

TOWN OF BEDFORD
May 17, 2016
ZONING BOARD OF ADJUSTMENT
MINUTES

A regular meeting of the Bedford Zoning Board of Adjustment was held on Tuesday, May 17, 2016 at 7:00 p.m. in the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: John Morin (Chairman), Bill Duschatko (Town Council Alternate), Sharon Stirling, Gigi Georges (Alternate), 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 Councilor Kelleigh Domaigne Murphy, Vice Chairman Adrian Thomas and Alternate Chris Swiniarski were absent. Alternates Kevin Duhaime and Gigi Georges were appointed to vote and Councilor Duschatko voted in place of Councilor Domaigne Murphy.

Minutes – April 19, 2016

MOTION by Ms. Stirling to approve the minutes of the April 19, 2016 meeting of the Zoning Board of Adjustment as written. Mr. Green duly seconded the motion. Vote taken; motion carried, with Ms. Georges and Councilor Duschatko abstaining.

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

Applications:

- 1. Christopher Davis (Owner) – Requests a variance from Article III, Section 275-22.A & Table 1 in order to keep an already constructed pool and deck 16 feet from the side property line where 25 feet is required and 27 feet from the front property line where 35 feet is required at 19 Servant Street, Lot 44-43, Zoned GR.**

Christopher Davis was present to address his request for a variance. Mr. Davis stated we are applying for an after-the-fact variance permit for the pool and deck. It has been there for over 12 years.

Mr. Davis proceeded to review the criteria for his application for a variance. **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:** It has been there

for so long it wouldn't change the characteristics of the neighborhood at all. **(2) Whether granting the variance would threaten public health, safety and welfare:** It has a fence around it for safety reasons, so there is no threat to public health, safety or welfare. **2. The spirit of the ordinance is observed:** It has been in place, we have talked to the neighbors and all of them have moved in, they don't mind it; they all actually have pools, so I don't think anybody would be affected by it. **3. Granting the variance would do substantial justice:** There is some cost associated with maintaining it for so long that would be wasted, and it would change the landscape of the property if we did have to tear it down, so there would be more cost associated with that. **4. The values of the surrounding properties will not be diminished for the following reasons:** It has been there in place for over 12 years before most of the abutters moved in, and we did talk to all of the neighbors and nobody seems to disagree with it. **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:** It would result in an unnecessary hardship because the characteristics of the property would change, the landscaping would have to change, and the cost associated with fixing that would be substantial. **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:** It has been in place for over 12 years, most of the properties in the area have a pool feature in their yard already, nobody seems to mind it. We did talk to everybody in the area, and it doesn't seem to bother anybody the way that it is. **ii. The proposed use is a reasonable one:** It is for our child who can use it for hot days, and we don't have to leave the property to swim. **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:** It is a small lot and with the new setback provisions when applied to this lot, we are trying to get this after-the-fact variance to keep what is already in place for the last 12 years.

Councilor Duschatko asked looking at the posted photograph, is that your house next to the garage in the background? Mr. Davis replied no; that is the neighbor's house.

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

Mr. Davis summarized we are just trying to get the permit in place so it doesn't affect any future problems with the property.

MOTION by Ms. Stirling to move into deliberations on this application. Councilor Duschatko 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 that. Chairman Morin stated it has been there

since the previous owner and there is no change. All agreed it meets this prong of this criterion. **(2) Whether granting the variance would threaten public health, safety and welfare:** Councilor Duschatko stated there is no evidence of that. All agreed it meets this prong of this criterion. **2. The spirit of the ordinance is observed:** Ms. Stirling stated I think a pool is a nice recreational adjunct to a home and this is a small lot, so I think the spirit is always a balance between private property maximum use, appropriate use, and the constraints that you have sometimes with these small lots. All agreed it meets this criterion. **3. Granting the variance would do substantial justice:** Ms. Georges stated it would allow them to keep the pool that they have had for the last 12 years and continue to enjoy it. 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. Councilor Duschatko stated the pool has been there long term, and it is in keeping with the neighborhood. 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:** Ms. Stirling stated it is a small lot, appropriate use, and the cost associated with deconstructing this. All agreed it meets this prong of this criterion. Mr. Green asked if this pool needed to be replaced, would the replacement pool have to be the same size? Is there that restriction? Ms. Elmer replied it could be smaller; it cannot encroach any more than it does now. **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 it goes back to the lot size, the shape of the lot, how restricted the lot is, the item has been there since the previous owner, and he just happened to find out that it was an issue. Ms. Georges stated if we believe that it comports with the spirit of the ordinance, and then it also would follow that the imposing restriction wouldn't be necessary for the full effect of that ordinance. Ms. Stirling stated we do have 16 feet from the side property line, so we are conceding 11 feet, and I think that is a modest amount. I would perhaps feel a little less comfortable if it were 2 feet. So I think that still meets the spirit of the ordinance, as you were pointing out. All agreed it meets this prong of this criterion. **ii. The proposed use is a reasonable one:** Ms. Stirling stated I think this is a reasonable use for all of the reasons stated above. All agreed it meets this prong of this criterion.

MOTION by Ms. Stirling that the Zoning Board of Adjustment grant the request for a variance from Christopher Davis (Owner) from Article III, Section 275-22.A and Table 1 in order to keep an already constructed pool and deck 16 feet from the side property line where 25 feet is required, and 27 feet from the front property line where 35 feet is required, at 19 Servant Street, Lot 44-43, Zoned GR, with the stipulation that with approving this application we recommend that he be required to obtain an after-the-fact building permit within 60 days of this approval. Councilor Duschatko duly seconded the motion. Vote taken - all in favor. Motion carried.

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

- 2. 209 Route 101 Realty, LLC c/o Dick Anagnost (Owner), – Requests a variance from Article III, Section 275-21.A(1) & Table 2 to allow warehousing (self-storage) in the Commercial Zone where it is not an allowed use at 209 Rt 101. Lot 20-39, Zoned CO.**
- 3. 209 Route 101 Realty, LLC c/o Dick Anagnost (Owner), - Requests a variance from Article III, Section 275-21.A(1) & Table 2, in order to construct a paved commercial parking area on a portion of the lot that is located in the R&A zone where it is not an allowed use at 209 Route 101, Lot 20-39. Zone CO.**

Steve Keach and Jason Lopez from Keach-Nordstrom Associates, and Bill Greiner, member of 209 Route 101 Realty, LLC, were present to address these two applications for variances.

Mr. Keach stated the balance of the property to the west is home to the Route 101 Plaza, Harvest Market, Ace Hardware, Subway, Primary Bank, etc. The property is Map 20, Lot 39 and is 11.43 acres in area so the image of the site that is posted on the screen superimposed on the aerial photograph is approximately a quarter of the total area of the premises. It is split zoned, and as you see, the white line that passes from east to west 400 feet along and parallel to Route 101 divides to the north the line or above the line in the residential/agricultural district and to the south in the commercial district. Again, that line for a very long time has been situated 400 feet to the north and parallel to the historical alignment of Route 101. This site obviously was purchased by my clients several years ago, in 2012, and as you know, has gone through some renovations including the construction of Primary Bank and most recently the addition of a great tenant in Ace Hardware. The site is bifurcated running north/south along the thread of Riddle Brook; the area of the site that you are most familiar with being to the west and the area that is the subject of this evening's application is about 1.25 acres of upland that is situated between the Johonnette residence to the east, which is as shown in the photograph, so the south is obviously Bedford Center Road, and you can see the genre of the this photograph was approximately nine months ago when Millennium Running was under construction and the parking lot was not yet built, with the modifications that have occurred between that and the construction of Members First Credit Union. At the time that our clients purchased the property we performed a survey of the property and low and behold they learned that there was about 1.25 to 1.50 acres of hard upland in the commercial district situated beyond the large wetland expanse, associated flood hazard area, and so forth along the thread of Riddle Brook that runs from north to south passing under both Bedford Center Road and Route 101 and on its way to Merrimack. Our clients asked us what would be an appropriate use. Obviously that area is a bit isolated, it is accessed by Bedford Center Road, and looking at the array of commercial uses that are available under the Zoning Ordinance for this district,

it obviously was not appropriate for a traditional commercial use, an office building, commercial retail. There is a need for a lot of the local businesses particularly and some residents for a place to store goods, so the notion of potentially doing a kind of low impact use, self-storage was explored. Obviously there has to be architectural features here given the nature of the district, and we have taken a look at some alternatives there and looking at that footprint of 10,450 square feet in dimension, it sets itself up nicely to take, which is really small for a self-storage facility, something that looks a little bit reminiscent of a classic New England barn, and that is the proposal that is before you this evening.

Mr. Keach continued the facility would be single story, 10,450 square feet of storage, which would have perimeter access, with traditional storage on the outside and interior hallways that would take you to space that would have a climate control nature on the inside. So it is kind of a split-use cold storage around the perimeter and an opportunity for climate controlled on the inside. Access would be provided from Bedford Center Road; this would be an unmanned facility in that there wouldn't be a permanent employee. Rather, patrons who have leased space within the building would have access to the perimeter through a gate with a passcode to access the sight. Once inside the gate they would need another passcode to get into the interior of the hallways of the proposed storage building.

Mr. Keach stated the target market is primarily businesses, although if a resident wanted to store home goods there, they could, they won't be discriminating, but you think about the area. I have owned a business in Bedford for 22 years, and I have files stored in a self-storage in Merrimack because there were none available in Bedford. Anytime I want to retrieve a file, I have to drive to Merrimack to get that file. If this was available, I might very likely be a tenant. We also have quite a number of tradespeople here in town, people who might have to store equipment, where electricians store tools and their stock and trade that is a very traditional use for this type of space. Again, we attempted to find something given its locale that was a low impact use. I think we have found that. As you notice looking at the building, it doesn't have a massive parking lot in the front of it and it has two parking spaces. Most patrons would simply park in front of the door that they were trying to access when they are loading and unloading their goods. We do have a fire lane, and we have met with the Fire Department and they wanted the access that you see around three sides of the building and that is a 30-foot apron that goes around the building for that purpose and for access to the exterior spaces. From an impact standpoint, according to the Institute of Transportation Engineers, the ITE, in their publication trip generation for this as proposed of a 10,450 square foot of storage space would be expected to generate during an average weekday 26 trip ends per day, which is 13 arrivals and 13 departures, so it is a very low impact use from a traffic standpoint.

Mr. Keach stated in your staff report you will notice that there was a request made after we submitted this application for some architectural drawings. Our client wasn't able to get those in the short timeframe that was available to do that, so I am prepared to tell you what we have discussed. We looked to do a structure that has proportions

reminiscent of a barn. It would have pitched roof, it is a single story so it would be a shallow barn like a horse barn, but it would be a gable roof with the gables on the north and south ends of the building to give it some proportional mass to the building to make it look good. We are thinking about a reddish color with white trim, the doors wouldn't be your typical orange self-storage door but they would have painted trim to make them look like the side of a carriage shed or something like that, at least to the extent that it faces Route 101. This building upon construction will kind of disappear into the landscape a little bit as well because obviously that area along the thread of the brook and the perimeter as you see is mature forest. What Mr. Lopez, who is the project engineer from my office, has prepared the posted drawing and you notice that the perimeter fence on the drawing is in white and then the greenish line that you see is the corresponding edge of wetland to the west. If you look real carefully, you can see grading lines. This is going to be a pretty compact piece of construction, and it will leave an opportunity not only to leave the mature forest around the four principal sides of the improved area, but also along the way the boulevard section going in. Frankly this thing will disappear into the back because it doesn't need to be seen like a traditional commercial use. As I said, there will be no full-time attendant planned and Mr. Greiner can speak to you about the way that they would advertise for business. Remember, they only have 10,450 square feet planned, some of which is interior corridor, so there is probably about just over 9,000 square feet of net space to fill up, and given the fact that you think about it, the only self-storage facility that I am aware of in Bedford is a small one down behind the Land Rover dealer, so there is certainly a need and we anticipate that this could fill up very quickly.

Mr. Keach stated we talked about self-storage in the Bedford center area and warehousing in general. It is not a foreign use to the area. In fact, within the realm of that photograph posted, the historical use of what is now Millennium Running was warehousing when it was the Water Center. Fitzgerald Tile just up the street, the majority of that building has historically been warehousing, across the street Ethan Allen Furniture, the Fireplace Village, each of those businesses have warehouse components in the rear of the store. It is not a foreign use to this area warehousing in general, storage bifurcated into small spaces that individuals or individual businesses can rent is a new use. The bottom line is we feel that this is an appropriate low impact use given this isolated piece of commercial land.

Mr. Keach stated there are two variance requests that are implicit in this. One is a use variance. As staff has correctly pointed out in the staff report that was provided to you for this evening's meeting, our Zoning Ordinance here in Bedford is a permissive ordinance. By that what is meant is that there is a table of permitted uses, and if you are one of them, have at it, if you are not, we have to come see you folks. There was a time when there was a lot more land available, or I should say, practically available in Bedford for this type of use, and that was when a good part of what is today the Performance Zone district along the Route 3 corridor was formerly prior to 1992, was in the Service Industrial district. About the only piece of the Service Industrial district left is out by Belmore Drive off from Route 114 headed towards Goffstown. About 90 percent of that district disappeared with the adoption of the Performance Zone district back in

1992. The land in the Performance Zone, because of the water and sewer utilities, the investment the municipality has made along with the transportation improvements that have been made over the years, is just too valuable for this kind of use. That is why you see this type of use pop up in travels around other municipalities but you haven't seen much of it here. You simply can't afford to purchase land at the value that it costs in the Performance Zone for this type of use, although there is a new one being built near the Merrimack line, but that is a multi-story thing, it is a completely different animal than this thing. For the variance requests, obviously one is from Article III, Section 275-21.A and Table 2, Table of Permitted Uses, of the ordinance. The second is for, when I point to the upper left-hand corner of the photograph where you see there is a little paved turnaround that extends about 40 feet over the zoning district boundary, that is primarily there and the design vehicle that was used for that was a fire truck, so that if a fire truck went into the north side of the building, they could back out and then do a reverse movement and drive out of the site back to Bedford Center Road. I'm not suggesting that is the only vehicle that would ever use it; in fact we hope they never have to go there, but the reality is it would have been a lot smaller if it would have been for a vehicle other than to accommodate a fire truck and it may not have required the variance.

Mr. Green stated you said because of the short timeframe you didn't have an opportunity to have an architectural drawing. Mr. Keach responded that is correct. Mr. Green asked why wouldn't it make sense to defer this until you have an architectural drawing because if you want to put something, I always like to see what you are proposing. Mr. Keach responded I understand that. I will answer that in the way that is truthful. Assuming we prevail here and are granted these variances, our next step is not to the Building Department but to the Planning Board for site plan approval. Our site plan review regulations here in Bedford have an architectural review component so that function will be done by that Planning Board under those regulations as is traditional. I believe the reason that the recommendation was made is because of some of the testimony that I have given here tonight, and some of which is contained in the ordinances, speak to the element of architecture and it could very well be that we may elect to defer and provide that information if that is essential to your decision making capabilities. But at the time I submitted these applications, I didn't think it was as important because of the second line of defense that the public has through the function of the Planning Board and the adopted regulations that are a part of their code. Does that make sense? Mr. Green responded I understand what you are saying. Whether I agree with it is a different issue. Mr. Keach stated we can come back to that.

Chairman Morin stated looking at the house in the photo on the right side, is that house owned by you. Mr. Greiner replied no; it is a life estate and right now there is an individual living in there and once he is no longer living in there, for whatever reason that might be, I think we will be acquiring that as well. From the same family we have acquired everything that is around there, and obviously they are fine with it or they would be here tonight. Chairman Morin stated I was kind of wondering that. I didn't see a mailing for that property for notice. I only saw two mailings go out, with one of them to the Wallace Road people. Mr. Keach stated we have a copy of the abutter's list and it is

surprisingly extensive because that is an awfully big property. It picks up people on Wallace Road and North Amherst Road, on the backside, Shorty's, etc. Chairman Morin stated the other return was from Priscilla Curry Trustee. Ms. Elmer stated but the abutters did get notified; those are the people that did not choose to pick up their mail. Chairman Morin stated I was also looking on the back of the application where they are normally all listed and I couldn't find it. That helps.

Chairman Morin stated my other question was just to know how far it is to that dotted residential line to the abutting back property, the person on Wallace Road. Mr. Keach replied it varies, about 400 feet, and with most of the land there may be pockets in there , between there and the back property lines of the houses that front on the southerly line of North Amherst Road, most of that is unbuildable wetland and it is within the floodplain.

Mr. Duhaime asked you said that you are going to be able to buzz in to get in and out of the storage facility. Is that 24/7 or is that 6:00AM to 6:00PM? Mr. Keach replied it could be set to anything that the owners wish it to be. I have extra storage on Route 3 just south of the Bedford line in Merrimack and they have hours. I know you can't get in there before 6:00AM, although I have never tried to get in there before 6:00AM, and it generally runs around the fall of darkness. I think in the winter I have stopped there to pick up stuff at like 7:30PM and I think I remember seeing a little placard with the time. Basically it is not a place to be afterhours, and how these folks tend to manage their property, I don't know. We have not talked about that. Mr. Greiner stated my sense is that the Planning Board will have some say about that and that will be a condition of approval if we get there.

Ms. Stirling stated I wanted a point of clarity on something. I might have been confused about what you said so I want to make sure I got it right. You alluded to the fact that if you were to buy a piece of property in the Service Industrial zone or Performance Zone, that it would be too expensive, so therefore you are proposing to put it here because it would be cheaper. That real estate is higher. Mr. Keach responded what I meant was that in this portion of town along the Route 101 corridor, clearly there is a demand for some storage, but there is no land that is either zoned Performance Zone or Service Industrial on the Route 101 corridor. The closest area that is in the Service Industrial zone is a small pocket of land on the Goffstown side of Bowman Brook near where Belmore Drive is, and I think pretty much everything out there is Service Industrial between Bowman Brook, with the exception of the Mobile station, which is kind of spot zoned, and that is all there is. In the Performance Zone district, because of the investment that the municipality has made in public utilities, water, sewer, and transportation, the value of that land, both from a sale perspective and to the municipality in terms of tax base, would be kind of a waste of that land for a low turnover use like this, and frankly it wouldn't support it. You would never be able to afford to buy a piece. Ms. Stirling stated so I was correct in hearing that where you could buy it to be in compliance with zoning, is such a small, little area, and other than that it would be too expensive to build this type of facility on the other land that would be available? Mr. Keach replied right. Mr. Greiner stated I think what you would see if somebody were

going to look to develop a storage facility somewhere in Bedford, they are going to be limited either to the Route 101 area or the South River Road area, and to Mr. Keach's point, the cost that has gone into that land is so high that if somebody decided they still wanted to do it, they would pay a premium for the lot compared to what a project like this would generate. Retail uses can afford higher land costs, medical office buildings can afford higher land costs, because of what you are getting in terms of return but this couldn't. So if somebody were going to do it, my guess is the best shot they would have is to put up a steel, prefab building that is kind of the old way of storage, which I think would probably be allowed but it is not the highest and best use down there, and certainly aesthetically not what folks would want to see sitting right there on the corridor. Ms. Stirling stated I just wanted to make sure I understood that. Mr. Keach stated and it is not the highest and best from the municipality's perspective in terms of tax revenue. Obviously a building that is a storage building doesn't tax like an office building or a manufacturing facility and that is highest and best use factors to it as well. Councilor Duschatko stated but the reality is that properties are zoned for Service Industrial if they aren't zoned for commercial, so whether there is an over-investment infrastructure along there or not is really immaterial for the use of that particular property and there is room for it. Mr. Keach stated but it is fair to say that there is not a single parcel of land on the Route 101 corridor in Bedford that you could do this use by right. Councilor Duschatko responded we are not talking about Route 101. Route 101 is not zoned for this type of use, and it is not in keeping with the general 10-year plan for the Town for that use. The zoning is a community type of issue; it is not just a little spot that somebody happens to find. Mr. Keach replied I understand; I have written a lot of your zoning.

Ms. Elmer asked how tall is the building going to be? Mr. Keach replied because of the nature and style of the building, it is probably going to be a minimum of 14-foot eave height. It may creep up to 16 feet, but it's probably likely to be in the 14-foot range simply because of the exterior doors. Ms. Elmer stated you mentioned that the doors weren't going to be the orange roll-up doors like we see everywhere else. You had mentioned that the trim was going to be painted. Are the doors also going to be painted, still roll-up? Mr. Keach replied the idea is to have something that is reminiscent of like a barn or carriage shed, where it has a series of doors. Ms. Elmer stated I know the Planning Board is going to make all of those decisions; we are not, but just out of curiosity. There is currently a self-storage facility under construction on Route 3 right where the new off ramps are by Iron Horse Drive. I don't know the particulars about whether it is heated or if it is similar to this as far as the type of storage and that kind of stuff, but there is a facility currently under construction. Mr. Keach stated it is significantly larger as well.

Ms. Georges stated I have a question about the turnaround where you said it is going to allow for the efficient maneuvering of emergency vehicles. Is it required? Is it the only way that you would be able to get an emergency vehicle in and out of there design-wise? Mr. Keach replied I am going to have Mr. Lopez speak to that because he dealt directly with the folks at the Fire Department. Mr. Lopez stated what I have done on multiple projects is have the turning template for the Bedford fire truck. They need to get the truck in there and turn it around on the site, so the only options are to provide a

turnaround or to do pavement all the way around the building to provide a 1-way. We actually met with the Planning Department early looking at this, and I had a concept where we had the driveway going completely around the building. It was recommended that we slide it towards the Johonnette property, limit the impervious area, it stops from having doors on one side of the building, so we have gone through a couple of iterations and concepts and what we landed on was three sides with doors and to provide a turnaround for the emergency vehicles.

Mr. Keach proceeded to review the criteria for the use variance. **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 self-storage facility is to be located on an isolated area of upland on the extreme easterly side of the subject property. While this portion of the property is situated in the commercial district, it does not enjoy direct access from New Hampshire Route 101 and is physically separated from the balance of the Route 101 Plaza property by Riddle Brook and bordering wetlands. The proposal contemplates construction of a single structure of 10,450 square feet to accommodate the proposed use. Self-storage is a low-impact use in general. As an example: The Institute of Transportation Engineers suggest the planned facility is expected to generate only 26 trip ends per day, with 13 entering and 13 exiting. Further, it is the applicants' intent that the facility will not have full-time employees. Although architectural plans of the facility have yet to be finalized, it is the applicants' intent that the future building will be of a style and color reminiscent of a typical New England barn. It is believed the building having corresponding dimensions and style will fit nicely into the prevailing character of the locality. On that basis the applicant asserts that the planned use to be an appropriate and productive use for this otherwise isolated piece of commercially zoned property, which not adversely affect the essential character of the area within which it is to be situated. **(2) Whether granting the variance would threaten public health, safety and welfare:** The proposed facility is to be managed remotely by a part-time caretaker. As such, the building will not require water nor sewer utility accommodations. In order to ensure proper site security as provided, the facility will be fenced and equipped with a passcode operated gate at the site entrance. Access to the interior of the building will also require use of a passcode. Added security will be provided both at the building exterior and interior by the use of cameras, and the corresponding low impact use proposed will not pose a threat to public health, safety or welfare. **2. The spirit of the ordinance is observed:** The planned facility is a commercial use, which will provide a needed service for local residences and businesses. As a commercial use, placement of this facility in the commercial district conveniently located off the Route 101 corridor is appropriate in the alignment with the spirit of the ordinance. **3. Granting the variance would do substantial justice:** The proposed use is commercial in nature and being centrally located in town around other commercial businesses will provide the most convenient access for residents and businesses. **4. The values of the surrounding properties will not be diminished for the following reasons:** The abutting properties to the east and south are zoned for commercial use. There are residential properties to the north, but greater than 400 feet away and shielded by forest and a scrub shrub wetland. The project will comply with the landscape and architectural requirement standards and

therefore not diminish the value of surrounding properties. **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 subject property is bifurcated by Riddle Brook and its associated wetlands and flood hazard area making a continuation of the established retail use of the balance of the parcel impossible. Due to the location and shape of the isolated area of uplands on the property in consideration that needs to be given to traffic and lack of utilities, most permitted uses identified in the ordinance are not practical for this area. The site is best suited for a use with low traffic counts and limited need for water and sewer utilities. Since any use of the property must also be economically viable, the applicant believes self-storage is a correct fit. Given the limited opportunity for commercial use of the subject premises, denial of the variance that otherwise facilitates the planned productive use would be an unnecessary hardship. **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:** We assert that the proposed use is appropriate for the commercial district and is situated adjacent to a State highway that is developed with a wide variety of other commercial uses. The use will not be out of character for the area given its modest size and appearance. It should be noted that there are few, if any, undeveloped lots available within reasonable proximity of the subject location upon which the planned use could rightfully be constructed. **ii. The proposed use is a reasonable one:** Self-storage is a reasonable use for this property due to the limited impact on traffic, limited need for onsite parking, and lack of need for sewer and water utilities. Self-storage is commonly recognized as a commercial use and the property is in the commercial district. **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:** Self-storage is traditionally considered a commercial use under most municipal zoning ordinances. That is not the case in Bedford, and as such, the requested variance is necessary in order to realize what is otherwise an appropriate use of land given its constraints, location and surroundings.

Councilor Duschatko stated you make the comment that is it commonly recognized as a commercial use. Could you comment on that? Mr. Keach replied probably just about every municipality that surrounds this town lists self-storage as a commercial use. Councilor Duschatko stated however under the State statutes and thinking each municipality has its right to basically establish its zoning requirements and what is going on surrounding it doesn't necessarily mean it is appropriate for us. Is that correct? Mr. Keach replied I suppose that is why we are here seeking a variance.

Mr. Green stated the area that you had had a variance for parking. Is that correct? On the map it says 2013 variance for parking in R/A zone. Chairman Morin replied that is behind the shopping plaza; that is the property next door. Ms. Elmer stated it is the same piece of property; it is just on the other side. Mr. Keach stated you know where the septic system is you can see in the woods, it was in that area. When the bank ended up where it did, it alleviated the need for that variance so we didn't use it.

Councilor Duschatko asked what happens when the abutting property becomes property of the owners? Mr. Greiner replied we have no plan for it at this point. Councilor Duschatko asked would you merge it and then you can open it up for commercial use because it would be bigger. Mr. Greiner replied it is a possibility. We have not gone down that road. The problem where it lies and you know I have developed a lot of stuff in Town, it is not a good site for retail. Retail is highest and best use for tax dollars, so if we are looking from the tax perspective, and that is always a consideration maybe not for this board, when we look at things and the Town looks at things, retail is not an option because it is not seen, which is why Mr. Keach mentioned this use lends itself to it. It doesn't need to be seen, it doesn't need the visibility that you would need, and it doesn't need the signage and all of that stuff that comes with retail. From an office perspective, we have done no analysis on the other property to see what the soils are like, what we would have in terms of septic, there is no water here, so none of the investment that we have talked about on South River Road exists here. It was a challenge for us when we lost a tenant at Harvest Market. Everybody wants to put their business there, it is pretty visible, but with no public water and very limited area for septic because of the wetlands and everything else that is there, we are very constrained with what we could have. We are happy to have Ace Hardware; we didn't kick Aubuchon out, we were disappointed to see them leave, we were happy that Harvest brought hardware back in there, which is with an existing system. This piece of property as it stands doesn't really lend itself to a septic system. Even if a retailer got over the fact that they couldn't be seen and they weren't visible, there isn't a lot that could go there, and one might say so what, but from a tax perspective it benefits both parties to see development of the property where reasonable. So we don't know what the abutting property has in terms of soils, we have done no analysis on that, there is a gentleman living in there, we are certainly not going to go in and start work there. When that happens, it will happen at some point in time, we will do what we think makes sense at that point. I don't know if it has been discussed in front of this Board, maybe it did when we did primary, but the Town is very interested in us taking ownership of Bedford Center Road, that piece of property that you're talking about is important for that. When we don't own all of the pieces of a puzzle, it is hard to go out and work with the Town to do something like that. We have a general long-term plan for what we want to do there, but while somebody is still there, it is premature for us to go in there. Councilor Duschatko responded I certainly understand that, but you must have a thought process behind it or you wouldn't have acquired the property. Mr. Greiner stated we have not acquired it. Councilor Duschatko stated I'm sorry, I thought you had. Mr. Greiner replied no; it is in a life estate now, so when he is not living in there, we have the option to buy that. Councilor Duschatko stated when you said life estate, I assumed that you were the owner of the life estate. Mr. Greiner stated no; it is in a life trust for him, and when he isn't living in there, we have the option to buy it. I think everything has been agreed in terms of pricing and that but Mr. Keach has done no engineering on it to my knowledge. No money has exchanged hands at this point in time. Councilor Duschatko stated my point was, this little piece here, if you had control and actually owned the other property, then I see that this might be a little premature. When you said life estate, I just assumed that it was subject to a life estate.

Mr. Keach proceeded to review the criteria for the variance request to construct a paved commercial parking area on a portion of the lot that is located in the R/A zone where it is not allowed. **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 self-storage facility is to be located on an isolated area of upland in the extreme easterly side of the subject property. While this portion of the property is primarily situated in a commercial district, the northern portion does extend into the residential/agricultural district. The conceptual layout of the building, parking and access lane has been designed to be within the commercial district. A turnaround has been laid out for use by fire trucks and other large vehicles. Given the shape and setback restrictions on this portion of the property, it is necessary for only the turnaround to extend into the residential/agricultural district by about 40 feet. The planned turnaround will not adversely affect the essential character of the area within which it is to be situated due to the location being to the rear of the development and being greater than 125 feet to the closest residential property line. **(2) Whether granting the variance would threaten public health, safety and welfare:** The proposed turnaround will not pose a threat to public health, safety or welfare. On the contrary, it will allow for the efficient maneuvering of emergency vehicles. **2. The spirit of the ordinance is observed:** Article III, Section 275-15 of the ordinance states that all development shall comply with the parking requirements specific in the Bedford Land Development Control Regulations. The Land Development Control Regulations Article 320, Section 321.2.3, states that all non-residential and multi-family sites shall be afforded fire lanes and emergency vehicle access sufficient to fill the requirements of the Bedford Fire Department. The proposed fire truck turnaround is appropriate and in alignment with the spirit of the ordinance as Mr. Lopez explained earlier. **3. Granting the variance would do substantial justice:** The proposed turnaround will allow for the efficient maneuvering of emergency vehicles. **4. The values of the surrounding properties will not be diminished for the following reasons:** The abutting properties to the east and to the south are zoned for commercial use. There are residential properties to the north, but greater than 400 feet away, and shielded by forest and a scrub shrub wetland. The project will comply with landscaping requirements and standards and therefore not diminish the value of surrounding properties. Again, we envision this as the building out in the woods. **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 subject property is bifurcated by Riddle Brook and associated wetland; therefore, due to location and shape of the isolated area of upland on the property, special consideration needs to be given to emergency vehicle movement. Given the limited area and shape of isolated area of upland, denial of the variance that otherwise facilitates the planned productive use would result in an unnecessary hardship. **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 establishment of the residential and commercial district line was based on a 400 foot offset from the Route 101 right-of-way. This offset splits the subject property into two zones with little to no

consideration given to the layout of the upland portions of the property. As such, the proposed layout of the development requires the turnaround to overhang the zoning line. **ii. The proposed use is a reasonable one:** The paved turnaround is a reasonable use on this portion of the property due to the limited impact on abutters and the distance to the nearest residential home. **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:** We have talked about this quite a bit tonight, but the paved turnaround is a spot to provide a safe and adequate area to maneuver vehicles. This spot is not intended as a parking space or area of high use. As such, the requested variance is necessary in order to realize what is otherwise an appropriate use of land given its constraints, locations and surroundings.

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

Mr. Greiner stated I would like to address Mr. Green's point from earlier. The three principals of this project, Dick Anagnost, Dan Sklar and myself, have done a lot in Bedford, we all live in Bedford, we all have a lot of community pride. Rest assured that if this gets beyond this point and gets in front of the Planning Board, we will work with the Planning Board to make sure that the architectural piece makes sense for them but also makes sense for us. We could certainly come in and do something on the cheap and cheesy, but that's just not what we do. We expect more and I think that the Town expects more.

MOTION by Councilor Duschatko to move into deliberations on these two variance application requests. Ms. Stirling duly seconded the motion. Vote taken – all in favor. Motion carried.

The Board proceeded to deliberate the criteria for the use variance.

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. Georges stated we have had testimony in terms of the essential character that speaks to the fact that it will not be visible by those surrounding it, that it won't be unsightly, we have not received a concept plan but we have gotten assurance that it will be done within the character of what is expected as appropriate in Bedford, so on that count in terms of essential character, it seems to meet that test. Chairman Morin stated I agree with that. Mr. Duhaime stated I would agree just knowing the Planning Board gets to look at the architectural. Councilor Duschatko stated I'm a little uncomfortable in not knowing what the elevation is going to look like, but in general I would have to agree. All agreed it meets this prong of this criterion. **(2) Whether granting the variance would threaten public health, safety and welfare:** Ms. Stirling stated I don't think it would do that. Chairman Morin stated there has been no testimony; there is nothing here that would show it would do that. All agreed it meets this prong of this criterion. **2. The spirit of the ordinance is observed:** Ms. Stirling stated this is where I have an

issue. It is not a permitted use. We are the Zoning Board, we don't make zoning, and it is permitted in Service Industrial and the Performance Zone but not in the commercial district, and it is clearly out of sync with the spirit of the ordinance that we're slated to enforce. Councilor Duschatko stated I agree with what Ms. Stirling just said. Not the fact that there isn't other areas in Town that are Service Industrial or Performance Zone, there is no crying need, it is just convenience, but we don't make zoning, the community makes zoning. If this applicant wishes to put together a zoning amendment for the Town to vote on, I would welcome that. Let's get everyone involved, I don't think it is our role to overcome that ordinance. Ms. Georges stated I want to understand the notion of the listing being permissive and make sure that I have it clear in my head, because I know that an argument was made that because it is not listed doesn't necessarily mean that it is prohibited and you can see it both ways. So I just wanted to sort of surface that and get a sense of how others view that before we put that to rest because it might not have been anticipated. Ms. Elmer stated it is prohibited. Ms. Georges asked even if it is an unanticipated use and it would then require some action, as Councilor Duschatko is stating? Ms. Elmer stated yes. Councilor Duschatko stated I think to further expand on that as I mentioned before, we seem to base a lot of zoning and other planning decisions on a master plan that cost us a tremendous amount of money every 10 years, and that master plan could have addressed things like that if that was the will in the case of the Town. There is another opportunity coming up in a few years to look at it that way. Unfortunately that is the way the zoning was written; we didn't write it, and I don't think it's up to us to just make a change willy nilly because it sounds like a good idea. Chairman Morin stated I am kind of teeter-tottering on this one. I look at it like yes, the rules are there for certain areas and stuff like that, but the other thing we look at also is if a project or an item or something would fit in another area, because that is what we are here for is to grant a variance if it doesn't disturb that area or it doesn't make a big change to that area and those types of things. Listening to the plan of what we have gotten tonight I don't think it makes a big change in that area. It is pretty much a commercial area; it is warehousing but it is still a commercial business. Where it is located on this lot for a commercial business to be so far out of the way, I don't think any commercial business would ever want to be there, and I think there was some testimony to that. It is not a proactive area for that. So looking at this specific lot and this specific asking for what use it is, I can lean that way and say yes it does meet the spirit as in looking at that people didn't want these big warehousing type places in their areas and that is why certain parts of Town were made into that, the Route 3 corridor, where there are some huge buildings out in that area. I don't think we're looking at that. What we have been given for testimony as in the proposal of what the outside might look like, a barn or carriage house type thing, with the multiple doors, for what can be seen I think is going to be very limited by looking at the way this property is set up and you look at where the wetland borders are and how this property is, where you can put something is very limited. Ms. Stirling stated again, I just feel like it is overreaching. We weren't given to say if we think it is a good idea or that it is aesthetically pleasing. We are not trying to develop the Town, and we are trying to follow the guidance that was given to us. It is not up to us to look at commercial endeavors and say I like this project, it is more about that isn't what you are instructed to do, to piecemeal together somebody's business development plan on a piece of

otherwise unused land. It is not our job to try to figure out what viably can exist there. It is not a permitted use. Chairman Morin stated but the other thing I have to say on that is that every commercial person that comes in front of us we are making that decision no matter what it is. Ms. Stirling interjected not this radical. We tweak, we don't completely redo policy. We are a Zoning Board with tweaking power; we are not in the spirit of the ordinance going to rewrite the ordinance. Ms. Georges stated I am struggling with this too, so I want to flush it out a little bit. I am actually just looking at the handbook language on the spirit of the ordinance being observed, and I hear what you both are saying and it is weighty. At the same time on the other side, essentially it says that the provisions must promote the "health, safety or general welfare of the community" and then goes on to talk about ways in which granting a variance would require that these judgments are being made in terms of whether something is unsightly or whether it is having a result of overcrowding or whether some sort of hardship is promoted, so when I look at that language, I feel like this meets the criteria in terms of the spirit of the ordinance. So I feel like there are sort of two counter things going on here. Mr. Green stated I think part of the problem is that what the purpose of a Zoning Board of Adjustment is. It isn't just to approve everybody that comes before us with a good idea. It is to look at it very carefully because we are not in the business of gutting the zoning rules, and I'm concerned that some of these things that come before us are being brought before us because we don't like the zoning so we will come and ask for an adjustment. No, I don't think that is how it should be. Adjustments should be looked at very carefully, not with the idea of yes we will grant them, but more with the idea of why should we grant them. In other words, it is not to come before us because we like you, it is you are asking us to make a change when the voters of this town have made a decision, and I agree with those that say it is not our job to overrule. I am concerned that we may be going beyond what an adjustment really means, rather the exception rather than the rule. Why have zoning if you are going to grant every adjustment. Ms. Georges stated just to that point; I want to clarify that my argument is not we should grant to whoever comes before us whatever they want, because we like them or we think they are fine, upstanding community members. What I am saying is perhaps we ought to weigh if there is a need for this, is it an appropriate answer to that need, and does it promote some sense of general welfare in doing so. If we believe those tests are being met or we think there is latitude to think about whether those tests are being met, then it is our responsibility to think that through because perhaps this is filling a need. There was testimony before us to state that this would and that it would be done within the character of what is required and expected of Bedford. We haven't heard testimony in opposition, and I think if I had heard testimony in opposition, I would more readily be standing in line with those of you who are saying let's not take that leeway, but you see where I am coming from on this. Councilor Duschatko stated I see where you are coming from but to follow up with the rest of that paragraph that you quoted, it basically says this requires the effect of the variance be evaluated in light of the goals of the Zoning Ordinance, which might begin or end with review of the comprehensive master plan the ordinance is supposed to be based on. Ms. Georges stated I hear what you are saying. Councilor Duschatko stated and the conclusion of that is it comes out as a guideline and basically says; however, when the ordinance contains a restriction against a particular use of the land, the board of adjustment would violate the spirit and

intent of the ordinance by allowing its use. If an ordinance prohibits industrial and commercial uses in a residential neighborhood, granting permission for such activities would be a doubtful legality, with strong emphasis the Board cannot change the ordinance and that is what we are being asked to do. Yes, I realize it is a strict constitutional type of thing, but I think at some purpose what is written and what is put down within recent time has merit. Ms. Georges responded I am normally a strict constitutionalist, however, I guess then my question is, we grant variances and so how do we determine then when we grant a variance and when we don't grant a variance because if we took the strictest constitutional view, then our role would be obsolete. Ms. Stirling stated that is what I was talking about with tweaking not rewriting. Ms. Georges asked so where do you draw that line? Ms. Stirling responded the other thing you said that we evaluate need, but we don't. In fact, we are not evaluating the need of a business to come in somewhere. That is not our role at all. If you want to take the argument a step further, that is not something we even look at, but we don't actually have any documented need of this property's purpose because we have no evidence of that. So in addition to not only your argument falling on the fact that we don't evaluate need, in addition, they haven't shown any evidence. We haven't had tenants' letters of intent shown; we have no evidence that there is any need anyway. Not only are we not supposed to look at it, but we don't have evidence of it free to say you are basing it on some perceived need. Ms. Georges responded right, and just for the record, I picked up the need comment from Mr. Green, on his argument that if we had established a need, that it would be viable. Your point taken. Ms. Georges agreed that it meets this criterion. Chairman Morin, Ms. Stirling, Mr. Duhaime, and Councilor Duschatko disagreed that it does not meet this criterion. **3. Granting the variance would do substantial justice:** Ms. Stirling stated the justice question is always kind of a tricky one. But, again, we are not evaluating the need of the business. I think granting the variance the justice kind of ties in more with the spirit of the ordinance, what would be just. That is how I am reading that. Mr. Green stated it is like the one we had prior to this one. The use had been there for 12 years. It would be unjust to require that it be taken down, but this is not the same thing. Councilor Duschatko stated this falls in one of those uncomfortable zones. The question I'm asked is what is the role of the Zoning Board and most of the items that we get involved in when we do make adjustments are dimensional rather than use based. This isn't a dimensional thing; it is not a preexisting structure. It is actually an appropriate way to come about it, coming before a project is put into place rather than doing it and then coming back and saying forgive me. I'm really mixed on that particular deal. They did the correct thing; unfortunately I just think it fell out of the spirit and the language of the ordinance. Chairman Morin stated I am on the border, but I am going to go with no, that it does not meet this criterion. I don't think it meets substantial justice. There is not enough there. Councilor Duschatko stated I also vote no for that reason. Ms. Stirling stated I vote no as well. Mr. Duhaime and Ms. Georges voted no. **4. The values of the surrounding properties will not be diminished for the following reasons:** Ms. Stirling stated we have had no testimony or evidence of that and really would not be able to speculate on that. I don't think it would diminish the values of the surrounding properties. 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: Ms. Georges stated we have had testimony that says there are serious limitations to what can be placed in that area. By that argument there is a substantial case that says it would pose an unnecessary hardship. Chairman Morin stated but also looking at the other side of it, they are creating their own hardship. Ms. Stirling stated that is where I was going as well. When they bought 209 Route 101, it was what it was and they knew what they were buying. So to come and now say it is a hardship, then why did you buy the property? That would be my first question. My second point is right in the answer. The site is best used for low traffic counts and since any use of the property must also be economically viable. Before you buy a piece of property, and my job is not about the piece of property you bought now is hardship because you cannot economically, viably develop it, that is simply not the role of the Zoning Board, It is absurd that it is in literal enforcement for an unnecessary hardship, not only create your unnecessary hardship but then just tell me it is not economically viable, it is absurd. Ms. Georges stated the only thing I would look to is the fact of it being, and I hear exactly what you are saying and it is an important point you are making, although because it is in the commercial zone, I'm sure the owners looked to, and there is testimony to the effect that they looked to a variety of ways to use that, would have fallen strictly within the letter of the ordinance for commercial use. And because of those limitations that were not of their own making, they really wanted to, and one would imagine because it is in the commercial zone, it is beyond the scope of our discussion but the intent and the hope of the Town is that things that are in the commercial zone are being utilized to the highest and best value, so I think there is some argument here that says there was a lot of due diligence here, there was an effort made to utilize this within the letter of the law. So it wasn't sort of an arbitrary thing to say let's go do this. Councilor Duschatko stated other than the statement within the letter of the law, I would probably agree with you. It wasn't within the letter of the law. Ms. Georges responded but that is why they are here for a variance. Councilor Duschatko stated going back to one of my questions; there is evidence that this is a commercial use in other towns. That is immaterial. Ms. Georges stated I agree that it is immaterial. Ms. Stirling stated they still are free to come back to us with a variance for a property that fits into a commercial zone. It happens to be that they come before us with one that doesn't fit, but that doesn't mean that we won't listen to them again. We listened to them several times when they made their bank building even better after they came back a second time. Again, it has to line up the appropriate use in the appropriate zone. All agreed that it does not meet this prong of this criterion. **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 again, I will go back to it is an unnecessary hardship. They knew going in that it was zoned commercial, not Performance Zone and Service Industrial, so it can't be a hardship when you knew what you were going into. Ms. Georges stated as I'm thinking about this and looking at this, I think it might have been helpful had we heard more exhaustive testimony about other options that had been looked at, so we could have more of a fact base to determine whether or not this in fact is the only option left on the table, and barring that, I think it is difficult to completely go along with this piece. All agreed that it does not meet this prong of this criterion. **ii. The proposed use is a**

reasonable one: Ms. Stirling stated the proposed use is not a reasonable one. Chairman Morin stated due to the fact that it is not zoned correctly. All agreed that it does not meet this prong of this criterion.

MOTION by Councilor Duschatko that the Zoning Board of Adjustment deny the request for a use variance submitted by 209 Route 101 Realty, LLC c/o Dick Anagnost (Owner) from Article III, Section 275-21.A(1) and Table 2 to allow warehousing (self-storage) in the Commercial Zone where it is not an allowed use at 209 Route 101, Lot 20-39, Zoned CO, for the reason that it has not met all of the criteria for a use variance per our deliberations. Mr. Duhaime duly seconded the motion. Vote taken - all in favor. Motion carried.

MOTION by Ms. Stirling to move out of deliberations on these applications. Ms. Georges duly seconded the motion. Vote taken – all in favor. Motion carried.

Mr. Keach stated after getting a response from my client, we would like to request that the second variance application this evening be withdrawn without prejudice.

MOTION by Ms. Stirling that the Zoning Board of Adjustment grant the request from the applicant to withdraw without prejudice the request for a variance from by 209 Route 101 Realty, LLC c/o Dick Anagnost (Owner), from Article III, Section 275-21.A(1) and Table 2, in order to construct a paved commercial parking area on a portion of the lot that is located in the R&A zone where it is not an allowed use at 209 Route 101, Lot 20-39, Zone CO. Councilor Duschatko duly seconded the motion. Vote taken - all in favor. Motion carried.

New Business:

Chairman Morin stated we have a request for a rehearing on a request for a variance that was heard last month.

Councilor Duschatko recused himself from this discussion and left the meeting.

Chairman Morin stated we can only have four voting members on this; we can't have five because we cannot take the place of the one of the Town Councilors. Ms. Elmer stated you can. Councilor Duschatko's email said that you can even though in the past our practice has been that we didn't. But because I knew we were going to be short tonight, we requested Town Council's interpretation of that to see if it was absolutely required that only a Town Councilor could replace a Town Councilor and it is not a requirement. But that being said, it is up to you whether you feel more comfortable waiting for the Town Councilor that was on the previous application to be here to continue or you may appoint an alternate. It is totally up to you to decide. Chairman

Morin stated I think it is up to the remaining members present to make that decision. Ms. Stirling stated we have five and we need five. Let's have five members.

Ms. Georges stated I want to ask for some clarification and talk about one hesitation that I have. I was not at the previous meeting in which this was discussed. I did thoroughly read the minutes and I have gone through all of the material again, so I could participate although there were two items in evidence that were not included in the packet that I have not read. Ms. Elmer stated I never thought to forward those that weren't here last week, which are the handouts they gave to us at the meeting. Ms. Georges stated and that is because one of the three arguments in the request for the rehearing hinges on one of those pieces of evidence, the appraisals. Because I haven't been able to read them, I don't feel comfortable making a judgment on that basis, and I apologize for that. Ms. Stirling stated they were two letters of review. They weren't really substantive. The fact that you know that they weren't that thorough, they are just like something a friend would write. Chairman Morin supplied Ms. Georges with copies of the letters for her review. Ms. Georges stated I can read through them but I don't know how the other members feel about me voting. Chairman Morin replied if you feel comfortable by reading through them, then if you feel comfortable sitting, I will appoint you as a voting member for this and we can make a decision if there will be a rehearing or not. Ms. Elmer stated unfortunately we can't wait until our regularly scheduled meeting because State statute says you have to review it within 30 days. Mr. Duhaime asked we are voting whether to rehear it? Mr. Green asked or are we voting to let me vote? Chairman Morin replied once we go through everything, we will be voting if we are going to allow a rehearing or not because they are requesting a rehearing. Ms. Elmer stated so tonight there is no public testimony, there is nothing like that, you have to make your decision based on what was submitted, based on their letter, and then if you do not agree, then you don't have to have another meeting. If you do agree that there was enough information there that you want to grant a rehearing, then it would be like a whole full blown new application where we would notify all of the abutters, notices would go out, all of that stuff. Ms. Georges stated I am fine with doing that.

Chairman Morin stated we will have the three alternates, Mr. Green, Mr. Duhaime and Ms. Georges, voting on this request for a rehearing, as well as Ms. Stirling and myself for the five voting members.

Ms. Stirling stated the point of the fact that it runs with the land, and therefore some of the case law that they went into about that. I'm not sure that that was really at least emphasized and that gave me pause, because in addition, it kind of goes a little bit to the idea that the ordinance had been around for many, many years and the fact that it is a little different than with the pool, which is constructed, it would be a pain to take it apart, it is a small lot, there is no conceivable place to put it other than where it is. In this case it is a moveable vehicle and it was not clear in my mind, there was some talk about the gradient side yard would make it hard to get it to the back, it didn't feel to me like it is sort of like someone going over and saying this is going to be a pain in the butt, so it would be a lot easier if you can just leave it where it is. For those reasons, I thought that those were areas that were raised that were smoothed over kind of quickly,

so that gave me pause. Those are my preliminary thoughts. Mr. Green stated I am concerned about granting a variance for something that can be moved, and what does this mean for future owners. Does it mean that anybody who buys that can then say I am grandfathered in, I have this variance and I can put a mobile home there? Ms. Elmer interjected you want to be careful that you are not reviewing the application again. You have to just be specific to this letter. I want to make sure that you are referencing the letter, not the application. Ms. Stirling stated that is what they referenced in there the points I raised that did give me pause.

Ms. Georges stated I was wondering if it might be useful, to me especially because I wasn't there, if we might just go point by point on the three major points that were provided in the letter because those would be the basis for us granting or not granting a rehearing. Ms. Elmer stated for a point of clarification: Just because now you are looking it over again and you think you might have made the wrong decision based on the fact that now he is bringing this up again, it is very hard but you have to try to distinguish that because you could rethink every decision you ever make. The Board made a decision on a certain set of facts that were present, they had full opportunity to have other facts presented at that meeting, it is not like they didn't have the opportunity to present a certain set of facts. I just want you to be careful as you are reviewing this that you are not reopening the case. Ms. Georges responded absolutely, and what I'm asking is in not reopening the case if we could in fact just say they are arguing three things for why we should have a rehearing. Do we believe that they have met the standard for having a rehearing, that is what I am arguing for. Ms. Elmer stated because you didn't vote at the last meeting, it is not up to you to say I would have voted differently. Ms. Georges stated I am actually arguing the opposite; we are on the same page. I am saying let's not re-litigate the facts because they raise a procedural issue, let's discuss whether or not that procedural issue was violated. Ms. Elmer responded absolutely.

Ms. Stirling asked can you go through that. That was interesting to me. Did we not reopen it for rebuttal? Chairman Morin replied we did, but what the appellant is saying that in the suggested language of the manual that we get there is a thing that talks about different opportunities for opposition. Unfortunately we don't have those in our rules. Our rules are very specific as it talks to giving the public the opportunity that are in favor and that are in opposition, which was clearly done at that meeting. On Page 6 of the notes it is very clear that I put it out there.

Chairman Morin stated the part that kind of got me a little bit was that in the letter they are saying they didn't get the opportunity after summation to give more information. We didn't stop anyone from going to that microphone. Someone could have gone up and gotten to the microphone and I would have acknowledged them. It was to the point, if I remember correctly, that there was no more input being done so at that point I asked for a motion to go into nonpublic input. I'm fully against the procedural issue of the opposition not having the opportunity to give testimony. Mr. Green stated they had opportunity. Chairman Morin stated they had plenty of time to give testimony. Ms. Georges stated that is helpful, because from reading the minutes it appeared as you

stated it that there was no cutting off from opportunity, and in fact the handbook language says “shall be allowed to speak in rebuttal” and doesn't say that there is a requirement, and this is handbook language, it doesn't say there is a requirement that the Chair say is there anybody who wants to rebut, but it is incumbent on those who want to rebut to come up and speak. Chairman Morin stated and the other thing with the handbook is it is a suggested manual. It is ideas for towns or whatever to utilize; it doesn't mean that all of those ideas are put into their procedures. Mr. Green stated towns have the freedom to adopt or reject. Chairman Morin responded exactly.

Ms. Georges stated the second item was regarding finding of facts. This is about the decrease in value. They are getting into an argument of substance. Chairman Morin stated actually the fact on that piece was the applicant had their information on house sales and then the people appealing had their two letters. Mr. Green stated and property values are going up, so based on the evidence, it was hard to say whether there was any diminution. Is it possible that it might have gone up more without this, but that is a possibility and there wasn't an appraiser here with all of the comparables, this is what happens? We didn't have that. Ms. Georges stated so that we are clear about what is being argued, in the letter asking for a rehearing they are arguing that it is the job of the Zoning Board of Adjustment to sift through conflicting testimony and other evidence to make a finding as to whether a decrease in property value will occur. As you stated, there were these competing bodies of evidence so that then becomes a judgment, but it wasn't really evidence, and that is why I am saying it that way because it was just letters on the one hand and then a discussion, as I understand, and on the other hand of the applicant's that said there were no facts in evidence on this. But I guess they stated that the property values did not diminish, that a number of homes went for asking price or within 2.2 percent of asking price. Mr. Green stated it is a hot market so things are going up.

Ms. Stirling asked what about them asking is this compelling, which is on the last page of the letter at the top page where it is Marine Bacon vs. Town of Enfield. “While a single addition to a house, a boiler tank does not adversely affect (in this case) shorefront congestion or overall value. The cumulative impact of many projects might well be significant.” Does it fit that site? Chairman Morin stated when going through this I didn't see any new information that couldn't have been presented at the hearing within all of these pages. Even the court cases, but you have to look at court cases as specific to what that case was, and we only got a very small paragraph of what that court case is. Mr. Green stated if it is a Supreme Court case, it is not by and large just limited to what that case is. Chairman Morin responded but we were only given that much of the case. We don't know what the line after it says. I had a very hard time going through this and seeing anything new that wasn't given at the hearing that would change my mind to have a whole new hearing. I am having a very hard time with it. Mr. Green stated it would seem if somebody is going to argue with legal arguments while it is not required, they really should have a lawyer with a memorandum pointing out what the law is, what the citations are, and how this falls within what Chief Justice Dalianis and other members of the Court have said. I don't think it is our responsibility to necessarily go and research the law. I think it is a litigant's responsibility; that is how

courts or litigation usually acts. The court doesn't do its own investigation, and for these purposes we are acting as a quasi-judicial body. So if a litigant wants to bring what is the law, they most certainly have the right to do that but they better be prepared to argue and brief it. Chairman Morin stated the hard part with these too is that this is not a per se open discussion, it is not a public hearing, and it is our discussion. Again, after Page 2, pretty much everything after that I wasn't seeing anything new. It was everything I heard during the hearings. Mr. Green stated for a point of inquiry: If they are unhappy, they would have a right to go the Superior Court? Ms. Elmer replied if you deny here tonight, yes, that is their next step. Mr. Green stated if they find that we have done, or they perceive that we denied them of their rights under the law, it is not like we are foreclosing a remedy. They do have a remedy if they wish to pursue it. Ms. Elmer responded yes.

Ms. Georges stated I just want to be sure on this last point because I am reading the same way that you are, that we are not missing anything, because on the first one it was clear it was a procedural question. On the second one it was an interpretation of how one would do the finding of facts, so we agreed to disagree with the rehearing request on that basis based on what was heard. On the third one it just isn't clear to me on what basis the request is being made, on what specific ordinance, Zoning Board of Adjustment, procedural or other basis, or is what you are saying that you view this sort of just as an attempt to re-litigate the question of whether the spirit of the ordinance was met. Chairman Morin responded I see it as they are just reiterating everything that was said at the hearing but in a different document to see if they can try to change our minds. Ms. Georges stated that is how I read it and I just want to make sure that we are not missing something on that because the other two were clearly points that I think were worthy of just reviewing and making sure that the appropriate steps were taken.

Mr. Duhaime asked is there any validity to the construction of how they came up with that flat parking space, in the third paragraph on the front page, where they are saying that they violated wetland setbacks constructing it. Is there any validity to that? Ms. Elmer replied it is hard to tell because there was no certified wetland scientist that did the work out there and submitted a plan. Normally driveways are allowed to go right up against the edge of the wetland. If they actually filled a wetland to expand their driveway, that would be a violation of the wetlands ordinance, but there is no way to know that on the information that was given to us. Mr. Green asked isn't that part of the problem where most people don't hire attorney's to come so they have that sort of problem that they don't meet the normal standards of proof. The applicant is coming and they are not lawyers, by-and-large, and the people against this. Chairman Morin replied sometimes that can get confusing too.

Ms. Stirling stated I don't think there is enough to really grant a rehearing. Again, I lead on the strongest thing was that it stays with the land and I don't really remember if that was explicitly discussed, and I didn't have a chance to look in the minutes. Ms. Elmer replied there was no definitive answer on that one, and I don't know either. Just for future reference, if the Board so chooses, I can check with the Town attorney to see if it meets the same criteria as a building and it goes in perpetuity or because it is an RV. I

don't know either; it is a unique animal. Ms. Stirling stated that was the only thing that gave me pause because I think in my mind, they are an older couple, this problem is going to go away in a few years, but I think I made that assumption that it wouldn't necessarily run with the land. That is a little bit more troubling to me that I was kind of caught off guard on that. With that being said, other than that one piece, can we get that from the attorney and then revisit this. Ms. Elmer replied you would have to have a special meeting because you have to make your decision in 30 days. It is up to you. Chairman Morin stated if you look back in the minutes, you did bring up some items concerning those different concerns because I think you denied a couple of the pieces as in your vote. We had a couple of the pieces that were voted 3 to 2. You did have question on quite a few of those things. That is why I was very surprised at some of the information in here because, again, I didn't see anything new. Ms. Stirling asked you were fully of the understanding though that it was just going to transfer with the land. Chairman Morin replied oh yes; all of our variances do, unless we specifically do something. Ms. Elmer stated whether it is a use variance or a setback variance, variances go with the land. The only time that it doesn't is for those handicap variances. Those have to extinguish when the person who is using that variance is no longer there. That is the only case. There is a very specific type of variance for handicap accessibility that does not have to meet all the hardship standards, but it is specific to that particular user and when that user is no longer in that building, then the property has to revert back to the state it was before. Ms. Georges stated so we believe this was actually addressed in some form or at the least the question was raised on the variance going with the land. Now it did open up another point. Mr. Green stated I remember some discussion about that. Ms. Georges stated I read through the minutes very recently. Ms. Stirling stated there was quite a bit of discussion under the literal enforcement section, but I don't see anything in there that really jumps out at me specific to this point. Ms. Georges stated as we are thinking that through, if in fact it wasn't discussed, does that necessarily argue that the rehearing should be made because if that is a substantive argument that is now being inserted into the discussion that wasn't part of the discussion at that time, then that doesn't actually necessitate a rehearing I think because it is essentially saying but there is this argument that I neglected to raise that ought to give you pause, however, it wasn't raised, so that procedurally I don't know and I look to those who have served longer, I don't know that then triggers the need for a rehearing. I don't know that that meets the standard, and I guess I'm putting that out as a question. Ms. Stirling asked what are your thoughts, Ms. Elmer? Ms. Elmer replied my gut instinct is you were reviewing a variance and variances go with the land. You can second guess any of your decisions from previous meetings. Chairman Morin stated and for us that have been on this Board for a while, that hasn't changed. Ms. Stirling stated I do think to Ms. Elmer's point, I actually think that it is a little bit different when it is a building versus a vehicle. Ms. Elmer stated it was basically a use variance to park an RV in the front yard. So a use variance goes with the land. That would be my interpretation; I'm not saying it is the right one but.

Ms. Stirling stated I am prepared to say that we don't have to grant a rehearing. Ms. Georges, Mr. Green, Mr. Duhaime, and Chairman Morin agreed with Ms. Stirling.

MOTION by Ms. Stirling that the Zoning Board of Adjustment deny the request for a rehearing on a request for a variance heard at the April 19, 2016, Zoning Board of Adjustment meeting from Jane Boyer who requested 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, based on our discussion of the letter dated May 13, 2016 where it raises no substantive issues of matters that we did not already hear at the original hearing, per our deliberations. Mr. Green duly seconded the motion. Vote taken - all in favor. Motion carried.

Adjournment:

Motion by Mr. Green to adjourn at 9:00 PM. Mr. Duhaime duly seconded the motion. Vote taken – all in favor. Motion carried.

Respectfully submitted by
Valerie J. Emmons