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Town of Bedford  
November 19, 2019  
Zoning Board of Adjustment  
Minutes

regular meeting of the Bedford Zoning Board was held on Tuesday, November 19, 2019 at the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH.

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

Chairman Morin called the meeting to order at 7:00 p.m. and introduced members of the Board.

1. **Approval of Minutes:** September 17, 2019

Mr. Casale noted there were several areas in the minutes where the word “confirming” was used rather than “conforming”.

**MOTION by Mr. Green to approve the minutes of the September 17, 2019 meeting of the Bedford Zoning Board of Adjustment with the above-mentioned adjustments. Ms. Stevens duly seconded the motion. Vote taken 1 abstention: Mr. Gilbert - all others in favor. Motion carried.**

2. **Applications:**

Chairman Morin reviewed the rules and procedures for the meeting and swore in anyone wishing to speak at the meeting.

1. **Jeffrey & Shirley Ginn – Requests a variance from Article IV, Section 275-28.A in order to construct a garage addition with finished space on the second floor 31.4 feet from the edge of a wetland where 50 feet is required at 49 Colonel Daniels Dr., Lot 31-6-13, Zoned R&A. (Continued from September 17, 2019)**

**Background:**

This property is a 3.17-acre lot located on Col. Daniels Dr., which is a cluster subdivision. In a cluster, the front setback is reduced from 35 ft. to 30 ft. and the side setback is reduced from

25 ft. to 20 ft. The existing home was built in 1999. The wetland runs through the property from north to south, bisecting the property.

**Proposal:**

The applicant is requesting to build a 24 ft. x 24 ft. two-car garage addition with finished living space located on the second floor. The addition would be on the east side of the

existing garage on the back of the house. It would be 31.4 ft. from the edge of the wetland at its nearest point.

When the Conservation Commission first reviewed the application, it was for the two-car garage addition. At that meeting, the Commission recommended approval of a one-car garage or a 24 ft. x 12 ft. addition with the condition that all new impervious areas be treated with stormwater runoff approaches/techniques. Staff recommended the applicant submit a drainage memo to demonstrate there is no increased runoff and/or that any additional runoff be treated with low impact stormwater techniques.

The Conservation Commission also suggested the applicant could probably build the garage as a detached structure and not need a variance.

When the ZBA application was received, it included the two-car garage addition and the freestanding garage as suggested by the Conservation Commission. The ZBA then directed the applicant to go back to the Conservation Commission so they could formally review the detached location. There was much discussion about which location would be more environmentally friendly. In the end, it was a tie vote, with no clear decision made.

The applicant has decided to pursue the variance for the 24 ft. x 24 ft. attached garage with living space on the second floor.

Staff has also received a revised narrative from the applicant's engineer. The narrative states that stronger wildlife corridor protection is making its way through the legislature. SB200 did pass and became effective in September of this year. It continues to be the applicant's contention that a hardship exists for the reduced wetland setback, as it will have less environmental impact on the land.

### **Summary:**

If the Board approves the variance, the applicant will then proceed to the Building Department for permitting. The Board will also need to decide whether to include the condition recommended by the Conservation Commission and Staff that the applicant submit a drainage memo to demonstrate there is no increased runoff and/or that any additional runoff be treated with low impact stormwater techniques.

Earl Sanford of Sanford Surveying and Engineering, Jeffrey Ginn the owner, and Mark West were present to address this variance request. Mr. Sanford reviewed the history of this variance request. Because there was no testimony of a wildlife expert in regard to the wildlife corridor across Mr. Ginn's property the Zoning Board had requested they go back to the Conservation Commission, but they didn't have a wildlife expert on their board either. Mr. Sanford then made several calls to Fish and Game who agreed wildlife corridors are very valuable; however, they aren't in the position to make testimony and suggested he find someone in the private sector, which is why Mr. West will speak on it today. He has experience in determining wetland values and values of wildlife corridors.

A diagram was reviewed of 160 connected acres of wetland corridors. The wildlife tend to like to follow a low wet area, and there is a wet swale in the vicinity of Mr. Ginn's property. Their proposition is that his yard is not just any old "side yard" it is part of a network of 160 acres of mostly undeveloped wetland corridor. Keeping the trees and cover greatly enhances the corridor.

The proposed garage would be tucked in back of Mr. Ginn's rather than being a freestanding structure requiring removal of trees from the tree line where deer and bear have been photographed crossing. The proposed garage is 24' x 24' with mitigating factors like 32 shrub plantings using a 3:1 ratio of what they are creating in impervious surfaces in the setback including the roof and additional 600 feet of pavement required for the garage; and a stone infiltration trench that wraps around to help infiltrate anything around the impervious area.

Mark West of West Environmental, a certified wetland scientist with a background in wildlife biology who does endangered species surveys, reviews of habitat assessments for towns, and who has a lot of experience in ornithology indicated that the Ginn property is not just a wildlife corridor, but a habitat in general. He inspected the site and looked at the wetland system (which is a forested wetland). The wetland is part of a watershed of a small intermittent stream that continues down to the south behind a series of houses to the east of Colonial Daniels Drive. There have been two wetland delineations done over time. Mr. Ginn's lawn goes from his house right to the edge of the wetland. Because you have lawn right next to a wetland, the buffer and the reason the town is protecting the wetland is to protect the resources within it (the wildlife habitat, the water quality, and other functions of the wetland). Enhancing the buffer with native shrubs that have fruit and provide cover enhances the wetland itself and is a much better solution overall to the impact on the resources than removing and losing more wildlife habitat. It is Mr. West's belief that the proposal being reviewed this evening protects and enhances the wetland even though the structure is 30 feet rather than 50 feet from the edge of the wetland because another 20 feet of enhanced wildlife habitat that protects the wetland and creates a buffer to the resource area has been created with the 32 shrub plantings which was his suggestion to mitigate the impact of the garage construction. He said the infiltration trench will further protect the water quality and improve runoff that currently comes off the driveway by infiltrating it.

Chairman Morin opened the floor for questions.

Q: Mr. Casale asked if adding 600 feet of impervious area and a roof makes a situation where you lose lawn area that would normally absorb; so, the lawn is not just being disturbed, but solid objects are being placed over a significant portion of the lawn.

A: Mr. West said that is why the infiltration trench was designed to infiltrate the runoff rather than having it flow over the lawn to the wetland. Mr. Sanford noted that there is no rule in the Town of Bedford preventing you from paving right to the edge of a

wetland. What they are seeking relief from is the building setback. The ordinance requires only relief from the setback but has no restrictions about paving up to the wetlands. Mr. Casale felt that without the structure being there, there would be no sense in paving because it would only devalue the property. Mr. Sanford said some type of paving would be needed anyway to park Mr. Ginn's project cars whether the garage was built or not. Mr. Casale then said that he feels the evidence is working both ways – noting that Mr. Ginn has said he cannot park cars outside because of covenants in his neighborhood that we are unsure even exist. Mr. Ginn clarified that when he purchased the home he was told they are not allowed to leave cars out in the driveway. He has subsequently learned that the covenants only last 20 years, so we may now be at the end of that 20-year period. Right now, he has to leave one car on the lawn which doesn't help anything. If he can't build the structure he would have to extend the driveway onto the lawn in order to leave the car there.

Q: Mr. Casale asked if Mr. Ginn had been penalized for leaving the car out.

A: Mr. Ginn said he has been storing cars and has been told the covenant only lasts for 20 years and we are at the endpoint of that now. Since no home-owners association was formed there is nowhere to even go to get remedy and it is also hard to receive penalty. Mr. Casale feels that is not entirely true, and that somebody could sue him if it is in the covenants, but we are not even sure if it is actually in the covenants because Mr. Ginn only heard about them from the builder, and perhaps a neighbor may have seen the paperwork, but the Zoning Board has never seen the paperwork. The reason he even asks about these questions is because it is part of Mr. Ginn's evidence for needing a 2-car garage because he cannot park the vehicles outside. If he can park vehicles outside it alleviates the necessity for the 2-car garage addition. Mr. Ginn says that he doesn't even have the space to leave the cars outside on the current driveway. He would have to extend the driveway into the lawn area so he could enter and exit the garages now. Mr. Casale understands, but for the Zoning Board's purposes it is a variance request for the garage and not for whether or not he can put down pavement. It was agreed.

Q: Mr. Casale asked Mr. West about the alternate plan to move the garage across the driveway and take some trees down in a 24' x 24' area which may involve more area to facilitate for equipment and noted that it's been said that would be a worse impact than if it was put in the 50' setback area - - he asked if it was true overall that although it may be a little more impactful than the 50' setback, given the 200-300 foot corridor this is a small space in comparison to the trees that would still remain.

A: Mr. West said the alternate space is not really large, but the corridor is functioning even with several driveways that go through it. The roadways in this area are densely developed so it isolates the habitat areas because there is not much room to go in between the houses, so he thinks it would have some impact on the buffer. It wouldn't stop movement, because they don't have that many places to go, so the wildlife would still use it. He was asked to look at this from a wildlife habitat perspective and clearly the lawn

behind the house (although closer to the wetland) does not impact wildlife habitat the same as putting the garage in the alternate site. Planting the shrubs and creating a buffer and creating more wooded area next to the wetland compensates for the loss of impact outside of the buffer.

Q: Mr. Casale noted that it has been said that the deer cross through the alternative site area to get to a larger wetlands and if we put a 24' x 24' structure (with perhaps another 10' to allow for equipment) it will not affect the wildlife's movements across the corridor, and given the fact that the corridor is 200-300 feet having a garage there would not affect it greatly. It may be a little bit worse than encroaching on the 50-foot buffer, but not significant if the alternative site was used – correct?

A: Mr. West said he thinks it would have an impact, and wildlife would still continue to move through there but it has much more of an impact than the proposed alternative. The proposed alternative is a better option.

Q: Mr. Green asked for a brief description of what an infiltration trench is and why it is important.

A: Mr. Sanford explained the calculations he used to ensure enough storage for an additional 1-inch of rainfall without overflowing. It is  $\frac{3}{4}$  - 1  $\frac{1}{2}$  inches of stone wrapped in a fabric, and the top 6-inches are used as a ballast to keep sands from choking it up and protecting the lower section.

Q: In looking at the photo of the proposed addition, Chairman Morin asked if there would be gutters forcing the water coming off the house to a certain location or if it would be freefalling.

A: Mr. Sanford said they would place stone under the drip edge so it wouldn't matter. If they put in gutters we would run them into the stone trench, and if they don't the stone trench is still under the drip edge. The drip edge that is on the pavement side will hit the pavement and run into the stone trench. 100% of what would come off the roof would be captured, though.

Chairman Morin indicated he is of the same thinking as Mr. Casale in regard to the corridors and that 24 feet of a 200-300-foot corridor is not that much. They looked at the map and discussed how Mr. West took his measurements. Mr. West said the area is so densely developed that the area of Mr. Ginn's property is the widest space to get to the larger wetland. Any encroachment is not helpful because it is already compromised. He feels it is the habitat value of the forested area vs. the habitat value of the lawn. A balance and weighing of what is best is required.

An aerial photograph of the vegetation between properties was reviewed.

Q: Mr. Casale indicated that he is a hunter, and if he goes into a spot more than once the wildlife will retreat and go somewhere else. He asked if it would be agreed that even if we deforested the whole area that they are not helpless and as far as animals traversing the wetlands on the west side there are other ways the animals could go and they would adapt.

A: Mr. West said the animals tend to have to adapt, but they would prefer to go through tree-ed areas whenever they can.

Q: Mr. Casale asked if it would be true that if we take the little square out and all the trees around it remain it doesn't seem like it would be that big of an effect.

A: Mr. West said again, it is an impact that could potentially be avoided but it does not eliminate the corridor or block the corridor. Mr. Sanford said the argument they are trying to make is that it is much better ecologically and environmentally friendly to leave the trees there. To have the garage attached to the back of the house also makes it more efficient because heating can be tied in to the existing rather than the energy consumption required to heat a remote building.

Q: Mr. Duhaime asked how steep the grade from the lawn to the wetland is?

A: Mr. Sanford said it drops off about 3-6 feet.

Q: Mr. Duhaime asked if during a heavy rain there would be sheet flow towards the wetland today?

A: Mr. West said, "Yes you would get some and currently the lawn goes right up to the wetland boundary and we would be pulling that back and planting the shrubs and letting it grow back natural."

Q: Mr. Duhaime asked if the shrubs are elevated a little from the remaining part of the lawn so that you wouldn't get that sheet flow and there would be an opportunity for it to infiltrate?

A: Mr. West answered "Yes", especially if it is not mowed. Mr. Duhaime asked if it would be like a berm; but Mr. West indicated that it is sort of pit and mound. As an engineer Mr. Sanford said it will obviously provide infiltration through the plantings which will be raised slightly to encourage the infiltration, but it is not mounded or bermed up, although it could be, although that is not what is being proposed at this point.

Q: Chairman Morin asked if there was any additional items to add to the 5 criteria for the variance?

A: Mr. Sanford noted the following:

- The Conservation Commission commented that if they could get a wildlife expert's opinion that this would be a better alternative, they might rethink it. We have responded to their recommendation and it is in the minutes that that may have tipped the balance from a 3:3 vote to something that would have made the request for the variance go through.
- There is nothing that says you cannot pave right up to the wetlands.
- In re-reading the ordinance to try and determine the purpose of the ordinance the idea seems to be to keep the houses out of the wetland and he thinks it was more of a macro thing to say "50-feet" then you are keeping the vast majority out; but the wording of the ordinance says that there is extra thought that could be given to getting leniency. He read from 275-24.I which was added in 2007: "This zoning ordinance is to recognize the unequal and unique burden of wetland property owners and minimize restrictions which may be placed upon such properties." He indicated there would actually be more tree and shrub buffer (1,300 square feet of buffer) when their proposed addition is done than there is existing, so they are trying to honor the spirit of the ordinance.

Q: Mr. Duhaime asked if the red box shown as 24' x 24' is the extent of the clearing?

A: Mr. Sanford said they would absolutely have to go another 8-10 feet and with the huge majestic oaks that are there with their extensive root systems it is really quite an impact.

Ms. Stirling provided a bit of history. When the ordinance was drafted she was very involved in the process and one of the things they started out with was a 100-foot buffer. She said a group of them got involved because they felt this hit the homeowner very hard, so, the 50-foot required buffer that passed was a compromise.

Mr. Sanford said that every project that he worked on up until the 90's was given a pass, and then some legal action was taken to say that passes could not be given. Ms. Stirling said they were trying to reach a balance between property rights and protections. Mr. Sanford feels we are here today to explore that balance once again.

Something Chairman Morin brought up last time is that he understands we are at 30-some-odd-feet but one of his issues with the plan was how much the new building was encroaching in the setback. 80% of the building would be in the setback. In regard to leniency in the ordinance, we look at every application as a new application and try to look at what is being presented, what is there, and how we can try to work within the boundaries of that. He said he personally still has an issue with how much of this is within the setback area. Yes, there is some mitigation going on, but he has to look at what is being built and where it is being built – that is what we have to give the variance on.

Mr. Sanford replied that Mr. Ginn's property has 0.9 acres buildable in front and about 1 acre in back. He could go for a dredge and fill and put an even bigger barn in the 1 acre of upward in the back of his lot. There is over 30,000 square feet of buildable area. Of that 30,000 square feet he is only asking for 1% of it. The other issue that was important to some people on the Conservation Commission was that this was the line that was flagged by Dick Bond back in the late 1990's and if we held that line we would have had just under 24 square feet of impact. For various reasons the designation of this area has come forward 25 feet (including testimony that tree stumps were buried there and settled down and became a water magnet). It is not pristine, original wetland.

There were no more questions from the Zoning Board, so Chairman Morin opened the floor for questions/comments from the public.

Rick Harris who lives across from the Ginn's on Colonel Daniels Drive said there is a very large open area on his property that feeds directly into the Ginn's property where all the trees in his side yard would have to come down if a freestanding garage is built. He sees a lot of wildlife going through that area almost daily in the precise spot where the freestanding garage would need to be built. They don't go through the brushy area that is a little more set back, they go through the trees that would have to be cut down to build the separate garage. The addition of the proposed garage toward the rear of the house would be in harmony with the rest of the architecture of the neighborhood. There are no separate garages anywhere in the neighborhood. It would be more pleasing and more architecturally in harmony with the rest of the properties in the area if the garage was built in the rear of the house.

James Drake of 33 Christmas Tree Circle sits on the Conservation Commission and has heard the applicant twice already. He stated that the Conservation Commission came to an agreement at the first meeting and thought it would be an appropriate balance between the impact to the setback to cut the development in half. That was their recommendation and if you look at the meeting minutes they voted to recommend to the Zoning Board that the variance be denied. The applicant asked about another solution that had been mentioned during the meeting, and they took a second vote and recommended that he reduce the size of the development to 24' x 12'. There was discussion about the trees and putting a freestanding garage in that area and it was pointed out to the applicant that if he were to do that, the Conservation Commission would have no jurisdiction at all – it would be up to the Zoning Board because there would be no wetland impact. The wildlife corridor was not discussed at that time. The wildlife corridor came up in the Zoning Board meeting immediately following. At the Zoning Board's request, the variance was brought back before the Conservation Commission. Mr. Drake feels it should be considered (and the neighbor also brought up the important point) the State's requirement and initiative is looking at the wildlife corridor and if you look at the trees on this property that will be impacted by a move to a freestanding garage – across the street from it is an open area that is not a corridor. Secondly, the wetland corridor is straddled by the middle of the driveway. There are trees on either side of the driveway. Mr. Drake

is not sure of the true impact of this, and that is why the Conservation Commission asked for a wildlife expert to provide opinion on it. He understands the State is probably not going to provide any opinion whatsoever on this. Mr. Drake said the Conservation Commission definitely needs to talk with Ms. Stirling about it because they have been dying to hear history on it and the town has not been able to provide any history on it. In regard to the amendment of 2007, Mr. Drake feels it is important to realize that it was a citizen's petition to add "leniency" to the rules and that was rejected by the Planning Board. He feels it is important to remember that this was cluster housing and it was originally developed with the intent that this would be the footprint of the property in order to reduce the size of the development at a lower impact on all of the environment. He feels we really need to recognize was a cluster development was meant to be, what it was intended for, and not encroach on that. In listening to the proposal, if he was to review this again, Mr. Drake said he thinks the idea of an additional buffered wetland area has merit, but he is still not sure if the idea of additional encroachment with all the wetland and the additional impervious area from the driveway and roof would be offset by the suggested buffer in the wetland setback. If it is considered, he would add that the buffer extend around the driveway because it drops off that driveway into the wetland even on the back side of the trench drain. He would also suggest that we find some way to keep this in perpetuity. If we give up cutting trees but we can't keep the property owner from doing that, he suspects that within the next 5-6 years someone will offer to cut the trees down (because they are going to hit the house. Everyone in his own neighborhood is cutting down trees to protect their homes) because the trees are very close to the home and will probably come down anyways. In addition, if we are going to suggest wetland buffers like this and trench drains we've somehow got to incorporate that into the deed, or deed that land to the Conservation Commission and the Town so that it is protected; otherwise, we give up our right to protect that land. Based on this, 2 years from now the homeowner could just raze it, and then we have protected nothing.

Mr. West showed an aerial leaf-off photo of the area Mr. Drake was talking about. It looks like a drainage swale that may have been associated with the drainage for the roadway (he didn't inspect that area); but it is wooded on both sides and the open area is a ravine that is attractive for wildlife to move in. The open area is not forested but has grass and shrubs (it is not a driveway) and it is suitable as a wildlife corridor. He said if there was a deed restriction put on this property, granted the oaks are important but the back of the property could be protected depending on what the Town does. In some places they like small deed restrictions, but they are certainly not something a conservation group would want to hold unless the Bedford Conservation Commission has small acre areas that they protect, usually it is large areas that are protected.

Q: Looking at the aerial leaf-off photo and based on the comment of the neighbor across the street about how thin the wooded area is and that it is better for deer than the more wooded area to the north, Mr. Casale asked if the deer prefer to be more sheltered than the area where the second option is for the freestanding garage – there are a couple of

trees there, but it's not dense. Wouldn't the deer like to be more hidden from view and prefer to go north of the garage area?

A: Mr. West doesn't feel we can predict what wildlife will do in a corridor. In some cases, because there is grass under the trees they may be eating the grass under the trees and be seen in that location. He feels they would use both areas, but some deer are attracted to grassy areas under trees to graze. He looks not only at the deer and large mammals, but all species of habitat that would move across the corridor.

Mr. Ginn said the reason the animals come through is because there is a visible path from a hill that the animals come down and cross the street into the large wetland. Regardless of what conversation people want to have, he has lived there for 20 years and there are animals under the trees every day of the week. He is unsure if they are eating the grass, but he can attest that they dig up the acorns all year round, there are deer that sleep there with their babies every night. For whatever it is worth, Mr. Ginn says he is not cutting those trees down. He is trying to protect the environment. He tells his child every day that one of the greatest things about living in New Hampshire is that you have no idea how lucky you are to look out the window and be able to see this wildlife. He would like to build the addition in the least impactful way to the environment, but he will not cut the trees down, and he doesn't understand why anyone would think that would be a better option for the environment. He added that the 3:3 vote mentioned, was actually a 4:3 vote in his favor but the alternate was not allowed to vote. He was personally apologized to by 4 people on the Conservation Commission saying that it was grossly unfair and they were sorry that he was put through it. Mr. Ginn feels this has gotten very complicated and is curious to know if Mr. Drake attends these meetings on a regular basis or if this has just become a personal issue for him. There was comment that nobody had ever asked for such a large variance, and then it was pointed out that the Goedecke family asked for a gigantic addition to an existing garage all in the setback – so Mr. Ginn feels there is a lot of politics going on here. He hopes he can build his addition and he would like to enjoy his property. He doesn't want to have to build a driveway and park his cars there – he doesn't think it's good for the environment or his neighbors. He simply is not going to cut down those over 100-year old magnificent trees, and he is not going to destroy the wildlife because it is the beauty of living in Bedford. He can't understand how putting a garage on his lawn and cutting down the trees is more impactful given the mitigation efforts they have discussed. With that...he left it to the Zoning Board to decide.

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

The Zoning Board reviewed 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:**

Chairman Morin said it would not alter the locality at all. Mr. Duhaime said that we also heard from an abutter that it matches the neighborhood. Ms. Stirling agrees.

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

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

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

Ms. Stirling indicated the crux of the matter is the balance between the wetland setback requirements and the ability to maximize use of your property. She thinks both Chairman Morin and Mr. Casale raised relevant points percentagewise. She thinks from the first meeting to now we've received more information which we were looking for to be able to better judge this criteria (especially having the scientist weigh in). We try to respect the dedication and good work of the Conservation Commission. She has been on the Zoning Board for a long time and in her memory she never remembers going against their recommendation to the Zoning Board. It is just a recommendation. We have heard testimony that the alternate did not vote and maybe that would have been endorsed had that happened - she doesn't know how relevant that would have been, but we have a 3:3 split vote to consider relative to this ordinance.

Mr. Duhaime thinks the effort to create additional infiltration trenches and wetland buffers and planting should be factored in here. He thinks the spirit is to prevent things from being overbuilt on wetlands. The applicant has another option that could be argued whether or not it is more environmentally sound; but in his opinion he thinks it meets the spirit.

Mr. Casale doesn't want it to be lost that putting the garage where the trees are is an option, but there are other options that have been refused: Cutting down the size of the garage, putting it in front (which doesn't look aesthetically pleasing), etc. So that is not the only option he has. The other options have been refused.

Mr. Green said just because there are other options – do those options fit in with the neighborhood as a whole and even though those options are possible – would they stick out like a sore thumb? Mr. Green thinks that is part of the problem we face. Mr. Morin says that unfortunately we have a plan to go by, and that is what we have to vote on, so you must determine that.

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

Chairman Morin indicated as Ms. Stirling brought up earlier it's that balance we strive for. Everyone has to utilize the information we have and make a decision.

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

Ms. Stirling and Mr. Green didn't think so, and Chairman Morin said we've heard no technical 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:**

**Chairman Morin doesn't see that. All of the properties look the same in where they have put their houses, and they all have huge backyards that are unfortunately not useable due to different issues.**

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

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

**Chairman Morin said there is a lot of stuff but breaking it down you've got the general public purposes which the town has come up with a 50-foot area that has to be adhered to. We look at each application as a new and individual thing and look at all the evidence that is given to us and with that we have to make a decision, and that is going to be up to the individuals to make their decision about which way they feel about it.**

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

**Chairman Morin indicated it is reasonable to build an additional garage.**

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

**Chairman Morin read what they utilized on 5 (B): "Strict enforcements would have a net negative impact on the environment greater than the impact of keeping the garage tucked up against the house."**

**Ms. Stevens said it is hard to balance those two because we have an exact measurement we are supposed to abide by with the 50 feet, whereas with the wildlife we are really given no guidelines as to how much land we need to be keeping open for them to migrate from one side to the other – so she is struggling with that. They are here for one particular reason and she is struggling with the potential that we could have all kinds of people coming in with other mitigating factors that we would have to consider and those are extremely hard to weigh.**

**MOTION by Chairman Morin that the Zoning Board of Adjustment deny the request for a variance requested for Article IV, Section 275-28.A in order to construct a garage addition with finished space on the second floor 31.4 feet from the edge of a wetland where 50 feet is required at 49 Colonel Daniels Dr., Lot 31-6-13, Zoned R&A due to our deliberations and the information we have been given. Ms. Stevens duly seconded the motion. Vote taken – Chairman Morin, Ms. Stevens, Mr. Green, and Ms. Stirling (reluctantly, she stated) in favor; Mr. Duhaime against. 4:1 vote. Motion carried.**

Ms. Elmer asked if the applicant chose to go down to a one-car garage which was recommended by the Conservation Commission if that was something we would entertain this evening, or if the applicant would have to come back with a new variance to do that.

Mr. Morin felt we would be better off dealing with it this evening because if it is done tonight and there is not a significant change in the variance we would pretty much have to deny it anyway. It was decided to reopen public input so the applicant could provide input and comments on that.

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

Mr. Sanford indicated that he came in with a plan similar to the garage located at the intersection of McAllister and Meetinghouse and they said if you move it back 5-feet we will approve it, and he received the approval that night. He was hoping if the 24' x 24' garage addition was not approved if there is something that can be approved (such as the recommendation of a 12' x 24' garage addition) he would prefer not to come back through this process again.

Ms. Elmer asked the elevation of the addition. A photo of the proposed 24' x 24' addition was viewed and Mr. Sanford indicated it would basically involve cutting it in half – the 576 gets divided by 2 and the 600 gets divided by 2. Chairman Morin said we would then be talking about a setback of 43 feet instead of 31 feet. Ms. Stirling said 80% of the entire 2-car garage was in the setback. Mr. Sanford said we would need 7 feet of relief. Ms. Stirling said the envelope would be reduced to 50% from almost 100%.

Ms. Stirling said she was reluctant to vote to deny the previous motion so she would be on board with this.

Q: Mr. Duhaime asked if the mitigation factors would still be done.

A: Mr. Sanford indicated the mitigation factors would still be done, but there would be a little less of a trench.

Q: Ms. Stirling asked if they would still keep the plantings.

A: Mr. Sanford said they would.

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

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

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

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

**Chairman Morin indicated this has not changed, and the Zoning Board has no issues with this.**

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

**Chairman Morin feels there is a change here when it comes to losing some of that setback and still being able to work to get the mitigation and also having a recommendation from the Conservation Commission for that type of issue.**

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

**Chairman Morin said with a smaller garage he feels it works for both the Town and the applicant. Ms. Stirling thinks it honors the respect of both the setback as well as the maximum use property that we so cherish.**

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

**Chairman Morin indicated there was no expert witness on 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:**

**Chairman Morin thinks we've talked on that with the spirit working more within the setbacks. It *was* a recommendation of the Conservation Commission. We are looking at the setback issues and the overall building is not going to be in as much of the setback that was asked for prior.**

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

**Chairman Morin said the proposed use is a reasonable one.**

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

**MOTION by Chairman Morin that the Zoning Board of Adjustment approve the variance from Article IV, Section 275-28.A in order to construct a garage addition with finished space on the second floor 43 feet from the edge of a wetland where 50 feet is required at 49 Colonel Daniels Dr., Lot 31-6-13, Zoned R&A to include the mitigation per the plan. Mr. Green duly seconded the motion. Vote taken 5:0 - all in favor. Motion carried.**

**MOTION by Ms. Stevens to go back into public input. Mr. Green duly seconded the motion. Vote taken – all in favor. Motion carried.**

Ms. Stirling excused herself from the meeting, and Chairman Morin indicated that Mr. Casale would become a voting member.

- 2. Andrew Tamulevich - Requests a variance from Article III, Section 275-22.A and Table 1 in order to construct a shed 22 feet from the road where 35 feet is required at 1 Meetinghouse Terrace, Lot 22-62-1, Zoned R&A**

**Background:**

This home was built in 2013 on a 0.32-acre lot located on the corner of Meetinghouse Terrace and Meetinghouse Road. The property is unique in that it is surrounded on three sides by roads. Meetinghouse Terrace wraps around two sides with Meetinghouse Road being the third.

**Proposal:**

The applicant is requesting to build a 112 square foot, 8 ft. x 14 ft. shed within the road setback. Per our Ordinance, all sheds less than 120 square feet in size shall be permitted 5 feet from the side and rear property boundaries. In this case, the shed would be located 5 feet from the rear property line. All three other sides require 35 feet setbacks since they are all road (front) setbacks. As such, the applicant is requesting to place the shed 22 feet from Meetinghouse Road where 35 feet is required. It will be located behind an existing six-foot stockade fence.

**Summary:**

If the Board approves the variance, the applicant will then proceed to the Building Department for permitting.

Mr. Tamulevich introduced himself. He resides at 1 Meetinghouse Terrace in Bedford, NH. He feels his property is a blessing because it is the smallest property he's ever owned. When he moved in and realized how small it was he realized he would need room for yard equipment. Going into purchasing the house he knew there were a lot of really good factors involved and he figured he would move forward and try to get a variance to put a shed in. When he looked at the plot plan he noticed it is about 1/3 of an acre with an extremely tight building envelope (about 1-foot around the foundation of the house) and he has some obstacles: His septic and leach field were located where he originally wanted to put the shed. On the other side where the adjacent property already has a shed, he thought that might be a good place to put his own shed, but his propane tank is there. In looking at his options the easiest spot would be right in the middle of his

backyard where he has a patio, which would then eliminate his backyard. His property is parallel to Meetinghouse Road and the front and other side of his house is on Meetinghouse Terrace, so he is surrounded by three roads. The only choice he has is to request an area variance. The proposed builder of the shed, Reed's Ferry, came to do a site inspection and determined the minimal impact would be to align the 18' x 14' shed with one side of the house so visually it would be tucked in as much as possible to preserve his backyard leaving him to request a variance of 22-feet from Meetinghouse Road vs. 35-feet that would bring him to 22-feet of the fence that aligns with Meetinghouse Road. He is basically juggling the best space to preserve his backyard, not put it on his propane tank, which is ill-advised, and not putting it on the septic tank and leach field.

Q: Chairman Morin asked if the property line between he and his neighbor was fenced.

A: Mr. Tamulevich indicated it is fenced. There is a stockade fence all the way around his house. He showed a photo of the view from the road looking at the backyard. Bringing the shed right up against the house makes it look like it belongs there and is not just hanging out in the yard randomly.

Mr. Tamulevich indicated he would like to put some aesthetics into the shed and make it look identical to the house. He will invest money in the design of the shed so the eave overhang is fascia-board so it will not detract from the aesthetics.

Mr. Tamulevich reviewed 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:**

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

**Adding the shed to the property will enhance the property aesthetically and improve functionality of the property. Granting the variance will not threaten public health, safety, or welfare.**

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

**Granting the variance will not violate the spirit of the ordinance given that this will be a shed that will compliment the aesthetics of the house currently on the lot. Great care will go into the shed design to ensure there is no compromise in the surrounding community, current zoning provisions, and will not contradict anyone's health, safety or general welfare. By adding a shed to this property, I will be able to more effectively maintain my yard; keep the property looking exceptional; and maintaining property value. The shed will not impact any neighbor's views of any kind.**

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

**The current lot size and house requires additional storage for lawn equipment, bicycles, and other household equipment such as patio furniture.**

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

**A shed will be selected to compliment the house; a reputable builder will be chosen; and detail will be incorporated into the design of the shed.**

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:**

**Given the size of the house current lawn equipment needs to be stored somewhere. Other properties on the street have sheds, as well.**

**(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:**

**Without this variance I will have no place to store lawn equipment and bicycles. If I were to store it in the garage it would exclude being able to put a car in the garage.**

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

**The proposed use is for lawn equipment and bicycles which is a common use for sheds. Other properties on the street also have sheds.**

**(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:**

**This is a small lot with a limited building envelope so a variance is needed.**

Chairman Morin opened the floor for questions from the board:

Q: Mr. Casale asked if Mr. Tamulevich's garage was a 1-car garage.

A: Mr. Tamulevich said he has a 2-car garage but it is not overly large. He can put two cars in and open the doors but not much goes in between and on the sides.

Q: Mr. Casale asked the size of the garage.

A: Mr. Tamulevich didn't know but indicated there is a Subaru Outback and a Jeep in the garage and not much is able to go in the middle. Right now, the Subaru Outback is not in the garage because there is a lawnmower and a leaf-blower in the middle of the bay on the left.

Q: Mr. Casale asked the size of the house.

A: Mr. Tamulevich indicated the house is about 1900 square feet.

Q: Mr. Casale asked if there is a walk-out basement.

A: Mr. Tamulevich there is not a walk-out basement, there is a bulkhead basement.

There was no public present, so Chairman Morin did not open the floor for any public comment.

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

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

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

**Chairman Morin indicated there was no evidence of that.**

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

**Chairman Morin said there was no indication of that.**

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

**Mr. Green said it is a very small lot that couldn't possibly comply with current ordinances. Chairman Morin said that the whole house takes up the buildable area and the house is probably older than when the ordinances were put into effect (Mr. Casale later corrected for the record that the house was built in 2013). Mr. Duhaime indicated the house is also surrounded by three streets.**

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

**Mr. Green said that other people have sheds. Chairman Morin said it gives them the opportunity to store some items.**

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

**Chairman Morin indicated that no testimony was heard on that.**

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

**Chairman Morin said there are streets on three sides of the house and it is a very small lot. Mr. Casale said there is no other spot to put the shed besides taking up a lot of his backyard.**

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

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

**Mr. Green said it is the only place he can put the shed. Chairman Morin agreed.**

- (ii) **The proposed use is a reasonable one because:  
Chairman Morin said it is very reasonable to have a shed.**

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

**MOTION by Mr. Casale that the Zoning Board of Adjustment grant the variance request from Article III, Section 275-22.A and Table 1 in order to construct a shed 22 feet from the road where 35 feet is required at 1 Meetinghouse Terrace, Lot 22-62-1, Zoned R&A per our deliberations. Ms. Stevens duly seconded the motion. Vote taken – 5:0 - all in favor. Motion carried.**

**MOTION by Mr. Casale to go back into public input. Mr. Duhaime duly seconded the motion. Vote taken – all in favor. Motion carried.**

- 3. Jeffrey Riley – Requests a variance from Article III, Section 275-21.F.1 in order to operate a vehicle restoration business in an existing detached garage as a home occupation at 6 Lynn Drive, Lot 22-75-2, Zoned R&A.**

Chairman Morin indicated this variance request is tabled until December 17, 2019. This announcement serves as formal notice and no other letter will be sent.

### **3. New Business**

Chairman Morin indicated that with Gigi Georges leaving the Zoning Board there is no Vice Chair.

**MOTION by Chairman Morin to nominate Kevin Duhaime as Vice Chair of the Zoning Board of Adjustments for the rest of the calendar year (through around April 2020). Mr. Casale duly seconded the motion. Vote taken – all in favor. Motion carried.**

The next meeting will take place on December 17, 2019.

### **4. Adjournment**

**Motion by Mr. Green to adjourn the meeting at 8:33 p.m. Ms. Stevens duly seconded the motion. Vote taken – all in favor. Motion carried.**

Respectfully submitted,  
Tiffany Lewis