

TOWN OF BEDFORD
April 19, 2016
ZONING BOARD OF ADJUSTMENT
MINUTES

A regular meeting of the Bedford Zoning Board of Adjustment was held on Tuesday, April 19, 2016 at 7:00 p.m. in the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: John Morin (Chairman), Adrian Thomas (Vice Chairman), Kelleigh Domaingue-Murphy (Town Council), Sharon Stirling, Len Green (Alternate), Kevin Duhaime (Alternate), and Karin Elmer (Planner I)

Chairman Morin called the meeting to order at 7:00 p.m. and introduced members of the Board. Town Council alternate Bill Duschatko, regular member Chris Swiniarski, and alternate Gigi Georges were absent. Mr. Green was appointed to vote.

Minutes – March 15, 2016

Amendments: Page 21, first paragraph, 4th line from bottom, “readying” should be “reading.”

MOTION by Vice Chairman Thomas to approve the minutes of the March 15, 2016 meeting of the Zoning Board of Adjustment as amended. Ms. Stirling duly seconded the motion. Vote taken; motion carried, with Councilor Domaingue Murphy abstaining.

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

Applications:

- 1. Jane Boyer – Requests a variance from Article III, Section 275-18 in order to keep an already existing RV in the front yard where it is not allowed at 26 Wiggin Road, Lot 32-29, Zoned R&A.**

Jane and Jerry Boyer were present to address this request for a variance. Mrs. Boyer stated I have lived on Wiggin Road for 47 years, longer than any other current resident. I have always paid my taxes and tried to be a good citizen and never had any trouble up until now. This situation has been very stressful for me; it has cost me a lot of time, money and sleep, but I want you to know how much I appreciate this opportunity to present my case to you. I have worked very hard on this presentation and I’ve been very careful to keep it fact based. I am convinced that the facts and the documentation I present will prove that I meet all of the requirements for a variance.

Mrs. Boyer proceeded to address the criteria for this variance request. **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:** This is not a community where all of the houses look alike. The lots and houses vary greatly in style and size. Wiggin Road is a dead-end street with only 15 houses and very little traffic. The road is steep and winding, most of the lots are heavily wooded and the neighborhood has an informal, rural atmosphere. The RV is not visible from most of the houses; there are three houses from which it might be seen but it is not close to any of them. Only five neighbors drive by our house to get to their houses. When my husband is working on the RV, neighbors often stop to chat. Sometimes the children even go inside to see what the motorhome is like. Since receiving notification from the Town about this issue, I have spoken to all of the households on Wiggin Road. None of the people in those households to whom I spoke has any problem with my RV. Twelve of them, including four abutters, have signed statements in support of our request for a variance. The original documents were included in the package that we submitted, and I would like to read two of the comments. These are both abutters where one lives at 25 Wiggin Road: “We live across the street from the Boyer’s almost directly and only during the winter do we have an obstructed view of the motorhome. It is well maintained, tucked into their wooded lot, poses no issues to us whatsoever, and it is well off the road so we see no safety issue either.” The second abutter at 46 Wiggin Road: “I don’t have a problem with them having their motorhome on their property; they maintain it very nicely and care for it.” While driving through Bedford we routinely pass other RV’s that are located in front of their properties. This could be considered part of the character of the locality, and I would mention that there was a hearing on December 15th about an RV, and there was consensus at that meeting, as I recall, that the motorhomes were part of the character of the locality and his locality is Beals Road, which is ½ mile down Wallace Road from Wiggin Road. So it is in the same locality and the motorhome that he cited was on County Road near the high school, and if that is considered part of his locality, then that is part of my locality because I live even closer to it than he does. So I think there is some precedent considering that and the fact that we live close together; it is a similar type of neighborhood. Chairman Morin stated just so you know, each case doesn’t set precedence. Each case is a different case and dealt with independently. Mrs. Boyer stated I’m just giving you everything and you can take it or leave it. I am making as strong a case as I can because this is very important to me. **(2) Whether granting the variance would threaten public health, safety and welfare:** Granting the variance would not threaten public health, safety or welfare. The RV is not a hazard. Wiggin Road is straight on both sides of our driveway. On the eastern side it is straight for 300 feet to the drive at 22 Wiggin Road, and on the westerly side it is straight for 150 feet to my approximate boundary line. The RV doesn’t obstruct a drivers’ view from either side of the road or in either direction, so I would like you to take a look at Slide A that is posted. The little white thing in the distance is the RV, and you can see that the road is straight in front of it, and whatever bend there is is very gradual. Slide B shows the RV from 22 Wiggin Road, which is east of us, driving west, and you can hardly see it, but you can certainly see well down the road. Slide C is driving in the other direction, and, again, you can see well past and you can see how far the

motorhome is off the road. Propane delivery trucks, large dump trucks and ambulances have been able to get up my 12-foot-wide driveway with ease, nor does the RV interfere with police vehicles, snow plows or fire trucks on the road. There is a cul-de-sac at the end of the road, which was built to enable fire trucks to turn around. The RV cannot roll into the street. It is on a flat pad secured by a parking break. When the RV is in park, the transmission keeps it from rolling. When the engine shuts down, the air breaks are locked, and we also have chocks in front of the wheels. Even if it did roll, it would not gain any momentum because it would run into our lamp post and stop. During the winter the front of our lot is marked with reflectors for safety. All oil changes and other required services are provided at DDA Services in Londonderry, NH, and no hazardous waste is generated on our property by the RV. At the time I received the notice of violation of RV parking, the RV was approximately 14 feet from the road as shown in Slide D. Even though there is no hazard and the neighbors don't mind seeing it, I have moved the RV back another 8 feet for a total of 22 feet from the road. If I remove a large hardwood tree, I will be able to move it back another 2 feet for a total of 24 feet from the road. Slide E shows the tree. If we get the variance, we will remove the tree and move the RV back 2 more feet and that will also make it easier for my husband to access the rear compartments. **2. The spirit of the ordinance is observed:** I didn't write the ordinance but I guess the spirit is to just make sure the neighborhood looks nice and property values are not impacted. The ordinance would permit me to park the RV in the rear of the property, however, due to topographical obstacles, as noted by Sandford Engineering, in the letter I submitted, and I will read portions of that letter: "On March 10, 2016, I, Earl Sandford, professional engineer from this office, inspected the Boyer residence at 26 Wiggin Road. If the RV is to be parked at the rear of the house, there are significant obstacles. To the left, or east of the house, there is a 4-foot +/- high ridge that appeared to be shallow to ledge based on some preliminary probes and a large bull pine that would need to be removed. The slopes vary from 5 percent to 15 percent and are not conducive to road building or a parking pad. To the right, or west of the house, there are wetlands to cross and established woodland, which screens the neighbor's house; there are also significant changes in grade. In summary, these obstacles make it problematic to construct and access the rear. As an engineer, I can design most anything, but to provide RV parking in the rear would be a major project both in terms of economics and in terms of impact to the environment due to the significant land disturbance required. I also recommend that the 14-foot hardwood south of the existing RV be removed so as to shift the RV away from the road to the most reasonable extent possible." In addition to the Sandford letter, showing you Slide G, which is showing the left side of the house in the front, if you look at the retaining wall in front of the house, you can see how the land goes up and slopes, and you can see how that all of a sudden tops out and then disappears. It is very steep. Showing Slide H is the back left-hand side, where the little wishing well is on top of our septic tank and the leach field is behind it. Slide J shows the right side of the house. You can see where the propane tank is and you can see how the snow just stops and that is where it goes downhill, and you can see next to the garage there is some land and it stops because it is very steep over there. Slide K shows from the road and shows that same side of the house looking up, so you can see how steep it is to get up to the house and there is a little wetland that the engineer mentioned. I have had an RV in front of my

house for 12 years, and until now no complaints have been received from the Town, nor have any complaints been issued by the Police or Fire Departments. I will show that there has been no decline in property values on Wiggin Road since I got my RV. My husband keeps the RV in excellent condition and the space around it is clean, neat and landscaped. Slide L shows the current position since we moved the RV back and you can see that we have the sod down there and it is nice and neat and it is even further from the road. Mr. Boyer stated because of the tree we had to pull the RV out a little bit, it is not on the driveway, but when we take the tree down, I'll be able to push it in and make it much easier to park. Mrs. Boyer stated it will be further off the driveway as well as further back. Slide M is a different perspective and you can see how far the RV is from the road, which is not a hazard, and it is not going to go anywhere. **3. Granting the variance would do substantial justice:** I have lived on Wiggin Road for 47 years; I don't know when the original Zoning Ordinance was written, but it is likely that my house predates that ordinance. I do know that my RV predates the amendment that added RV's to the ordinance. So the rules have changed over time. I purchased my first RV in 2004, and the ordinance was amended two years later. It is ironic to me that the ordinance opposes the location of my RV all the while I am paying property taxes on it. The ordinance as written is very narrow in scope and mandates the parking of one trailer in a private garage or in a rear yard. The ordinance is not intended to ban RV's on private property, it only addresses location. This variance will provide substantial justice in that it will permit me to park my RV on the property where it is not possible to meet the requirements of the ordinance and where it has no negative impact. **4. The values of the surrounding properties will not be diminished for the following reasons:** During the 12 years that my RV has been here, many houses have been bought and sold on Wiggin Road. There has been no impact on property values. During the period between June of 2015 and February of 2016 the following properties, 22 Wiggin Road, 23 Wiggin Road, and 14 Wiggin Road all sold in less than 60 days at or within 2.2 percent of the asking price. You have the information as part of our packet. Signed statements from those buyers are included in the support statements that we have already provided, and also, there is another relatively new neighbor who bought a house prior to 2015 and he is building a brand new house on the lot. The RV did not deter him from buying the lot at 31 Wiggin Road, he paid full market value and he has also signed a statement of support for my variance request. **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: A. Denial of the variance would result in unnecessary hardship:** It is impossible to move the RV to the back of the house. Building a drive to the backyard on either side of the house would likely infringe on the property lines. In addition, a drive on the east side would cross our septic tank and leach field. On the west side, the slope is steep and there is a propane tank. These conditions also preclude building a garage. Storing the RV elsewhere would create a hardship because we need to keep the batteries charged by bringing power to it. In winter we need to check the roof for leaks. With the RV in its current position it takes us several weeks already to prepare for our long, sometimes 2 – 4 month, trips that we are planning one in the near future, and pack the RV with food, clothes and supplies. It would be difficult if we had to travel to an offsite location and moving the RV back and forth would cause a physical strain on

my 74-year old asthmatic husband. Acquiring similar accommodations elsewhere, including shade and power, would cost us almost \$4,000 a year. Even if feasible, all of these options would create a financial 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:** The ordinance was designed to protect against a negative impact on the character of the locality, on the public health, safety or welfare, and on surrounding properties. Since no such negative impact exists in this case, the purposes of the ordinance do not relate to this property. **ii. The proposed use is a reasonable one:** As I have shown, it does not contradict the spirit of the ordinance and all other options are either impossible or pose a hardship. **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:** As I have shown, it is impossible to build a garage or move the RV back to the house. A drive on the east side of the house would cross our septic tank and leach field, on the west side there is a steep slope and a propane tank, and on either side such drive would likely be too close to the property lines. These conditions, plus a large financial burden, also preclude building a garage.

Ms. Elmer distributed a letter to the Board and the applicant that was submitted at the beginning of this meeting.

Mr. Green asked how long is the RV kept on the property? I have seen people who have their RV's, they go down to Florida all winter, or they go up to a camp site. Is this a permanent addition that is only rarely taken away or is it gone most of the time? Mrs. Boyer replied it is not gone most of the time. It varies. We keep it at home in the winter; we don't go to Florida. We are going away three months this year and we sometimes take weekend trips or a week at a time. I cannot tell you that it is gone most of the time; it is not.

Councilor Domaingue Murphy stated you said that since the pictures were taken you have moved the RV back an additional 8 feet and then when you remove the tree that abuts where it is right now, you can move it back another 2 feet. How many feet off from the road is it? Mrs. Boyer replied it would be 24 feet. Councilor Domaingue Murphy stated I'm looking at this picture of where it is parked right now and you moved it back an additional 8 feet, because it looks like it is about 4 feet off from the road. Mrs. Boyer asked are you considering that bark mulch? The edge of the bark mulch is the road. Councilor Domaingue Murphy replied right. In this photograph, how many feet from the front of the RV to the road? Mr. Boyer replied we measured it with Mr. Sandford and he and I went back and forth quite a bit, and if we bring it back from the edge of the road, we are looking at the edge of the road not the center, I realize the road is different widths, and we measured it and we were looking at pulling it back and we were getting from the nose of the RV to the road, we were bringing it back 24 feet. In fact, the last 12 years we basically have had it even closer and there have been zero problems, police-wise, obstruction-wise or anything else. Councilor Domaingue Murphy asked so it will be 24 feet from the road? Mr. Boyer replied yes.

Chairman Morin asked the public for those wishing to speak in favor of this request for a variance.

Mike Blanchard, 22 Wiggin Road, stated I am in favor of the Boyer's keeping their RV where it is. I rolled a ball from the edge of the road and the ball rolls into their driveway, gravity fed, to 12 feet so there is no gravity issue of the vehicle rolling, even if there was a brake issue or anything like that, it wouldn't roll all the way into the road, which means from the center of the road, the gravity is downhill. With respect to the Council, we live in a democratic country and me being a neighbor and talking to the neighbors, no one really has a problem. I feel that our opinions should be weighed because it is a democratic country, and when I was going to school, we were told that not every letter of the law is to be taken to the letter, that there would be leniency in the law, and I feel that public opinion should help sway your votes. I am fine looking at their RV, it is a pleasure to look at, it is inspiring, and I being a business owner it makes me want to work hard to build and enjoy my retirement, it is very motivating to look at.

Chairman Morin asked the public for those wishing to speak in opposition to this request for a variance.

Ann Duschatko, 33 Wiggin Road, stated we own the lot at 27 Wiggin Road, which is exactly across the street from this motorhome. First of all we have no issues with the safety. I don't think that is a concern at all. We drive by it every single day; I'm not worried about it coming out into Wiggin Road. Our whole premise is the fact that it is devaluing the neighborhood and in particular Lot 27. All of the houses on the north side of Wiggin Road are \$500,000 and up. Lot 27 is part of Parker Ridge that does have protective covenants, and I'm assuming anybody that is going to buy this lot is certainly going to be assuming that they are going to be protected by the protective covenants and not facing a motorhome. Slide L that is posted shows what Lot 27 faces. The topography of our lot means that it has to be fairly close to the road. Lot 25, which is Lee, who isn't here tonight, her driveway is close to this but Lot 27 is actually across the street from Lot 26. If you look at the map that I provided tonight, it comes directly from the Town of Bedford and you can see that our lot is exactly across the street. We haven't been complaining. To be honest with you, I don't like driving by this but we drive up our driveway, Lot 33, our house sits way back, we don't even see this motorhome, but I see it every day when I go back and forth. My concern is the value of Lot 27. After we were notified of the request for the variance, I did contact two realtors, one from Keller Williams, and one from Caldwell Banker; they pretty much sell all of Bedford. Both of them came out and did market analysis, which I provided those letters to you also, and they feel it is going to be a detriment. Yes, we are going to be able to sell the lot because everything in Bedford sells, everybody wants to live in Bedford, I'm not concerned with that, but it is what are we going to get for the lot and what is the value going to be. All of the letters that have come in from the neighbors right up including Mike, who just spoke to you, they don't drive by this, they can't even see this motorhome from their houses. They drive up the road, it is a dead end road, they drive into their driveway, and then they drive out. Lot 27 is the lot that is going to have the

most affect from this. Councilor Domaingue Murphy asked is Lot 27 vacant? Mrs. Duschatko replied yes. Councilor Domaingue Murphy asked is it cleared? Mrs. Duschatko replied no, there are trees all over it. Councilor Domaingue Murphy asked have you ever had a site plan analysis done of where a house would be built on that lot? Mrs. Duschatko replied no, but there is a lot of wetland there, so I think it is going to limit where the house can be put, and I don't think somebody buying should have to situate their house that they don't look at this motorhome. It is going to depend upon what they can do based on our lot. While I don't think it is a safety issue, I do think it is a devalue issue and diminishes the value of our particular lot. We don't have any problem with them driving it into their driveway to load it up to take a vacation, but the bulk of the time the motorhome is there. I don't have a problem with them bringing it back when they need to empty it out either, I just don't want it there constantly, and I don't want someone coming to buy that lot to be looking at it. Once you grant the variance it is permanent, it can't just be a temporary thing and we all know that is what happens. So I am respectfully asking the Board to please follow the ordinance and deny this variance tonight. Vice Chairman Thomas asked how long have you live at 33 Wiggin Road? Mrs. Duschatko replied 33 years. Vice Chairman Thomas asked 12 years ago when they brought it there? Mrs. Duschatko replied it was going to be temporary; they were going to be gone all the time. They don't take that many trips and the bulk of that time it is there. Vice Chairman Thomas asked but you have known it has been there for the 12 years? Mrs. Duschatko replied right.

Mr. Boyer stated I basically retired a few years ago after spending 17 years in real estate. My last 10 years were at New Hampshire Housing Finance as a mortgage underwriter. As a mortgage underwriter you have to look at not only the people's credentials, being able to afford the house, but also a close look at appraisals. The bottom line is, in all of those years I never ran into a property being devalued by somebody's trailer, motorhome or anything else like that. NHHFA purchased the loans for their own portfolio, they serviced them, so we had to make sure that the properties were secure and they were maintaining their value. We never ever had that issue. I notice that we do have two opinions, and I say opinions, from business associates of Mrs. Duschatko, because she is in title work; those are opinions. It is hearsay as far as I am concerned because we have four properties in the last two or three years that have sold at market price, what they were asking within 2 percent and they have gone quickly. There is one that took a little bit longer. We have facts right here, the properties sold, the people who bought them were not bothered whatsoever by the motorhome, they all signed for us, the people at 23 Wiggin Road, he signed in a minute, he comes by with his children, walks by, talks with me, and he doesn't have a problem, and he basically paid very close to the asking price because he wanted the house. We have some opinions from professionals, but, however, we are showing the facts as to what has sold on Wiggin Road, not opinions by somebody else. I call it hearsay in and I may be very negative there, but I call it hearsay because we have four properties. In fact, the property that is not listed here down the street, the individual I spoke with recently who quickly signed, he has to drive by it every day. He is going to put up a house, which I understand is going to be close to a million dollars, he bought the property for at least what the bank was asking, I think he paid a premium, yet it didn't

affect him whatsoever having a motorhome there. In fact, he gladly signed off when we went around and asked him. He said it does not affect him at all. I really would question the opinions of some business associates who basically you work with all of the time, and I'm just saying that from my professional viewpoint, I have been retired a few years, but I know what I saw and I know what I was approving when I did underwriting for NHHFA. Mrs. Boyer stated there are three abutters that drive by that motorhome every day to get to their houses in addition to Mrs. Duschatko, and all of them have endorsed our request for a variance. We have opinions, as she says, from colleagues of the neighbor and we have facts about property values. All of mine is based on facts; there are no opinions in this. It is what the neighbors think, all of the neighbors except one neighbor. Slide L that Mrs. Duschatko is referring to was taken from the Figler's house at 25 Wiggin Road and not taken from their property lot. Mr. Boyer stated I know property values are opinions, in discussion and I think it is fair game, I know the Duschatko's bought that property as a buffer for their own land because of Parker Ridge; they didn't want any more houses up there.

Mrs. Boyer summarized everybody is entitled to their opinion. I'm giving you facts, and I sincerely believe with all of my heart that I have been very careful to be fact-based not opinion-based and that I have gone through every single condition that is required for a variance. I believe that I have proven that I meet all of those requirements, the hardship, the lack of negative impact and so forth. I thank you for your consideration.

MOTION by Ms. Stirling to move into deliberations on this application. Councilor Domaingue Murphy 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: Vice Chairman Thomas stated I think from some of the pictures that they have shown coming up and down the street that unless you are standing directly in front of it, it doesn't seem like it is something that sticks out, and really is to going to alter the locality of that property just because it is not really that visible, at least from the pictures that we have that were from both directions, you really couldn't see it coming up and down the street. I guess from a more naïve standpoint, I feel like it has been there for 12 years on and off so to me that is the essential character of the locality. Mr. Green stated except there is a zoning law and you don't have adverse possession against the Town and its zoning laws. The fact that it is there doesn't mean that the zoning law goes out the window. The zoning law is still there, and if it is there for many years, it is something that needs to be considered. Vice Chairman Thomas responded but that is why they are here. Mr. Green stated while we may say this only applies to this particular location, if somebody says you did it this time and you did it that time, are we then basically, by individual claims, negating the zoning law by having people say you have done it a half dozen times, why do you deny me or have we changed the zoning law without going through the appropriate formalities. Councilor Domaingue Murphy stated let me proper a different argument. If you drive around the surrounding neighborhoods, you will find other RV's that are parked on the front of their properties and that are visible from the

street, so I would argue that a single RV would not alter the essential character of the locality because it is in line with what other properties' owners have done in the area. Chairman Morin stated again, things that we dealt with part of what you said how about the next person. Everything that we do is individual. It is individual case-by-case, piece-by-piece; we don't put an umbrella over any of these pieces. Everything is decided on the facts of the individual case that comes in front of us, and we try to be very clear when we are deliberating to bring up those facts in the case so that way if there is an issue down the road, those facts are public, it is not because we did it for the other guy or something like that. Mr. Green stated that is what I am concerned about. If it happens enough and then suddenly it is denied, somebody could then claim discrimination and I don't think that is a problem we want to face. Councilor Domaingue Murphy stated I understand what you are saying; we certainly don't want to establish that it is easier to ask for forgiveness than permission, so I'm following you. I just don't see that as an end to that prong. Ms. Stirling stated this is the hardest case that comes before us because it is very sympathetic. I really feel for you to kind of find, and on this prong I could even be persuaded. I think the biggest problem I am going to have is the spirit of the ordinance when we get to that prong regardless of what we do here. I think it goes to the point, but this is what the ordinance says. I understand there are some mitigating circumstances and it might be more difficult to put it somewhere else, but, again, I kind of go to Mr. Green's point that observing the spirit of the ordinance is kind of what we are allowed to do, so I'm having a hard time. Chairman Morin asked what about the character of the locality? Ms. Stirling stated the essential character we have ruled as a community, they have kind of a convenient spot to say we want to do this, but the reality is that there could be tons of people that are in say Meadow Crest where they are going to park it in the front and people are going to be complaining. Councilor Domaingue Murphy stated again, we can really only take the case that is sitting in front of us, so let's not speculate on other properties. Ms. Stirling responded I know, but I'm trying to explain the difficulty that I'm having because it does still go to does it alter the essential character of the neighborhood and our locality, Bedford. Chairman Morin stated I think they do meet this prong of this criterion. I have no issue with this prong. Again, locality-wise it doesn't change what that neighborhood is like. We have an older part of the neighborhood, a newer part of the neighborhood, but it still hasn't changed anything. Vice Chairman Thomas stated I look at it from the standpoint of we are talking about a neighborhood, and you are looking at it from the standpoint of the entire neighborhood. Most of the people living in that neighborhood don't seem to feel like it is affecting their locality because they are the ones that are commenting and saying from where I am standing, it doesn't affect the locality of my neighborhood, that guy doesn't, that guy doesn't, and that guy doesn't. So I look at it from a totality of the neighborhood not just when you are driving by and you look and you say look at the RV, but if you keep going to your house, you are looking at the entire totality. Now it would be different if every neighbor said this is affecting the way this looks, then to me there would be an argument, in my opinion, that it would sway me to say this is really affecting the way the locality is looking, but based on the abutters' approval of it, it doesn't seem to me that it is really changing the locality of it from a neighborhood standpoint. All agreed it meets this prong of this criterion. **(2) Whether granting the variance would threaten public health, safety and welfare:** Ms. Stirling stated we have had no

testimony to that affect. It doesn't make sense, so I feel it meets this prong of this criterion. All agreed it meets this prong of this criterion. **2. The spirit of the ordinance is observed:** Ms. Stirling stated I don't think granting a variance is within the spirit of the ordinance, and, again, it is sympathetic, I know it has been there for 12 years, but I just think the ordinance is what it is. I don't think that granting the variance would be meeting the spirit of the ordinance. Mr. Green stated it is not like we're requiring somebody to tear down something. This is a very movable object so there is no necessity for it to be there other than coming and filling it up and taking it away. So the spirit of the ordinance, and you would have to go back to the records of when they did it, what the spirit was, that is if you believe in looking at the records and looking at spirit, but it would seem that the idea more likely than not would have been we don't want RV's in the front of homes in Bedford. These are movable, there is not a necessity that it has to be there in the sense that it could be driven off and parked someplace else, at an expense to be sure, but it is not like my goodness if I'm going to build a garage and it is going to come within 5 feet of a neighbor, it is the only spot that I have for a garage and I'm sort of stuck, this is not stuck. This is an economic convenience, not a necessity, and I think that is the difference. I think that may look to the spirit of the ordinance. Councilor Domaingue Murphy stated Section 275-18.A reads: "The parking of one trailer in a private garage, building, or in a rear yard is permitted provided that said trailer is not occupied and the trailer belongs to the owner or lessee at the land it occupies." To me the spirit of the ordinance is to prevent the unsightly presentation of these vehicles in the front of the yard, especially because the ordinance itself allows for the parking in a rear yard or a side yard where it is out of sight. I think there has been testimony from the public this evening by way of submitted signed statements and from the individual in the back of the room that said that it is not unsightly. In fact, from numerous abutters to the property it is not unsightly to them. There has also been testimony from one abutter that they do feel as though it is unsightly, although I would point out that the lot that is directly across the street it from it is a vacant lot and not where the property owner actually lives. I would point out also that, again, this has been there for some time, and I'm not trying to make the argument that the time period is defacto evidence for why a variance should be granted, it certainly isn't, but that there haven't been any complaints to this date. And, in fact, since the complaint has been filed, it has been moved back, and we have also seen multiple photographs that show that it is not actually visible from the sides through the treeline, except just barely. Ms. Stirling stated the ordinance doesn't say anything about because the neighbors don't object to it being in the front yard, it doesn't say anything about the length of time that it is in the front yard, it says that we allow it in a closed garage or in the backyard. That is what it says. Councilor Domaingue Murphy responded that is the letter of the ordinance. Ms. Stirling stated that is exactly right. That is all that I am titled with. Vice Chairman Thomas stated this is one of the things that comes up with this Board all the time is that this prong is always talking about the spirit of ordinance, what the written word of the ordinance is is the written word of it, but what the spirit of the ordinance is why we feel that that ordinance was put into place. I think the spirit of the ordinance is the reason why you don't want, the ordinance doesn't say we don't want this blank; the spirit is why is it there. So I assume that the reason they put it there was so that you don't have trailers and RV's in the front of your house because you don't want it to be

unsightly, because you don't want it to look like somewhere you don't want it to be. And, again, that could be different because that is what we are assuming the spirit of the ordinance is, and I look at it from the standpoint of if the spirit of the ordinance is like when we do setbacks, is to prevent overcrowding, but if it doesn't appear to be because there are bushes or something there, then we look at it and we say we are okay granting that variance. I look at this from the same standpoint of the spirit of the ordinance says we don't want unsightly things in the front of houses because it may not look good, but based on the pictures that I have seen, it doesn't seem to me that it is affecting the appearance of the property, so that then I feel granting the variance is in the spirit of the ordinance because we are still keeping it from being an unsightly appearance, which I think is the reason they don't want trailers in the front of the house. That is the way I read it. Mr. Green asked what if it was a less-pretty trailer? Vice Chairman Thomas responded I'm not talking about the appearance of the actual trailer; I'm talking about where it is in proportion to what people can see. Mr. Green stated but I think what you are talking about is also what if it was banged up and beat up and we say it looks too bad and therefore we don't do it and therefore we start being judges of art or whatever art is in the eye of the beholder. That is what I am uncomfortable with that we have to look at each one individually and say this is a nicely kept trailer so that is okay, that one looks a little bit older, maybe they put different coloration on it and I don't like it so I am voting no. Councilor Domaingue Murphy responded if I follow that to its logical end and I come before the Zoning Board and I petition to put a shed in my backyard and I need a variance of 5 feet because I am that far off from where I should be and it gets granted and I put up a florescent orange shed that is camouflaged, you may not like it, but under what ordinance are you going to tell me to take it down because you have granted the variance. Ms. Stirling responded but beauty is in the eye of the beholder, and we're not judges of that. We are following the ordinance. Councilor Domaingue Murphy stated to me it is whether or not it is visible. I suppose if it was florescent orange camouflaged and I could see it through the trees, I might have a slightly different opinion about it. Ms. Stirling stated but if it is in your backyard I don't care because that is not what we are talking about. Vice Chairman Thomas stated but if it was in your side yard. Councilor Domaingue Murphy stated I guarantee the neighbors would care if it was in the side and backyard and it was florescent orange. Vice Chairman Thomas stated I look at it from the standpoint, and your point is well taken, which is I'm not so much concerned about what the RV looks like, my question is can you see it, and from what testimony we have and the pictures I see, unless you are standing right across the street from it, either you are driving right by it or you can't see it, and that is what I am taking as the spirit of the ordinance is. People don't want it in their front yard because everyone else can see it all times, and I just don't see that with this based on what we have been presented with. That is the way I am reading it. Chairman Morin stated and with the testimony that we have of even this picture, I'm pretty sure the person with this driveway that owns this property filled out one of the items to say they were in favor of this proposal too and they are the ones who are looking directly at it and probably most affected by anything here. Chairman Morin, Vice Chairman Thomas, and Councilor Domaingue Murphy agreed that it meets this criterion. Ms. Stirling and Mr. Green disagreed. **3. Granting the variance would do substantial justice:** Councilor Domaingue Murphy stated I believe that there has been

written testimony submitted from Sandford Engineering that said it would be difficult to move the RV to the rear of the house, so because of that issue, I would say that it would do substantial justice to keep it where it is and grant the variance. Chairman Morin stated I agree with that. It talked about there being obstructions on the sides and the back, so I agree. All agreed it meets this criterion. **4. The values of the surrounding properties will not be diminished for the following reasons:** Mr. Green stated the way property is going in Bedford; I think it is hard to find anything that is diminishing the values. Chairman Morin stated we have evidence both ways. We have evidence to show properties that have gone and then we have evidence from some realtors saying it could go down. Councilor Domaingue Murphy stated we also have statements from 12 property owners on the street that say they don't feel the property values would be demised, so I think that also comes into consideration. All agreed it meets this criterion. **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:** **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:** Vice Chairman Thomas stated I do think that denial of the variance would result in an unnecessary hardship because we have been presented evidence from the engineer that show that there is a significant amount of work that would have to be done or the property has special conditions in which it would be difficult to be able to put the RV anywhere else. I think there would be some hardship there if you denied the variance. Ms. Stirling stated I disagree. Mr. Green stated my problem is it is not like when you are looking for a garage or some other thing that has to be attached. This is movable, it can be moved off the property and to me that puts it in a somewhat different category than saying if I can't put this garage here, I just can't have it because I have my septic over here and I have my well over there. This is a completely moveable object that could be moved to another location. Vice Chairman Thomas stated but that is hardship to the property, I am talking about hardship to the owner. That is a financial hardship that we are talking about as well, and that is occurring, that is something that there was testimony about too, demonstrated from the property owner that there is going to be a financial hardship to them. Mr. Green stated I agree there is financial hardship, but that is not hardship that this can only be done on this property. That is not true in this case. This vehicle could be moved off this property, granted at a financial cost. Ms. Stirling stated or a garage could be built in the current location. I don't know how far that side lot goes, but that may be within the area. Ms. Elmer stated I don't think it could. It wouldn't meet any of the setbacks. It wouldn't meet the setback from the wetland or the front of the road, and because of the road the building would have to be 35 feet back. Councilor Domaingue Murphy stated to me that is an unnecessary hardship. Vice Chairman Thomas stated to me the financial hardship is hardship. I look at it and all of them seem to sort of put that on their plate. Councilor Domaingue Murphy stated the more compelling argument to me is the setbacks and the boundary lines to get there. Chairman Morin stated getting into the surveying stuff, is pretty specific as in setbacks, grades, wetlands, all those types of things too. Ms. Stirling stated I don't think the engineer said it was impossible; it would be difficult, and, again, that is what we are talking about. It is not an

unnecessary hardship in that it could be done or it could be moved. Chairman Morin stated he was pretty specific about the only place that it could go; it couldn't go in the back because of getting there. Ms. Stirling stated he said it was steep on that side but it didn't sound to me, and that is one person's opinion, so, again, I don't think that sounds to me like it meets the unnecessary hardship because I think exhaustive research has not been done to rule other sites out within the property. That was sort of a cursory look, in my opinion. Chairman Morin stated he states that it is not conducive to build a road or a parking pad on the right side of the house. Councilor Domaingue Murphy stated I just want to point out that he states as an engineer I can design most anything, but to provide RV parking in the rear would be a major project both in terms of economics and in terms of impact to the environment due to the significant land disturbance required. Chairman Morin, Vice Chairman Thomas, and Councilor Domaingue Murphy agreed that it meets this prong of this criterion. Ms. Stirling and Mr. Green disagreed. **ii. The proposed use is a reasonable one:** Chairman Morin stated I think it is reasonable to be able to have your RV on your property. Due to the issue with the property, yes, it is going to be towards the front of the property, but I think it is still reasonable to have it there. Chairman Morin, Vice Chairman Thomas, and Councilor Domaingue Murphy agreed that it meets this criterion. Ms. Stirling and Mr. Green disagreed.

MOTION by Councilor Domaingue Murphy that the Zoning Board of Adjustment grant the variance requested by Jane Boyer from Article III, Section 275-18 in order to keep an already existing RV in the front yard where it is not allowed at 26 Wiggan Road, Lot 32-29, Zoned R&A, for the reason that it has met all of the criteria for a variance per our deliberations. Vice Chairman Thomas duly seconded the motion. Vote taken; motion carried, with Ms. Stirling and Mr. Green voting in opposition.

MOTION by Vice Chairman Thomas to move out of deliberations on this variance request. Councilor Domaingue Murphy duly seconded the motion. Vote taken – all in favor. Motion carried.

2. William Walsh – Requests a variance from Article III, Section 275-6 & Section 275-21.A (1) and Table 2 in order to maintain an existing second dwelling on the lot at 118 New Boston Road, Lot 2-11, Zoned R&A.

Attorney Michael Klass, Bernstein Shur Law Firm, and William Walsh, owner, were present to address this request for a variance. I am having a couple more plans handed out to the Board to give you another viewpoint, sort of a supplement to our application. This is to give you a layout of what is on the ground. The top plan is a portion of a 1989 septic plan. This is a 3.6 acre parcel of land with approximately 280 feet of frontage in the R/A district. As shown on that top plan, there is an existing residence situated more north toward New Boston Road, that is circa 1795, and then there is a second dwelling, which is why we are here, that I will refer to as a cottage, which we believe is circa 1955, and I'll get into that a little bit more. The top plan sort of shows the layout on the land

and it does show the two septic systems. I would also like to draw your attention to a dirt drive on the top left and that services an old woods road easement that kind of traverses down to another lot southerly, and that is not the driveway that is access to an easement for a third party. You can see in the plan the driveway is in the center drive, a common driveway with different points of egress and ingress servicing both dwellings. The second plan is a survey from 1974-1975 and just shows the dimensions of the lot. I believe this might have been put together as a potential subdivision; I think that explains the central line bisecting the parcel, but that is not particularly relevant. This is just to show the layout and you can see there are some dashed lines sort of on the confluence of New Boston Road that shows the drive and then you can see cottage marked on the top right portion. As I mentioned, this piece of property has two historic buildings, of which one is really historic. The first Town records of this cottage are from 1955. We are here because the Zoning Ordinance was enacted in 1953, so if we had a building permit a couple of years prior, which I think happened just down the street, we would be a preexisting nonconforming use. Instead, however, we are a nonconforming use. Mind you that nonconforming use began at least 60-61 years ago, so it has been quite some time. The current owners and applicant purchased the house in 1985, and since that time both dwellings have either been occupied or rented continuously and the Town has taxed this piece of property accounting for both dwellings. The technical reason why we are here is an application for a variance from Section 275.21 and the corresponding table of uses; essentially we are seeking to formalize these two dwellings where technically the ordinance allows only one.

Attorney Klass continued here is some background as to what we did before we came here. Mr. Walsh didn't just come in for a variance; he researched the issue. I'm not sure if we had all the records that we wouldn't be preexisting nonconforming. I found some old grainy aerial photographs that were really hard to read and couldn't quite tell, but it looked like something was there in 1952 but we are not here on an administrative appeal or anything like that. We accept that for the purposes of this variance request the cottage was there in 1955; we call it circa. About 7 years ago Mr. Walsh was looking to refinance and this zoning status actually tripped him up, and one of the banks denied his refinance application because there is a question out there as to what would happen if this structure burned down or technical nonconformance with the zoning regulations, so we started looking into it then. He is now looking to downsize sometime soon, looking to sell, and he needs to clean this issue up before conveying the property. He looked at subdividing, and actually Jim O'Neil is here from T. F. Moran if you have any technical questions. There was no formal site plan put together but sort of from a conceptual level the specific configuration and shape of the lot with relatively large acreage, this is 3.6 acres and the minimum is 1.5 acres here, so the acreage is there, it has about 280 feet of frontage, so it would need a variance on the frontage. There are also some questions because of that septic plan, and you can see that you wouldn't be able to draw a straight line halfway down, you would have to sort of potentially snake through these existing infrastructures, and you might have side yard setbacks, you might need easements, so it just was not a practical option. That is why we are here before you for a variance application.

Ms. Stirling stated I wanted to disclose that I did serve early on the Zoning Board with Mr. Walsh. I want to say that I can still be impartial, but I felt in all honesty I had to disclose it up front and make sure everyone is comfortable with that. Chairman Morin stated I do as well.

Attorney Klass stated I have some information that can supplement the written packet before you that was prepared by Mr. Walsh and I have some potentially additional legal supplements to that.

Attorney Klass proceeded to review the criteria for this variance request. **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:** The answer to this is no. Again, a common theme in this presentation is that this cottage and this property has been used in this manner for 60-61 years at least. I would suggest that it is a thread in the fabric of that neighborhood; it is part of the character of that neighborhood. This is not a new use that we are trying to do, we're not trying to get another structure or another building lot out of it, and we're just seeking to formalize something that has been there for decades. Moreover, the use of these two particular structures, residential use, it is a residential neighborhood, they are compatible with one another, they are compatible with the surrounding houses, in fact, I think the cottage predated the next two adjacent lots. Mr. Walsh stated the house next door was built around 1952 or 1953, but the two beyond that were built subsequent to this one having been built in the 1970's and 1990's. Attorney Klass stated and I would note that the lot is pretty heavily wooded. The closest abutter is to the east and when I went and looked, there is a nice swath of trees that run perpendicular to New Boston Road in between the two owners. I think you can see that in the posted aerial photograph. This time of the year you could see through because there is no vegetation on them but it does provide a visual buffer. In conclusion, this variance will not alter the essential character of the locality. **(2) Whether granting the variance would threaten public health, safety and welfare:** Some of the case law that interprets this prong, the phrase is whether or not the variance will unduly and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives, and I only mention that because in the next prong I do think that the spirit of ordinance and the zoning objectives and the public interest are somewhat enmeshed. And I say that only because that sort of brings the question of what is the purpose of the ordinance, and in the application we just saw you were sort of able to go to that particular prong, there is a particular section here but it is not like a frontage variance where you can say is there adequate frontage to make safe ingress and egress. This sort of gets to the fundamental reasons why we have zoning, and I think those are captured in your ordinance's introduction. I think that this second question really sort of gets to the public interest as well as the spirit of the ordinance. In this case I think that the purpose of that is to minimize overcrowding on lots and you want to make sure that uses on a lot are compatible with one another. You don't want to have a residence right next to a foundry or a slaughter house, so these are just short, very basic purposes of zoning. This questions if whether this variance is going to threaten public health, safety or welfare, and I think that we can agree that it is not going to. Again, this use has been this way for 60-61 years, it has operated safely, there is no

overcrowding from a math perspective, you have more than 3 acres and two dwellings, each dwelling has its own services, own septic and well, so there is no environmental impact here, so I think that the answer to this question is no, the variance will not threaten the public health, safety or welfare. **2. The spirit of the ordinance is observed:** For many of the same reasons granting this variance is within the spirit of the ordinance. The purpose here is to ensure the Town's general health, safety and welfare, to regulate uses such that they are compatible for your neighbor to use, to make sure there is no overcrowding or undue concentration on a particular lot. And here, again, the property has been improved in this manner with these two dwellings since at least 1955 in a safe and reasonable manner. There are no setback issues right now, it is an oversized wooded lot, there are no overcrowding issues, and I do think that the spirit, which is generally to ensure the Town's health, safety and welfare is satisfied in this particular application as applied to this particular piece of land. **3. Granting the variance would do substantial justice:** Substantial justice is done in this particular application. When I think about substantial justice, I sort of think of it as a balancing test, and I think some of the case law on this articulates the discussion such that is justice done if the loss in denying the variance application exceeds any public gain in strictly enforcing the ordinance. Denying this variance will not result in any appreciable gain to the public. As I have mentioned, this piece of property has been in this particular configuration and used in this particular way for at least 61 years, and I think that as there has been testimony, it has predated many of its neighbors such that there is really no gain in denying the application. Conversely, if the variance is denied, there is a substantial loss to the applicant. Taken to its logical conclusion, Mr. Walsh can't use that second cottage/dwelling in a manner that it has been used for 60 years. Again, he is looking to downsize, he is looking to convey this parcel eventually and he needs to clean up the title to do so. The Town has taxed it with two parcels so I really don't think substantial justice can be found in denying the variance application. **4. The values of the surrounding properties will not be diminished for the following reasons:** As a practical matter, Mr. Walsh is a licensed realtor, and it is his opinion that allowing this use, which has been ongoing since at least 1955, will not reduce the surrounding property values. I understand that is a little bit self-serving, but even without that I think the fact that this cottage predated many of the surrounding uses, this use has been ongoing for the last 60 years and really to provide evidence that there is going to be no issue with diminution in value. In essence, we are seeking to continue the status quo, which I don't think is going to diminish values. **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:** This is a unique piece of property. As we have discussed, it is oversized, it doesn't have enough frontage, it has a 1795 circa house, it has a 1955 circa house, because of the shape and configuration, however, a subdivision would simply require different variances and potentially complicate the conversation even more, and as a result, we do have a unique piece of property here. **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:** Again, what is the public policy here. The ordinance seeks to ensure the health, safety and welfare of the Town. In this particular

case we don't have an overcrowding issue, we don't have incompatible uses, we are seeking to sort of formalize an existing use, there are no issues with environmental resources, again, each dwelling has its own septic and well system, and given that this use has existed for so long, there is really no substantial relationship between the specific portion of the ordinance and this property. **ii. The proposed use is a reasonable one:** The variance seeks to allow a use that has been ongoing since at least 1955, this is a residential use in a residential neighborhood, the two dwellings are compatible with one another, they are compatible with the adjacent properties, they are compatible with the neighborhood, and the proposed variance is certainly reasonable. **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:** As I touched on earlier, strict conformance of this ordinance as it applies to this property really is harsh. You are looking at a nonconforming use. If this house was built last year, the zoning code enforcement officer would potentially be over there with a tear-down order. I think there are equitable issues here such that that would hopefully never be an issue, but I do think that you can't reasonably use that cottage without a variance. From a practical perspective, the variance is necessary to allow the applicant and owner to convey this parcel. Seven years ago when money was a little bit more free and underwriting standards weren't quite as strict, Mr. Walsh was denied on a refi application, so today with modern banking practices sort of tightened up a little bit, we expect that there would be even more problems. So I don't think that there is any way that cottage can be used reasonably without some sort of relief.

Attorney Klass stated in conclusion, we feel that the five prongs of the statute have been satisfied as applied to this piece of property.

Chairman Morin asked the public for those wishing to speak in favor of this application, for those wishing to speak in opposition to this application, or comments neither for nor against this application.

Mr. Walsh stated my point, and Attorney Klass made it, is to reinforce. I am a real estate broker; I am familiar with the lending situation right now. There were substantial difficulties seven or eight years ago trying to get financing for this property. I suspect if I were to sell it tomorrow, a buyer would have an almost impossible time trying to get an underwriter to grant financing and that is simply what I am trying to do. It will essentially be transparent to passersby and neighbors; it is simply what is there has always been there and now it is legal.

Ms. Elmer stated I did get a phone call from the neighbor across the street, Mrs. Upton. She is 95 years old, she doesn't come out to night meetings anymore but she has lived there most of her life, and she actually remembers when it was built, and she has no objections at all.

Mr. Green asked let's say if the cottage had burned down, could it be rebuilt? Ms. Elmer replied no. If he gets the variance, then yes, but at this point, no.

MOTION by Mr. Green to move into deliberations on this application. Ms. Stirling 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: Ms. Stirling stated I don't think it would do this. It has been there for 61 years, so I think it meets this prong of the criterion. All agreed it meets this prong of this criterion. **(2) Whether granting the variance would threaten public health, safety and welfare:** Mr. Green stated it doesn't appear that way. Vice Chairman Thomas stated we have seen no testimony to this. All agreed it meets this prong of this criterion. **2. The spirit of the ordinance is observed:** Chairman Morin stated I think we get into the spirit that talks about overcrowding or that type of thing. Looking at that area, I have driven by it many times; even with the cottage there it doesn't look to be overcrowded. I think if people drove by they wouldn't even notice that it is one lot sharing the same area. Vice Chairman Thomas stated I live out that way and I have never noticed it and thought look at these two buildings on one lot. Mr. Green stated it looks like a mother-in-law cottage or something of that nature. Ms. Stirling stated I think we had some testimony that it was in aerial maps maybe in 1952; I think that it may even have been started to be built prior to the 1953 zoning. We don't know but I think at this point it is a huge lot, so I think it meets the spirit of the ordinance. All agreed it meets this criterion. **3. Granting the variance would do substantial justice:** Vice Chairman Thomas stated I think it will allow him to be transparent in whatever he wants to do in the future. I think him coming here to straighten this whole thing out would grant him justice because at least it will enable him to do any sort of legal transactions, etc. and use the land appropriately. All agreed it meets this criterion. **4. The values of the surrounding properties will not be diminished for the following reasons:** Ms. Stirling stated we have had no testimony, no letters of that, so it seems very unlikely that that would affect values. All agreed it meets this criterion. **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:** **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:** Vice Chairman Thomas stated we have seen the special conditions of the property and they are that these two dwellings have been there for 60+ years and trying to bring it into compliance would be subdividing it, which we already discussed would be difficult because of the septic and things like that. I think that really shows that denying the variance would give it some unnecessary hardship because the other option is razing it, which doesn't seem like a reasonable option at this point. All agreed it meets these prongs of this criterion. **ii. The proposed use is a reasonable one:** Chairman Morin stated going back to what was said earlier, it has been there for 61 years, it seemed pretty reasonable through those 61 years, and I don't see why it would change at this point. All agreed it meets this prong of this criterion.

MOTION by Vice Chairman Thomas that the Zoning Board of Adjustment grant the variance requested by William Walsh from Article III, Section 275-6 and Section 275-21.A(1) and Table 2 in order to maintain an existing second dwelling on the lot at 118 New Boston Road, Lot 2-11, Zoned R&A, for the reason that it has met all of the criteria for a variance per our deliberations. Ms. Stirling duly seconded the motion. Vote taken - all in favor. Motion carried.

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

3. Stephen & Donna Ferranti - Request for a variance from Article III, Section 275-22.A & Table 1 in order to construct a garage 7.0 feet from the side property line where 25 feet is required at 127 Liberty Hill Road, Lot 26-14-33, Zoned R&A.

Stephen and Donna Ferranti were present to address this request for a variance. Chairman Morin swore in Mr. and Mrs. Ferranti.

Mr. Ferranti stated this request is to permit the construction of a 24 foot X 24 foot detached garage with a 12 foot X 24 foot open lean-to at the end of the existing driveway at 127 Liberty Hill Road. This location puts the northern edge of the structure within 7 feet of the northern property boundary abutting 123 Liberty Hill Road, Lot 26-12-1. We would like to be granted a variance to change the setbacks to 7 feet from the current 25 feet.

Mr. Ferranti proceeded to review the criteria for this variance request. **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:** Granting the variance would not alter the essential character of the locality. This would not be the first detached garage in the neighborhood and would allow for the hidden storage of vehicles currently parked in the driveway. **(2) Whether granting the variance would threaten public health, safety and welfare:** Granting the variance would not negatively impact public health, safety or welfare in any way. **2. The spirit of the ordinance is observed:** The spirit of the ordinance will be observed because a visual buffer to the adjacent property will be maintained; existing landscape and trees will continue to maintain a significant division between the properties. You can see on the posted photograph that we're talking about putting it at the very end of that long driveway, and those arborvitaes at the bottom side of that driveway are 40 to 50 feet tall. The abutter that is in question is the Murphy house just to the lower part of that picture, and there is another photograph that just has a very small visual that they have to the end of that driveway, and they are in the side yard a lot, but most of that 200+ feet are covered with those trees. **3. Granting the variance would do substantial justice:** It would allow the owners to park all of their vehicles in covered locations with some

additional hidden storage. Note: we do have a patio, and this is with regard to the hidden storage; we have patio furniture that we have no room for in the current garage because the current garage was built in 1947. We can fit one car in there, so the patio furniture I wrap with a brown tarp and put in the middle of the patio every winter. It is not something that I do not like to look at when I look out my windows, nor I am sure the neighbors don't either.

4. The values of the surrounding properties will not be diminished for the following reasons: Granting the variance would result in an increase of existing property value in turn raising the value of the surrounding properties. In the end the structure will cost more than \$60,000 and will appear as if it could have been built at the same time as the existing structure. The main house and the main garage that exists there now were built in 1947. That garage is a 1947 2-car garage, so it fits one regular family sized vehicle from today. Posted is a rendering of the garage/barn that we are building here. It is 2-car with a lean-to and a storage area up top. If you were looking from the Murphy's property, they would see that corner with that right door, which would have been right in front of that silver car that was in the picture. That would be their view.

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: The garage would be constructed at the end of the existing driveway. After evaluating all other possible locations, the only viable one would be to move the garage south 18 feet to be within the setback away from the end of the existing driveway and closer to the existing structures as well. This in turn would require the need to accommodate for a depression in the grade as well as construction of more driveway surface, so more project costs. This alternative location would also create difficult entry and exit patterns with modern family sized vehicles due to the tight space that would result from the proximity of the new structure, existing structure and existing landscape. In this aerial photograph posted it shows that well. Those two cars at the very end, in front of those cars is where the garage would be. if we had to move it 18 feet towards the existing house, coming down that long driveway, making a very tight left turn and then a very tight right turn, I have a Toyota Tacoma 4-door cab and a 6.5 foot bed, that truck is more than 18 feet and it doesn't have a great turning radius. Our youngest has a car, it is at home, she is at UNH, they don't allow cars for the first couple of years, so that car is in the driveway, so with cars in the driveway and having to move that garage 18 feet south, creates a hardship, the least of which would be probably modifying some of the landscaping to be able to make those corners a little bit more large-vehicle friendly.

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: The general public, unless they were looking for it, would not be able to see the structure. At the speed that the cars go down Liberty Hill Road those 40-50 foot arborvitaes have about a nanosecond to look down and be able to see that garage. The only other people that would actually see it are the neighbors walking their dogs on Appledor, and they would see it from the left of this picture, which is the lean-to. Denial of the variance would create unnecessary additional cost to the project as well as preclude the owners from easily parking modern family sized in a covered space.

ii. The proposed use is a reasonable one: The proposed use is reasonable because it

allows the use of the property the way the abutters are able to use their property. It is reasonable to have a covered vehicle parking and storage in a New England climate. Last year with two children at home and the cars that we had, we fit one in garage the existing garage and I shoved snow off from all the other cars. I am looking forward to not having to do that.

Mr. Ferrante stated we do have a letter from the affected abutting neighbors, Brandon and Amber Murphy. That letter was read into the record and will be attached to these minutes.

Chairman Morin asked the public for those wishing to speak in favor of this application, for those wishing to speak in opposition to this application, or comments neither for nor against this application. There were none.

MOTION by Ms. Stirling to move into deliberations on this request for a variance. Mr. Green 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 looking at the plan and how far back it is, and as his testimony, I don't think it is changing anything with the essential character. It won't be seen unless you are stopped in front of the house. All agreed it meets this prong of this criterion. **(2) Whether granting the variance would threaten public health, safety and welfare:** Ms. Stirling stated it hardly seems likely that it would threaten public health, safety and welfare. All agreed it meets this prong of this criterion. **2. The spirit of the ordinance is observed:** Ms. Stirling stated I think the spirit is to maintain visual buffers; in this case while they are closer on the line, it is not significantly impacting another neighbor, so I think it still meets the spirit of the ordinance. All agreed it meets this criterion. **3. Granting the variance would do substantial justice:** Vice Chairman Thomas stated it would allow them to use their property for its intended use. A garage is pretty reasonable. Ms. Stirling stated since 1947 lifestyles have changed, cars have gotten bigger, so it seems like granting the variance would do substantial justice. All agreed it meets this criterion. **4. The values of the surrounding properties will not be diminished for the following reasons:** Ms. Stirling stated we have had no testimony to that. In fact, we have the neighbors saying that the improving of their property is going to increase their property value and everybody else's. All agreed it meets this criterion. **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: 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:** Chairman Morin stated I think it gets into, which we have talked about already in another case, the side setbacks are set up to keep things apart from each other. The way this one is configured, where it is located I think gives them the opportunity to use their property in an effective manner and still has the

support of the neighbor so it is able to be utilized. For general public purposes it is really not affecting this piece. I think it meets this prong of this criterion. All agreed it meets these prongs of this criterion. **ii. The proposed use is a reasonable one:** Chairman Morin stated it is reasonable to have a garage to put your vehicles or other items in. Ms. Stirling stated it is an expected use in a residential area. All agreed it meets this prong of this criterion.

MOTION by Councilor Domaingue Murphy that the Zoning Board of Adjustment grant the request for a variance from Stephen and Donna Ferranti from Article III, Section 275-22.A and Table 1 in order to construct a garage 7.0 feet from the side property line where 25 feet is required at 127 Liberty Hill Road, Lot 26-14-33, Zoned R&A, for the reason that it has met all of the criteria for a variance per our deliberations, with the following conditions:

- 1. The shed shall be removed or replaced within the buildable area of the lot.**
- 2. An asbuilt survey plan shall be required to ensure the structures meet the variance and setbacks.**

Vice Chairman Thomas duly seconded the motion. Vote taken - all in favor. Motion carried.

MOTION by Vice Chairman Thomas to move out of deliberations on this request for a variance. Councilor Domaingue Murphy duly seconded the motion. Vote taken – all in favor. Motion carried.

4. Paul Toscano - Request for a variance from Article III, Section 275-22.A & Table 1 in order to construct a shade structure 6.2 feet from the side property line where 25 feet is required at 9 Hearthside Circle, Lot 30-11-19, Zoned R&A.

Paul Toscano was present to address this request for a variance. The plot plan was posted on the screen. My wife is home with our three sons and they very much enjoy the pool area that we are going to discuss tonight and the request for a shade structure or pavilion is what I am proposing. Four years ago we decided to install a pool in our backyard. The plot plan depicts a very small space provided for backyard privacy and the subsequent pool and patio area. It seems as though through my research that the house was originally planned for a more central location on the property, but for some reason and likely ledge, the location of the foundation was moved back and to the southeast. The septic is in the front yard, most of the usable space of the property is on the Hearthside Circle side of the property, and there are wetlands to the west of the house. Due to these constraints we did invest in a plot plan provided by T. F. Moran to allow for the compliant installation of the pool. As you can see by the provided plan, the pool is very, very close to the setback on the north side of the backyard and it is relatively close to the setback for the entire length of the pool on the east boundary. After installation of the concrete pavers we had established a comfortable usable space around the pool, especially on the east side next to 15 Hearthside Circle, which is my

abutting neighbor, Mr. and Mrs. Todd Bryant. Currently the east side of the pool area opposite the house provides for no shade and this side of the pool is where we have positioned our furniture. On the same side there is a rock wall and shrubs and a fence that is approximately 3 to 4 feet above the pool deck and there are some pictures to depict that. Our proposal for a variance is to provide a permanent structure to provide shade that is large enough to accommodate our family and our guests, the structure is proposed as an open concept pavilion, which will provide shade, but also maintain the beauty of the landscape by way of an open concept and a relatively low roofline. The structure will have no floor or foundation, it will have open air sides to allow for air and visibility of the landscape, it is not our intention to build anything to obstruct views or appear out of place with the surrounding buildings or homes. I think most importantly I have spoken to all five of my abutting neighbors, especially the most affected owners, Mr. and Mrs. Bryant and Mr. and Mrs. Renzella. I have shown them the plans, answered their questions to discuss the circumstance for this projected proposal. They have offered their support for the project in the form of two letters that I have provided in my documentation. I would also like to express that if we were not facing the confounding constraints and proximity of the house, the pool and the setbacks, I would have certainly sought alternative plans or proximity for this proposed structure. I would also like to say that Mr. Bryant and Mr. & Mrs. Renzella offered to come to the meeting this evening; I thanked them for that support and said there was no need to do so and they wrote a letter. My other five abutting neighbors I spoke with in person, none of which are in any visibility of this proposed structure, there is dense wooded area in all the neighborhood, it is a mature neighborhood and they offered no objections.

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: The proposed structure would not alter the essential character of the locality in the sense that there is an existing pool and patio present, the structure will remain on an existing patio and proposed inside a rock wall that creates a natural barrier to the abutting property. **(2) Whether granting the variance would threaten public health, safety and welfare:** The proposed structure would not threaten public health, safety or welfare because it is reasonably sized for the location and the surrounding space. It is customary to have a shaded area adjacent to a residential pool, and it is positioned in the most appropriate space given the proximity to the house, the sun pattern and the natural order of the two properties. The posted photograph shows the stake that represents the closest proximity to the property line. According to my site plan it is 6.2 feet. I didn't know it would be that exact when I had the plot plan done, and one note I would make is that is a stake in the ground and that would represent the rear portion of this footing of the proposed permanent structure. It would be very similar to what we have now, which is a non-permanent pavilion type umbrella, it is metal and it is not fixed to the ground. It has provided shade but not subsequently enough shade for what we deem is needed for that area and to be away from the sun's harmful rays. It would be no deeper than that current structure; it would be longer, however, along the property line. **2. The spirit of the ordinance is observed:** The structure will be while outside the setback of 25 feet it does not impede the natural barrier of the two properties, no vegetation would be removed, and the structure will not impose on each abutting

property owner's privacy, but it will maintain the beauty of the landscape and importantly it has the support of the two most affected property owners. Chairman Morin stated we have the letters from the two abutters and they will be included in the file for this request. **3. Granting the variance would do substantial justice:** I think this really comes down to the circumstances of the plot plan, in that when the house was built, it was built very, very far back on the property and left us very little backyard space. Certainly if the house was built more in the central portion of the property, this would never have been an issue at all. We thought about putting a pool in the front yard but I didn't think that would be the greatest idea, so we put it in the back and we knew that the pool is inside the setback, there was no variance asked for there, it happens to be that anything on that east side would require a setback variance. Given the circumstances of the plot plan, position of the house, existing limitation of space, the proposed structure would allow for the maximum use of the backyard while it is relatively very small the proposed structure would provide permanent shade area in the larger portion of the pool patio where the sun is most intense and the structure will be suitable and complimentary to the surrounding area and will provide a usable space for the seasonal use of the pool. You have included in your package a sketch of the proposed structure. It is very similar to what is there now except it is longer, no more depth to it, and it would match the house in terms of color and shingle, no flooring, no walls, all open air, no visible obstruction of that nature. **4. The values of the surrounding properties will not be diminished for the following reasons:** The surrounding properties would not be diminished by the proposed structure of the five abutting properties. Only two will be able to see this structure. The most affected abutter, Mr. and Mrs. Bryant, have offered their support, which was included in my application. In addition, my neighbor across the street, Mr. and Mrs. Renzella, proposed a letter of support and by the nature of the structure being in a backyard and adjacent to an existing pool, it will not adversely affect any property by way of visibility, architecture, design, or function. **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:** We talked about this a little bit already and the nature of how much space was available given the position of the house, there is very little usable space in the back portion of the yard, the edge of the pool is just inside the setback, any structures on the east side of the pool would be outside the setback but this is the only suitable space and position for this item. It is designed to suit the area by size and scope, it includes a low pitched roofline, open air concept, and no natural barrier with no natural viewing obstructions and by no means would we be asking for this variance if there was a better more suitable solution for all parties affected. **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:** The general purpose of the ordinance is to place and provide a suitable barrier of space and privacy for adjacent properties. The proposed structure maintains privacy such that it is not intrusive or unreasonable and it is reasonable because it is a reasonable addition to a backyard private area, the proximity of the house, the pool and the sun pattern while maintaining an open concept for visibility, landscape, minimizing obstructions.

Mr. Toscano summarized because of the position of where the pool is, the placement of the home in the very back portion of the yard, it has allowed only for a very small area to be used for private space. Most of our yard is in the front of our home, which is not private. The pool has taken up virtually all of the square footage of the existing back side of the yard. The only reasonable place to place this shade structure is on the east side next to Mr. and Mrs. Bryant's property, it would be inside a rock wall and an iron fence with shrubs and plants are present. Anything put to the east side would require a variance and other possible locations would either not allow for enough space, not create desired shade or possibly present a safety hazard in that the structure if it was placed on the other side of the pool, and would block the view of the pool from the home. I propose that the desired location is one that is reasonable and appropriate use of space by way of the variance process and I appreciate your consideration of that. You can see from the posted photograph that the whole back side is all wooded; there is a natural place to put this shade structure inside a rock wall, inside the fence, on an existing patio, on the appropriate side of the pool where the sun exposure is the most intense.

Chairman Morin asked the public for those wishing to speak in favor of this application, for those wishing to speak in opposition to this application, or comments neither for nor against this application. There was none.

MOTION by Councilor Domainque Murphy to move into deliberations on this application. Vice Chairman Thomas 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: Vice Chairman Thomas stated seeing that it is in the back corner and it is not really being seen by anybody, I don't think it will alter the appearance of the locality, especially because there is sort of a structure there. He is just sort of expanding what is already there. All agreed it meets this prong of this criterion. **(2) Whether granting the variance would threaten public health, safety and welfare:** Vice Chairman Thomas stated there was no testimony to this. All agreed it meets this prong of this criterion. **2. The spirit of the ordinance is observed:** Chairman Morin stated the spirit is not to have congestion and even this structure is going to be basically four posts going up to a roof for coverage, so from the neighbors what they can see is pretty much see-thru except for a small piece of roof, therefore not having an issue with the spirit of the ordinance. All agreed it meets this criterion. **3. Granting the variance would do substantial justice:** Ms. Stirling stated in this case the uniqueness to the way the house was placed on the lot, which really doesn't allow him a lot of flexibility. Mr. Green stated and they should have some shade. All agreed it meets this criterion. **4. The values of the surrounding properties will not be diminished for the following reasons:** Ms. Stirling stated we have had no testimony and no objection from neighbors. All agreed it meets this criterion. **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: 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: Ms. Stirling stated this is like a poster child for why the literal enforcement would really be an unnecessary hardship. Again, the use of your property for a pool, shaded area, all reasonable within a residential neighborhood. Again, he is by design backed into that corner, and that is why variances are granted because it is an unnecessary hardship to not grant this variance. All agreed it meets these prongs of this criterion. **ii. The proposed use is a reasonable one:** Chairman Morin stated it is very reasonable to put up a shade structure to help shade people from the sun. All agreed it meets this prong of this criterion.

MOTION by Councilor Domaingue Murphy that the Zoning Board of Adjustment grant the request for a variance from Paul Toscano from Article III, Section 275-22.A and Table 1 in order to construct a shade structure 6.2 feet from the side property line where 25 feet is required at 9 Hearthsides Circle, Lot 30-11-19, Zoned R&A, for the reason that it has met the criteria per our deliberations, with the following condition:

1. An asbuilt survey shall be performed and presented to the Town.

Ms. Stirling duly seconded the motion. Vote taken - all in favor. Motion carried.

MOTION by Ms. Stirling to move out of deliberations on this application. Vice Chairman Thomas duly seconded the motion. Vote taken – all in favor. Motion carried.

New Business: None

Adjournment:

Motion by Councilor Domaingue Murphy to adjourn at 9:15 PM. Vice Chairman Thomas duly seconded the motion. Vote taken – all in favor. Motion carried.

Respectfully submitted by
Valerie J. Emmons