

**TOWN OF BEDFORD
November 20, 2018
ZONING BOARD OF ADJUSTMENT
MINUTES**

A regular meeting of the Bedford Zoning Board of Adjustment was held on Tuesday, November 20, 2018 at 7:00 p.m. in the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: John Morin (Chairman), Melissa Stevens, Neal Casale (Alternate), Dave Gilbert (Alternate), and Karin Elmer (Planner 1)

Chairman Morin called the meeting to order at 7:00 p.m. and introduced members of the Board. Regular members Sharon Stirling, Melissa Stevens and Kevin Duhaime, Vice Chairman Gigi Georges, and Alternate Len Green were absent. Mr. Casale and Mr. Gilbert were appointed to vote.

Approval of Minutes:

MOTION by Mr. Casale to approve the minutes of the September 18, 2018 meeting of the Bedford Zoning Board of Adjustment as submitted. Mr. Gilbert duly seconded the motion. Vote taken - all in favor. Motion carried.

Chairman Morin reviewed the rules of procedure and swore in members of the public.

Applications:

- 1. Edward and Katherine Crowley – Request for a variance from Article IV, Section 275-28 in order to construct an in-ground pool 32.7 feet from the edge of a wetland at its nearest point where 50 feet is required at 44 Barr Farm Rd, Lot 2-23-15. Zoned R&A.**

Edward Crowley was present to address his application for a variance. I am here requesting a variance for an in-ground pool in the back of our home. When asking for a variance, according to notices sent out to homeowners, going through the process there are laws and conditions under which the Zoning Board of Adjustment operates. Said Board, according to this notice, has authority to act in four distinct categories. #3 is variance, this is where I believe we fall under. Section 3 of this notice states variances are included in a Zoning Ordinance to prevent the ordinance from becoming confiscatory or unduly oppressive as applied to an individual with unique situations. A variance may be granted by the Zoning Board of Adjustment if all of the following five standards are met as follows:

1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality: (2) Whether granting the variance would threaten public health, safety and welfare: I don't believe that is the case. We are a pretty private home and it wouldn't be bothering anybody back there. **2. The spirit of the ordinance is observed:** I don't believe it is. We are not intruding on any wetland and rainwater contains more pollutants than pool water. We are also planning on putting a rain garden around our pool and a pretty large apron. If the pool did leak in 20 years, it would be fixed and do less harm than our current rainwater. **3. Granting the variance would do substantial justice:** With virtually no other place to put the pool because of lot restrictions, ledge, slope, leaching field, location of home, this location is the only spot. It just would be done because we would be able to enjoy a pool, like other taxpayers. **4. The values of the surrounding properties will not be diminished for the following reasons:** Pools increase the property value, therefore none would be affected. **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:** Saying no would bring hardship onto my family because we wouldn't get to enjoy a pool on our land that we pay taxes on. Not approving my first proposal has also brought a hardship on me because now I have to destroy my \$5,000 flower bed with a beautiful Japanese maple, grasses and shrubs and spend an additional \$15,000 to \$18,000 excavating ledge. My family wants this pool so I am left with no choice. Wetland setbacks were voted into place by taxpayers with the understanding that there would be exceptions under special circumstances, hence variance law; otherwise there would be no variance law. My original proposal met all of the variance law requirements, does not chemically affect the land any worse than rainwater, provided a buffer to the wetlands with no intrusion, but the Conservation Commission voted not in favor stating the pool has never been approved inside a wetland setback. So I am back here now under the guidance from the Building Department, with more hardship in the form of money spent for engineering and ledge estimates of \$15,000 to \$18,000, seeking approval. I also found proof that a pool has been built within a wetland setback, and in fact, it was approved September 28, 2018 40.5 feet from the setback by Mr. Dean Gagne. We are now 32.7 feet, pretty much as close as I can go to my home. There was also an addition approved just 28 feet from a wetland on the same date as Mr. Gagne. In my eyes there is no difference between a pool and an addition. They are all structures, so we are here today to ask for approval of this pool. **A. Denial of the variance would result in unnecessary hardship: 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: ii. The proposed use is a reasonable one: B. If the criteria in subparagraph A are not established, explain why the property cannot be used in strict conformance with the ordinance and why the variance is therefore necessary to enable a reasonable use of it:**

Chairman Morin asked you mentioned your first application but you have never come to us before. Mr. Crowley responded I was referring to the Conservation Commission. Do you have the pictures? Ms. Elmer replied not the original site plan. Mr. Crowley asked do you have the original pictures here that I submitted to the Conservation

Commission? Ms. Elmer replied yes. Mr. Crowley stated the original submission had requested a 32 x 16 pool in a raised area of our backyard that intrudes into the wetland setback where it was 18 feet from the setback and the Conservation Commission said that is way to close, can you please move it forward as far as you can, and we have never approved a pool all the way in a setback. So I went back to engineering and said how close can we get it to our home and he said we can bring it to the current proposal, but in doing that I have a rock bed as shown in the posted photograph. I have this rock bed and underneath that is all ledge. The original proposal had been in the back of the home in this area back here, which is all fill, so we spent the money to bring it as close to our house as possible, which puts us at 32.7. I could maybe move it another foot or so but that is about it, but in doing that now I have to excavate that entire rock bed. I wanted to have it in front of that rock bed because that is all fill done by a previous owner or the original builders; I am not really sure. Chairman Morin stated thank you.

Mr. Crowley stated with the rest of our lot there is virtually no place else to put it. The back of the property has a giant slope that goes off into a giant wetland back there, our leaching field is to the front of the house and there are also wetland setbacks over on that side, which I had a picture of. This is the front of our house here and leaching field is pretty much right in this front corner, so the only other possible spot would have been back here by these trees but there is a severe slope and a big wetland back there. If I put a pool back there, there is also ledge to the left, which is in the picture above. This shows the giant piece of ledge right here where our sandbox is. If the leaching field ever failed, we wouldn't be able to get to the pool to replace it.

Mr. Casale asked are you assuming that there is no other place or has an engineer told you that there is no other place? Mr. Crowley replied an engineer has scoped it out and drawn it out. We hire Meridian, who has done these plans, to come and look at everything and based on all of the setbacks there is virtually no place else to put it. Like I said, with the leaching field out the front right corner of our home, if we put the pool in the front of our house, the leaching field would be right behind it. So when the leaching field fails, there would be no way to get the leaching field. Chairman Morin stated it is too bad Meridian didn't put contour heights of your property on the plan because looking at the plan it doesn't give us any type of slopes or anything else. Mr. Crowley responded it is flat and then just to the back of the home where the setback line is where the slope starts. Other than that it is fairly flat. And then in the front of the house I have a retaining wall where it starts to go up on the property, which I did have pictures.

Chairman Morin stated reading the Conservation Commission's info from the first meeting, and the little bit they had from when you had gone to them a second time, I think one of the things they brought that I read is that the distance to the wetland closest was one piece of it, but their main concern was that the whole pool was within the setback. There is nothing that is out of the setback; the whole thing is in the setback. Mr. Crowley responded correct. Chairman Morin stated and that was their problem with the issue. Mr. Crowley stated yes. The pool that you guys just approved on September 28th is $\frac{3}{4}$ of the way into it. Chairman Morin responded every application we get here,

Sir, is done separately, so we are looking at this plan, this issue and what we have for information. Mr. Crowley stated right.

Chairman Morin stated another question I have is, why didn't you wait to come to us after you see the Conservation Commission to get more input from them because it looked like that meeting you went to was their workshop meeting, it wasn't a public meeting, per say. Ms. Elmer stated that was an error on my part for not getting him on the agenda. Chairman Morin asked but they didn't make any recommendation or anything did they? Ms. Elmer replied they couldn't because it wasn't posted. Mr. Crowley stated but I did receive an email from the Building Department the next day because I was allowed to speak at that meeting, and they said that they did spoke about it and their recommendation would be to still move forward because it is entirely in the setback. So I said at that time, well I don't think they are going to change their mind, I have done everything that they have asked me to do as far as pushing it as far forward to the home as I possibly can, give or take a foot, which would actually put it outside the setback. The pool would basically start right on the edge of the setback as it sits now. If I wanted to destroy that entire rock wall, which I am trying to save because it looks nice, I could get the pool a foot outside the setback.

Chairman Morin stated I know you talked about the front, which I understand where the leach field is, but why not the side of the house, the westerly side. Looking at the photograph at the top of the page, why not put it on that side of the house? Ms. Elmer stated if I can answer that; if you look in your packets, I put a copy of the septic plan. Chairman Morin stated but as he brought up, it is in the front corner. Ms. Elmer stated it is kitty-corner. Mr. Crowley stated it goes out on an angle and then it cuts left and then there is a giant hill there as well, which goes down into a giant pond wetland. I would actually have to destroy wetland to put the pool there because I would have to put a giant retaining wall in and bring in a bunch of fill, as well as blow up a whole bunch of ledge. It is actually my kids sledding hill.

Ms. Stevens stated my only question would be, and maybe I do not understand you correctly, so the land actually isn't flat then. Mr. Crowley responded the majority of the lot is flat and in the back of that house it slopes off, and then on the front of the house where that retaining wall is when it starts to slope up we have a wall. We have a rock wall right about here and it runs the entire length of this side and then starts to slope up right here. Then our leaching field, which I have a picture of, so you can see what I am dealing with. Ms. Elmer stated that picture is in your packet. Mr. Crowley stated you can see where the leaching field is and the tank. Do they have the one all drawn up with the red? Ms. Elmer replied not the colored one. Mr. Crowley stated this probably shows the rock wall.

Chairman Morin asked the public for those wishing to speak in favor or in opposition to this variance application.

Attorney James Lombardi stated I am an attorney for Chad and Nicole Laird, who live at 40 Barr Farm Road; they are immediate abutters to Mr. Crowley. Mr. Laird is here tonight.

Attorney Lombardi stated as direct abutters, the Laird's have an interest in making sure that any development such as the one that Mr. Crowley proposes meets all applicable guidelines and does not intrude on their property rights. They don't oppose his putting a pool in his yard, but they are very concerned about how this particular project will impact them and the wetlands between their two properties, which is primarily on the Laird's side of the property line. Their concern is heightened by the fact that Mr. Crowley has shown a disregard for that property line by cutting down a tree on their property for which he was cited in September by the New Hampshire Department of Natural and Cultural Resources and ordered to clean up the damaged and cut trees that he left in the wetland area in connection with that project. To this day that debris, or slash as the department calls it, has not been cleaned up, and for these reasons the Laird's have extra concerns about Mr. Crowley's plans.

Attorney Lombardi continued to address the specific requirements of the variance Mr. Crowley, of course, must satisfy all five criteria, which he addressed earlier in his presentation, including one of two hardship elements. I am not sure that he addressed those specific elements, however, but he doesn't satisfy either one of those hardship prongs. The primary thing he must establish even before getting there is that he needs to establish that there were special conditions of the property that distinguish it from other properties in the area. He states that he has wetlands and he has ledge and he has a leaching field. That is probably true of many properties in Bedford, and I am not sure that makes his property any different from other properties in the area, but even if the Board believes the property satisfies that special condition requirement, it doesn't follow that "no fair and substantial relationship exists between the general public purposes of the ordinance" at issue here, which is the 50-foot wetland setback, "and the specific application of that provision to the property." In the end there are wetlands here, there is a setback here that applies to those wetlands and his proposed pool is entirely within that setback. There is nothing at all about this particular property that makes this wetland any less of a wetland or the setback any less important or less applicable. He says that the ledge and the leaching field limit the locations where such a pool can go. In looking at the plan, there does seem to be other places where it could go, either in the backyard or the side yard, he has attempted to address those issues, but there does seem to be quite a bit of area, and it is unfortunate that the engineer hasn't spelled out that there could not be any other place where this pool could be located. There is nothing in writing or nothing in the plan which suggests that, there is nothing in writing by the engineer that states that, and unfortunately the engineer isn't here to address that. So it is not entirely clear how the location of the ledge and the leaching field would prevent him from placing a pool in those areas, and we respectfully request that the Board explore this even further.

Attorney Lombardi stated this application, of course, is about a pool. The applicant wants a pool, an in-ground pool and a large in-ground pool, in fact, larger in design now

than what he initially applied for before the Conservation Commission. This design is 6 feet longer than what was originally submitted to the Conservation Commission and what they considered in their September 25th meeting. There are, of course, many different types of pools and the Board probably does not want to deny him the right to have a pool, and that is understandable, and neither does Mr. Laird. Just because he wants a large in-ground pool doesn't mean that the Board must give him the right to have such a pool where he wants to put it, especially if putting it there violates the ordinance. In this case the pool still is entirely within the wetland setback, not at 20 percent or 50 percent or 75 percent. The entire pool is still within the setback. The applicant talks about other applications that have been granted by this Board for pool locations with a wetland setback. The Planning Department, and I spoke with Ms. Elmer about this, has confirmed that an application involving a pool with 20 percent of the pool within the setback has been approved but that another where 80 percent of the pool remained within the wetland setback was denied, and therefore there appears that in no case has an application been approved with more than 20 percent of a swimming pool within the wetland setback. In this case, therefore, there is no justification for allowing the pool at this location. There is a fair and substantial relationship between the ordinance provision and the property and on that basis, and for the other reasons we have talked about, the variance should be denied. The applicant, however, does not qualify under the other prong of the hardship test either, which says "Due to the special conditions of the property that distinguishes it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance and a variance therefore is necessary to enable a reasonable use of it." Again, there is nothing special about this property that distinguishes it from other properties in the area, but even if the Board disagrees with that statement, the property is being used as a residence and the applicant is not being forbidden the right to use it for that purpose and denying him a permit to put this pool in his proposed location will not deny him that right either. So on that basis as well the variance should be denied.

Attorney Lombardi stated one final point; as you know, the Conservation Commission did not recommend approval at the September 25th hearing on the basis that the entire pool was within the setback. That fact has not changed with Mr. Crowley's revised plan. The entire pool is still within the setback and the plan has not received the recommendation of the Conservation Commission. So for all of these reasons, the variance should be denied. Thank you for your time. Chairman Morin stated thank you.

Chairman Morin asked for further comments or questions from the audience. There were none.

Chairman Morin asked for further comments or questions from the Board. There were none.

Chairman Morin asked Mr. Crowley, is there any other input that you have for us before we go into deliberations? Mr. Crowley replied yes. First of all, in regard to the wetland issue, I did have a contractor come out and cut down a bunch of 200-foot pine trees when we started this process because first of all I was unaware of a wetland setback

until I applied for my permit with the Planning Board. The contractor unfortunately did drop a couple of giant pine trees into the wetlands, which we immediately pulled out the very next day or the day after. I had four guys at my house and we took them all out. We didn't do it on purpose, it was a complete accident. He just dropped them the wrong way. We didn't do that. I got a knock at my back door one day and it is Mr. Laird with a police officer saying that we intruded onto his property and he was going to sue us and call everybody in the world. I called the Building Department and asked them what the laws were in regard to trees that have fallen on somebody else's property, and Wayne said you just need to get them out of there, which we did, we had already done that, so I thought everything was fine. A couple of weeks later I got a letter from a state forester, and I called him up and he had a slash law letter in there. I asked have you been out here and he said yes. What is the situation? He said you have a lot of branches that are still in the wetlands, and I would just like you to remove them. I have already closed this case. He said personally I think this is kind of a waste of my time, but if you tell me that you are going to go in there and clean it all out, that is fine. I did do that the very next day, I went into the swamp and pulled out all of the little branches and brush and everything that we possibly could. With regard to the tree that was cut; it was a 5-inch maple that was already dead. One of the trees had fallen on it, so we did cut it because there was about a 5-foot piece sticking up and it just wasn't safe, so we cut the rest of that off just to make it flat. He said that tree has no value, we are not going to give you a ticket for it, it is not a big deal, just please clean up the slash. I took pictures of it, I sent them to him, and he said absolutely thank you for doing that, no problem. So that was the end of it. I didn't get a ticket, I didn't get in trouble or anything like that, I followed the letters of the law once the contractor messed up and dropped the trees on Chad's property. I believe the only reason why Chad is here is just because we don't get along; we never have. Pretty much nobody in the neighborhood gets along with Chad. I honestly think he is here just to... Chairman Morin interrupted just keep it to the application, please. Mr. Crowley responded I understand.

Mr. Crowley stated in regard to this lot not being abnormal; I don't believe that this lot is like many other lots. If you look at the wetland setbacks, they are everywhere on my property. I would say that this is a very unique lot with everything that is in there. The position of the leaching field is a major issue. If you take a look at the picture that has the leaching field and how close it is to the setback, you cannot fit a pool back there because if you are looking at it in the north position, if you put a pool to the right of that leaching field, I have no access to that pool if something is wrong. If I put the pool in front of the leaching field in the front of my house, then I have no access to the leaching field when the leaching field fails. There is also a giant ledge boulder, a mountain, in that back right corner, so I would have to excavate all of that ledge and then it slopes off behind that, so when you really look at this lot, there really is no place else to put this pool. Across the front of the house there is a retaining wall and then it starts to slope up, which cuts off that giant piece that sticks into the Lot 223-15 area. That is a hill right there, so there is absolutely no way to put a pool there, plus I would be blocking the leaching field.

Mr. Crowley stated with regard to the pool being completely in the wetland setback, that is already an existing lawn, it is already raised above the wetlands, it is a 4-foot retaining wall that has been there since we bought the home, so there is no intrusion into the wetlands, we are not disturbing any of the wetlands whatsoever, there won't be a single piece of dirt that goes over that retaining wall. We are simply asking to put a pool on top of grass that is already existing with a giant apron and a nice rain garden, which the Conservation Commission requested, to catch any pool water that might roll off the back of the apron. This apron is going to be 4 to 6 feet long and I can't imagine anything getting into the wetlands from our pool, it just won't be possible. There is just too much space in between. Like I previously stated, the rainwater is much worse than pool water. Pool water only contains chlorine, so am asking for a variance just like previous people have gotten here.

Mr. Crowley stated with regard to 20 percent of the pool being built in the wetland, to me allowing an addition 28 feet into a wetland is the same difference as a pool. They are all considered structures, so to say 20 percent of the pool or 100 percent of the pool, it shouldn't matter. It should be the fact that there has been previous people that have had structures that have been allowed as far as 28 feet into the setback to be able to decide for my family to be able to enjoy a pool or to not enjoy a pool on our property, and I believe that we should have the right to enjoy a pool and qualify under every single variance rule that we have submitted. There is no other place to put this pool because of the way this lot is set up.

Chairman Morin asked the Board if they had further questions for the applicant. There were none.

Attorney Lombardi stated there are personal issues between the Laird's and the Crowley's, that is not a secret and the only reason I mention that is in the interest of full disclosure. I will say that Mr. Laird disagrees entirely with the characterizations and the descriptions of the events that Mr. Crowley has put forth to you. Chairman Morin stated we are here for the application, we are not here for neighborhood squabbles or whatever it might be. I just want to stick to the application issue. Attorney Lombardi responded understood and I respect that. I would just ask the Board, he keeps saying that there is no other place on this property that his pool can be placed. If he has substantiation for that besides his word and if he can bring in an engineer to substantiate that as well, I think that would help both the Board and the Laird's to understand that perhaps that is the only place. That doesn't get him out of the conundrum of having to comply and to meet the hardship requirements that are set forth under the ordinance. We would ask the Board to hold him to that standard. Again, the Laird's do have questions about whether or not he will abide by any rules and regulations that do apply, given the past history. So they do have some significant concerns about how this project will all play out if he is granted a variance. Thank you for your time. Chairman Morin stated thank you.

Mr. Crowley stated I am a contractor, I build humungous developments for a living, and I have passed every single inspection that I have ever had. I can't say the same for my

neighbor but I can tell you that the trees that we dropped were a mistake. I can tell you that... Chairman Morin interjected again; the tree issue is not part of the application. I let you explain it because it was brought up, let's just keep it to the application. Mr. Crowley stated the attorney is trying to point me as being somebody that won't follow the laws in regard to how this project is going to develop, and I can assure you that it will be built, permitted and done by quality contractors. It is not going to be a homeowner project. That is not the type of people we are, so I just wanted to make that clear. But to me in regard to his point, all you have to do is look at the plan and look at the layout and the drawings that I have submitted that clearly show where there is a giant piece of ledge and a giant hill and a leaching field and another rock wall in the front of the home, this is the only place logically, without creating or redoing my entire property, that this pool can go. It is the back of the home.

Mr. Casale stated Mr. Crowley, you mentioned that you are a builder; I saw that in one of the emails. Mr. Crowley stated an electrician actually, new construction electrician, but we build big developments. Mr. Casale stated I thought I saw like Ed Crowley Builders or something like that. Mr. Crowley responded I used to be a realtor so that is an old email that I have just kept. Mr. Casale responded so in real estate developing, and you stated a short time ago that you were not aware of the wetland setback. Mr. Crowley responded right. Mr. Casale stated and you purchased this property three years ago, so you have been in real estate. Mr. Crowley responded that was 20 years ago that I was in real estate. Mr. Casale stated and you state that you work with developments, so you were not aware of the limitations on this lot. I actually investigated Barr Farm at one time to possibly buy a home in there and as the attorney stated, like other developments here, there are a lot of limitations ledge and wetlands, and so did you not look at that as a developer, a real estate agent, and say hey this property has some limitations. Again, particularly because you are a builder, so I can see that if you are a lay person. Mr. Crowley responded I am just an electrician, I am not a builder, so I don't deal with wetlands. I just show up to a home and wire it, so I have nothing to do with land development. We just build these big developments and we are just the electricians, but I can tell you that every permit in every house that we have done has gone off without a hitch. But as far as the wetlands, when we were cutting the trees down and when I applied for the permit, I didn't know that there was a wetland setback. Wayne actually called me one day and said you need to apply for a wetland setback, and I said I have no idea, and he came up to my house that day and I walked him through the property and showed him everything, and he said I think you have a really good shot of having it put here based on what I see, so this is what you need to do, this is the process and whatnot. Mr. Casale replied okay, thank you.

Chairman Morin asked the Board for any final questions. There were none.

MOTION by Mr. Gilbert to move into deliberations on this application. Ms. Stevens duly seconded the motion. Vote taken – all in favor. Motion carried.

1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality: Chairman Morin stated personally I don't see a pool altering the essential character of the locality when looking at the neighborhood. **(2) Whether granting the variance would threaten public health, safety and welfare:** Chairman Morin stated again, I am not seeing that issue for a pool. Ms. Stevens stated I would agree with that. **2. The spirit of the ordinance is observed:** Chairman Morin stated I am having an issue with this piece. Mr. Casale and Ms. Stevens responded yes. Chairman Morin stated the spirit of the ordinance is to keep a buffer between wetlands and structures. Seeing what was put together and what the Conservation Commission talked about being 100 percent in the setback, makes a big difference, a huge difference. I don't think we have, that I can remember, this Board has ever looked at a variance for 100 percent in the setback, that I can remember anyway. I have a major issue with this prong of the application. Mr. Casale stated I agree. Ms. Stevens and Mr. Gilbert both stated they agreed. **3. Granting the variance would do substantial justice:** Chairman Morin stated people do have the opportunity to put a pool if they have the location to put it. I still have a hard time looking at the plans that were given to us that there is not some alternative location to slide it to a little bit here and there to get out of 100 percent in the setback. And, again, with the plans we have and the pictures I have looked at, I am not seeing that. Mr. Gilbert stated I need to see more and hear more from someone who knows more than we do about where you could put something and what the ramifications of that are as he explained over on the other side there where you have rock and ledge and other things. I don't see it. I am a layman, I don't know exactly where it could go, but it might be able to go somewhere else, but I think we need help with that. Is that fair to say? Chairman Morin stated I would agree. Ms. Stevens stated not having a really good look at where the slopes are on the property certainly puts us at a disadvantage here but there obviously is plenty of land there on that lot. Chairman Morin stated and even by the pictures that were put in here, it doesn't show there to be a lot of slope in the pictures. It is a lot of flat grass that I can see, so that only adds to my feeling that there has to be something where this can be moved out of that setback. **4. The values of the surrounding properties will not be diminished for the following reasons:** Chairman Morin stated we have heard no testimony to say anything would be. **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:** Chairman Morin stated I am having a hard time seeing a special condition. Looking at the plan there is a good amount of space that is outside the wetland. The neighbors are dealing with some of the same issues when it comes to setbacks and size of the lots and where they have everything, it is nothing unusual that I can see to anyone else next to them. **A. Denial of the variance would result in unnecessary hardship: 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: ii. The proposed use is a reasonable one:** Chairman Morin stated the applicant did not give any information on part A, so we are going to utilize part B. **B. If the criteria in subparagraph A are not established, explain why the property cannot be used in strict conformance with the ordinance and why the variance is therefore necessary to enable a reasonable use of it:**

Chairman Morin stated he gave us information, but I don't have enough by what I have in front of me, to meet that prong. Again, going back to the Conservation Commission not even giving any type of approval when it came in with this within 100 percent into the setback. Reading their minutes too, looking at the first plan and then the second plan coming in as a bigger pool taking up more space within the setback, is a little bothersome when I read that piece.

Chairman Morin asked are there any other comments on the criteria? Mr. Casale asked Ms. Elmer, would you at all be able to comment on the attorney for Mr. Laird his point about the reasonable use of it? Is there definition-wise in the reasonable use, is what the attorney said accurate in that he is able to live there and kind of like the other things are extraneous and not part of this definition? Ms. Elmer replied I don't quite understand what you are asking me. Mr. Casale stated he had mentioned that he is able to live there, he has a house there, and that a pool is a luxury and that therefore he does have reasonable use of his property and the pool is kind of outside of that. Ms. Elmer replied that is kind of subjective and that is why he is here. He is asking for a variance of that. Chairman Morin stated we do have that piece too like in Part A in #5, which he gave us no information on. Part 2 of that A section is "Is the proposed use a reasonable one." We make that determination if it is reasonable. Mr. Casale responded right, but I am just wondering if there any case law on that. Ms. Elmer replied not that I am aware of.

MOTION by Mr. Casale that the Zoning Board of Adjustment deny the request for a variance submitted by Edward and Katherine Crowley requesting a variance from Article IV, Section 275-28 in order to construct an in-ground pool 32.7 feet from the edge of a wetland at its nearest point where 50 feet is required at 44 Barr Farm Road, Lot 2-23-15, Zoned R&A per the deliberations by this Board.

Ms. Elmer stated you have to be more specific. There has to be a reason per your deliberations, not just your deliberations. You have to give a specific reason. Chairman Morin stated I'd like to amend the motion to add "It does not meet the spirit of the ordinance when we are talking about why the ordinance is there and why there is a buffer in the wetland." It doesn't meet the prong of the spirit of the ordinance due to the fact the pool is 100 percent within that buffer.

Mr. Casale agreed to add the following amendment to his motion: "It doesn't meet the spirit of the ordinance prong due to the fact that it is 100 percent within that buffer." Mr. Gilbert duly seconded the motion as amended. Vote taken on the motion as amended; with all members voting in the affirmative, the motion carried.

MOTION by Mr. Gilbert to move out of deliberations on this application. Ms. Stevens duly seconded the motion. Vote taken – all in favor. Motion carried.

New Business: None

Adjournment:

Motion by Mr. Gilbert to adjourn the meeting at 7:49 p.m. Mr. Gilbert duly seconded the motion. Vote taken – all in favor. Motion carried.

Respectfully submitted by
Valerie J. Emmons