that it's usable and the current ordinance kind of prevents the use because like I say, since we've gone to the 30-day required minimum stay, we haven't booked a single visit—not a single one. We've been on that for probably six weeks now. Because when we first got contacted, we immediately ceased the short-term rental, and we went to the 30-day minimum. Chair Morin said alright, any last questions before we go into deliberation? There were none.

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

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

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

Mr. Green said it could. And my concern is I have no question that the applicant would closely monitor and do exactly as he says. If we grant the variance, that will continue into the indefinite future. Am I correct in that? Chair Morin replied correct. It stays with the property. Mr. Green said

it does not expire when the property is sold? Chair Morin said right. Mr. Green continued this property is not all that far from Saint Anselm's figuratively and literally. And there would be nothing that would prevent students from Saint A's renting this and suddenly having a party house, which would change the character and effect. That can happen. I'm sure that this applicant would try to make sure that it didn't, but there's no guarantee in the future. That would be a real concern, that this would be a perfect place for students from Saint A's to rent. They' aren't necessarily concerned about putting all their clothes in armoires but just having a place where they can have parties, make noise, have fun, which would alter the character of the neighborhood. Chair Morin asked anybody else on this piece? Mr. Gilbert added the piece of this that I'm struggling with it says the smaller, attached home has seen continued use since 1950s and approval of the variance would not alter the current use. Well, the current use wasn't allowed. It's already altered in my mind, and I don't know if that is in the spirit of granting it essential character, but that says it to me right there that the current use is not an approved use. Board agrees. Mr. Gilbert continued altering a non-approved use; I don't know how that fits in with the character piece of this. Mr. Green stated I don't think it gets grandfathered by doing something that's not permitted. Mr. Gilbert said that's correct. Mr. Green continued it had to have been permitted at the time it started. And if it was changed, then it can be grandfathered in. But if you never had authority to do it, then it was an improper use from beginning and can't suddenly be made legal, at least as that's how I would understand it. Ms. Ports stated to clarify there's no indication that the home was used as a short-term rental previously. Other parts of the property were used for commercial uses, like the lofts above the garage. Chair Morin said thank you.

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

Mr. Green said it depends on who rents it. Mr. Kellermann said yes, I worry a little bit on the short-term rental piece. There's a little less control. If there's a nuisance, those people are gone, you have someone else in next week. There's a little bit less control, a little less investment in the neighborhood. Whereas if you have a long-term renter, they're a bit more tied to the neighborhood itself. Mr. Green added unless they're students. Mr. MacPherson stated just a concern that if we were to grant this, what's the precedent? Chair Morin said you've got to remember what we're here for. We're here to give relief to the ordinances of the Town. That's our job, no matter what the ordinance is. That's what we do. But everything we do is by application. Because we decide something for one person doesn't make it automatic for everybody else. Everything is an individual application, and we vote on individual applications. But that's what we do. That's why they come to us—looking for relief from the ordinance.

Mr. Green replied that's true, except we can't appear to be arbitrary and capricious. Because otherwise somebody could say well you gave Mr. Jones, who everybody knows, a variance, but you didn't give it to Mr. Smith, who nobody knows and maybe some people dislike, and therefore you're doing it on a prejudice basis, not on a factual basis. Chair Morin said yes, but that's why we factually look at every application.

2. The spirit of the ordinance is observed because:

Chair Morin said it's definitely not. The spirit of the ordinance is that there are no short-term rentals in Town. I don't know where else to go with that. The town made a decision. It's part of the ordinances, and they've decided that. And this definitely is not in the spirit of the ordinance. Mr. Kellermann added yes, and they decided that pretty recently. I think it was five years ago, or so. Chair Morin said yes, and the Town makes that decision—the public makes that decision—not us, not

the government, not anything else. It's the Town who decides what's there in the ordinances, and they vote on them. And I don't think this is in the spirit of the ordinance at all. My thought on this piece anyway. Anyone else have anything for that one? Mr. Gilbert said I just agree. Other Board members agree.

3. Granting the variance would do substantial justice because:

Chair Morin said well, for the homeowner it would because it would give him an opportunity to rent it more often, but again it's something that the Town has spoken to. And I don't like writing ordinances or in our venue giving relief to something that is basically not allowed in Town. Mr. Green added yes, if this had been used for this type of use, even though it was illegal, for the last 10-15 years, I think there would be more of a claim of some equitable relief, but it hasn't. So, it doesn't even fall into that category. Chair Morin said and, unfortunately, being on this Board for so long, it has come up before, many, many years ago prior to the ordinance. But we do have an ordinance now and unfortunately, I would feel better if it was allowed somewhere in Town, then it would give us a little more traction to play with. But it's not allowed in any zoning area in town. So that's the hard part, for me anyway.

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

Board agrees they have not heard any expert 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:

Chair Morin stated the only piece of testimony we received on this was basically it's a one-acre lot compared to half-acre lots. Ms. Thomas stated the only distinguishing thing is that the building is there. Chair Morin added but compared to the other ones, it's double the size, but he has two houses and two garages, so it equals out a little bit too.

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

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

Chair Morin stated this is that piece that basically is the scale. And the general public purposes of the ordinance is that they didn't want short-term rentals. And this would give short-term rentals. Ms. Thomas added, and the property could still be used for long-term rentals, so it's not that. There are options.

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

Chair Morin said it could be. Ms. Thomas added if there wasn't an ordinance, it would be.

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

Criteria not applicable, addressed in subparagraph (A).

MOTION Mr. Gilbert moves the Board deny the request for a variance from Article III, Section 275-21A. Table 2. Table of Uses to allow the operation of a short-term rental in a secondary detached home at the rear of the property at 434 Donald Street, Lot 44-60, Zoned GR. The motion is supported by the following finding of fact facts:

- 1. The variance request does not satisfy all five criteria for granting relief from the Zoning Ordinance. Specifically, Criteria 4, the spirit of the ordinance, is not observed because the request is directly against the zoning regulation that we have in place for 30-day rentals, and Criteria 5, hardship, has not been established.**
- 2. The Board includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into this decision.**

Mr. Green duly seconded the motion. Vote taken – All in favor – Unanimous. Motion Carries.

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

Chair Morin said item number two. Please introduce yourself and go ahead with your application, Sir.

- 2. A.J. Garron – Request for a variance from Article III, Section 275-22A. Table 1. Table of Dimensional regulations to build a detached garage within 15.8 feet of the side setback where 25 feet is required at 44 Ministerial Branch, Lot 9-2-4, Zoned R&A.**

Mr. AJ Garron presents his application: Hi everyone. I'm AJ Garron. I live at 44 Ministerial Branch in Bedford. I moved there almost three years ago now, but I also grew up here. I moved here when I was three. I actually grew up with Alex. What I'm requesting is a variance to the northeast side of my property. You can see the property up here on the screen. I've talked with two of the neighbors that are most affected by this and gotten their go ahead. There should be a letter also attached with my packet. I'm not sure if the other neighbor got it in in time, but she said she was going to see one of the chairmen. Should I start with the application first and go on from there? Chair Morin said yes, you can jump right into the application. Mr. Garron continued I'm requesting a variance from Article III, Section 275-22A Table 1 for a 9.2-foot variance to the side set back ordinance of the northeast side of tax Map 9 Lot 2-4 at 44 Ministerial Branch in order to fit a detached 26 by 30-foot garage. The garage will be wood construction, have a black roof with a vinyl exterior. The overall look will be consistent with the existing home. See attached plot plan for proposed location.

- 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:**

This won't be contrary to public interest, because the purpose of this variance is to build a detached garage for residential use. It would be well in line with the character of the neighborhood. There are several homes with detached garages, few of which are within these setback requirements, all visible from the road. I have a model of that too, or a photo of that in my packet. I'm looking to place it on the property in the most aesthetically pleasing area. One of the things you'll see, the constraints of my property, there's really only one place to put this, which is why I'm here.

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

2. The spirit of the ordinance is observed because:

My house is zoned residential agricultural and what I'm proposing is a garage for residential use. The spirit of the setback is observed because there will be a natural tree barrier between 48 Ministerial and our home which is my neighbor to the right. Right now, the remaining 15.8 feet of the setback is heavily wooded and unusable land. The land will not be altered. There will also be an increased level of privacy due to the placement of the proposed building. Seeing this variance allows us to build a garage while not altering natural vegetation in the minimal way.

3. Granting the variance would do substantial justice because:

This would do justice because like I said, I grew up here. I grew up working on cars in my dad's driveway and I'm too old for that now. But mostly I just want a place to be able to store my vehicles. One of the main complaints of my home from previous owners was the garage was too small to fit an SUV and now I have a pickup truck which also does not fit. I can't close the door. So, I want to place to put that. Obviously, our vehicles are one of our biggest assets and investments and having a place to put that and keep the value up would be great. I spent a lot of time detailing cars in my career, so keeping them clean and taking good care of them is something I'm passionate about. And also, I have a child now and she is accumulating a lot of things that also don't fit in the garage. There will be a picture of that as well.

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

As you see, I have an image as well of all the properties on the map. I called out one in particular on 8 Deacon Road which sold one month after we purchased ours. Had we waited a little bit longer, maybe I wouldn't be here, but it has a detached garage and it sold for more than my property sold for, while being relatively the same on paper size and bedroom wise.

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:

My property has many constraints which limit my ability to place a garage without seeking a variance. These constraints include elevation change, an undersized lot. The overall plan: I have a one-acre lot. Bedford's standard lot size is 2 acres now. Placement of the original house was built in 1959, so it precedes all the zoning rules that we're speaking of today. Septic and leach field placement, the place from the well, the trees, which I'm trying not to alter too much. My plan has the need for one large tree removed, whereas some of the other, if I wasn't able to get to some of the other areas, would cause me to remove many which I don't want to do because that's why we love the neighborhood. It's very well wooded and it looks great specially this time of year.

(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:

I will be unable to keep my vehicles stored indoors which will decrease their value and condition. One vehicle in particular is a standard-size pickup truck, which doesn't fit within the existing garage. Having a

full-sized short bed truck is very convenient in a Town that doesn't have trash pickup. I'm not advocating for trash pickup, but it does help to have a truck to go to the dump every week. I did an SUV for a year and it's messy. Also, my passion is cars and motorcycles. It's what makes me get out of bed and go to work outside of my family in the morning, so having a place to work on my hobbies would be very nice.

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

I said before, this building will not be an abnormality within the existing neighborhood, and it will not affect the level of privacy the natural tree barrier in the neighborhood provides.

(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:

In order to fit a building in the desired and only logical location, it would need to be partially in front of the home without the variance in order to fit my vehicle, my things in. If you replace the building partially eclipsing the front of the home at a weird angle, it could not be perpendicular to the home like I'm proposing. We would risk the project having detrimental effect on the value of our home and overall character of the locale. Another limiting factor is the existing driveway and another reason for this variance is the only other way to put another garage on the property would require us to place it on the other side of our lot and either seek a variance for a second driveway due to our property having under 500 feet of road frontage or have a driveway built that would circle the front of our home, would not be aesthetically pleasing. And the septic precludes us from extending the existing garage backwards or adding onto the side or building behind the existing garage.

Alright, that was a lot of talking. I have some images here just to show you what I'm proposing. This is the proposed location down here in the right corner. We had Bedford Design come out and do a plot plan because one did not exist for my property. It shows where the setback is, and the garage is trying to be. I was able to get this because my wife's car wasn't in the garage, but right now it fits a small car. My wife has a smaller Audi, but SUVs and trucks don't fit in there. I've actually reconfigured the shelving like four or five times to try to make more room. But it's not working out.

This is the proposed location. There is a slight slope in the yard, so it will be kind of leveled out, but you can see very difficult. I should have got some thicker stakes, but there's one here and there's one here which will be perpendicular to the existing garage. This is the side view, the tree barrier that will be blocking most of the garage from the right side of my property. And here's the look in right behind where my truck is parked is around where the garage will be. If you look really closely up here, you'll see the septic vent pipe, so that's where the septic ends. I can't build anything in this area, which would be obviously ideal. This is not a driveway. I'm getting work done to my yard, so you can disregard all that grass that's not grown. This is just showing the slope that's obviously also a factor here. These are all the other properties in the neighborhood with detached garages. As you can see, my neighbor across the street has one that's pretty much on the property line. But again, our neighborhood was built in the 50s, so a lot of these ordinances didn't exist then. Also, one 2 houses down a single stall like barn-style garage and then this was 8 Deacon, which I mentioned earlier that sold for more than my property, so you know that property values wouldn't be diminished. It's also perpendicular to the house—similar type of situation. This is just that same map, but easier to read. Except for 8 isn't circled, so that's 8

Deacon. We're looking to build something like this. It probably won't be bright red, probably white like the house, but a simple two-stall garage. That's all we have here.

Ms. Thomas asked Mr. Garron, can you go back up to the picture where you see the front of your house? So, it would be where that tree is? In that area? Mr. Garron replied basically, it's pretty much going to occupy this open space to the right of the garage. There will be one tree—not this tree—it's actually over here somewhere that will need to come down to fit it. Ms. Thomas continued so, looking at your house that's past that car, kind of set back there? Mr. Garron replied yes. Chair Morin stated looking at the picture above, it would be like in between that tree and the car. Mr. Garron said exactly. I thought I had a picture of it but sorry I should have gotten some thicker stakes. Ms. Thomas said no, that's good. That's fine, thanks.

Chair Morin asked any other questions from the Board? Mr. Kellermann did not have any. Mr. Green asked what is the height of the existing garage for your cars to get in? And what is the height of the one you're proposing? You're saying the truck can't get in. Mr. Garron replied it's too long, not too high. Mr. Green said oh, it's too long. Mr. Garron clarified the truck is too long for the garage. It fits in height-wise, just the length doesn't fit. And no larger SUV or truck will fit in there ever. Mr. Kellermann commented and that's just a standard pickup truck, right? Mr. Garron replied yes, just the 1500, not even like a half ton or anything like that. I don't foresee a future where I wouldn't have one, so I was hoping I'd have a place to put it. One of the other options I've heard was to put one back here in this corner, but there are several trees, the well is here, and again you'd have to put the driveway around the front of the house, which I have worked really hard on this grass.

Chair Morin asked if there were additional questions. Mr. Gilbert and Mr. MacPherson did not have any. Chair Moring asked is there anyone in the public that would like to speak on this application? Introduce yourself and your address please.

Mr. Andre Garron testifies: Thank you. My name is Andre Garron. AJ is my son. I live at 48 Pinecrest Drive. My wife and I have been living here for over 30 years now. I just want to obviously voice my support for what my son is looking to do. When we looked at that plot plan and tried to locate the garage in the most minimum impact way, this is what we came up with or what he came up with I should say. And it just wouldn't work any other way. Obviously when this house was built in 1959, I think like most houses in that neighborhood, let's plop right in the middle so you have a front yard and a rear yard. But the sides were left at a minimum way that you can do anything in the future, not that anything was wrong with that. It just obviously it makes it difficult to do things. I served on 2 master plans here in Bedford. I've been a planner here and actually my whole career has been spent in New Hampshire as a planner, community development director, assistant manager and now a town administrator. But the one thing I've always loved about being on a master plan is that when those plans come alive, you're hopeful that the next generation will want to live here. Well, you have a case in point right here. The next generation is looking to live here and now just trying to obviously make the living arrangements such that we can do other things. And I can attest to I have my granddaughter. She does accumulate a whole lot of stuff. Not at our fault. We only buy her little things. I hope you vote in favor of this variance application.

Chair Morin said thank you. Any last comments before we go into deliberation? Mr. Garron said I don't think so. I've lost a lot of sleep about trying to figure out a place to put this so I wouldn't have to come here. But like I said, I grew up here. I lived in Manchester for five years, and after doing this little project you kind of understand why all the rules are in place and why places are nicer than others. Again, just

trying to respect the rules and ordinances in Town but trying to do this the right way and hopefully you guys will grant me a variance for this. Thank you. Chair Morin said thank you.

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

Chair Morin stated let's 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:

Chair Morin said it doesn't appear it would, and it looks like it would probably fit. Also with the locality, as he brought up in his testimony, there are some others in the area. And in looking at the property, he's got to go with what he's got.

(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:

Chair Morin said the spirit of the ordinance is to have some distance between you and your neighbors. As I just brought up looking at the plot plan and location opportunities he had, there's not much to pick from unless you put it smack dab in the middle of his front yard. Mr. Kellermann added and looking at the overhead, there's quite a bit of vegetation too. I think that creates a natural buffer.

3. Granting the variance would do substantial justice because:

Mr. Kellermann said yes, he's parking on the driveway, right now, right. Ms. Thomas said I think it would allow him to have the garage and it really would not inconvenience the neighbors or anyone else. Chair Morin added for the record, the letter that is attached is from 43 Ministerial, one of the neighbors. They're the ones who also have to look at it, and they were in favor. Mr. Gilbert said they're right across the street.

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:

Chair Morin stated he's limited on where the location is for the garage. Mr. Green added he can't put it on a well or a septic. Chair Morin added he's still got the beautiful front yard, though, right smack dab in it. Mr. Gilbert said this is like, to me, a classic case of a 1950s home built, and they had no idea that they'd have trucks bigger than they did at the time. And who would put a septic next to the house, not knowing that somebody would want another garage, Whoever had a 3-car garage in the 50s? Nobody. A victim of circumstance, you know?

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

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

Chair Morin said again, he's working within the ordinance. Yes, it's shortening it up a little bit, but looking at the property, looking at the vegetation hiding things and everything else, it seems like a it's very reasonable. Ms. Thomas added the public purpose of the ordinance is to create a buffer between properties, and he's doing the best he can to maintain the buffer. Mr. Gilbert said to me, it would also be a disservice to say put it on the other side and put more driveway. That doesn't make sense.

The Board agrees.

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

Board agrees yes, it 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).

MOTION was made by Mr. Gilbert that the Board grant the variance from Article III, Section 275-22A. Table 1. Table of Dimensional regulations to permit the construction of a detached garage within 15.8 feet of the side setback where 25 feet is required at 44 Ministerial Branch, Lot 9-2-4, Zoned R&A. The motion is supported by the following findings of facts:

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

Mr. MacPherson duly seconded the motion. Vote taken – all in favor. Motion carries 5-0.

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.

Chair Morin said you're all set. Mr. Garron said thank you.

V. Adjournment

MOTION: Ms. Thomas moves to adjourn the meeting. Mr. Gilbert seconded the motion. Roll call vote was taken – ALL IN FAVOR. Motion carried 5-0.

Meeting adjourned at 8:15 pm.

The next meeting will take place on November 15, 2022.

Respectfully submitted,

Sue Forcier