

TOWN OF BEDFORD
June 21, 2016
ZONING BOARD OF ADJUSTMENT
MINUTES

A regular meeting of the Bedford Zoning Board of Adjustment was held on Tuesday, June 21, 2016 at 7:00 PM in the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: Adrian Thomas (Vice Chairman), Bill Duschatko (Town Council Alternate), Sharon Stirling, Chris Swiniarski, Len Green (Alternate), Kevin Duhaime (Alternate), and Karin Elmer (Planner I)

In the absence of Chairman Morin, Vice Chairman Thomas was Acting Chairman. Vice Chairman Thomas called the meeting to order at 7:00 PM and introduced members of the Board. Town Councilor Kelleigh Domaigne Murphy, Chairman John Morin and Alternate Gigi Georges were absent. Alternate Len Green was appointed to vote and Councilor Duschatko voted in place of Councilor Domaigne Murphy.

Minutes – May 17, 2016

MOTION by Mr. Green to approve the minutes of the May 17, 2016 meeting of the Zoning Board of Adjustment as written. Ms. Stirling duly seconded the motion. Vote taken; motion carried, with Vice Chairman Thomas and Mr. Swiniarski abstaining.

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

Applications:

- 1. Kevin Allard (Applicant), Karen & Allen Albert (Owner) – Requests a variance from Article III, Section 275-22.A & Table 1 in order to build a garage addition 26.5 feet from the front property line and a porch addition 34.1 feet from the front property line respectively where 35 feet is required at 24 Oak Drive, Lot 12-45-10, Zoned GR.**

Albert Allen and Kevin Allard, builder, were present to address this request for a variance. Mr. Allen stated we bought the home three years ago. The house was built in 1962 and the garage is in bad shape. The roof sags quite a bit in the center, the foundation is broken, it is cracked, it has aged, and remodeling is not able to be done. The setbacks on the house from the street are what are in question. We are building the garage in the exact same footprint with the existing garage that is there now. The difference is that we would like to basically add a third bay, not a full garage bay, used more for snow blower,

lawnmower and equipment for the yard. The garage we have now is just large enough to accommodate two vehicles and during the winter months we are unable to use it. On the paperwork it notes that we are looking to build a brand new porch, and in addition to that, the footprint that now exists is all concrete, so we theoretically are following the same exact footprint with that as well. We do show on the front of that where a mud room is being added on the existing concrete slab and in 1962 when it was built, sometime over the last 50 years, there was a framed little mud room that was built on that. There is no heat in there, it is basically an exterior room with a couple of walls and windows to the appearance, and it is very much similar to what you see now. We just intended on making it slightly longer than it is now.

Mr. Allen continued I am in the construction industry, I do a lot of remodeling work, I am in the floor covering industry, and a lot of homes similar to this when building this we had thought to put a second floor over the area if we were going to remodel it or build it to utilize the space. We do some entertaining, it is a small home, it is a small cape, and we felt that the area would be used quite well especially during the holidays. Being a cape and being built in 1962 there are no closets or closet space, which is a little bit of a challenge with a family, so we looked to add a back hall for closet space and easier access to the backyard. We designed it with the intent to look very similar to how it looks now. We're not looking to add anything too strong or too opinionated, we're not looking to make it look larger, and trying to blend it to look like it was built with the home when the home was built, all the lines, windows, paint, and trim. We intend on carrying all similar lines so that there is correspondence with the neighborhood from a visual point of view. The driveway line would remain pretty much the same and the walkway would remain the same. We are hoping that we can achieve this approval.

Mr. Swiniarski asked how wide is the opening for the third bay of the garage? Mr. Allen replied I think the door is going to be 6 feet; we added 10 feet. We set it back, I think it was a 4-foot setback off the front of the garage so it was consistent, and, again, it is more of a storage area. Mr. Swiniarski asked a car can't fit in there? Mr. Allen replied that is correct. The cars will remain in the two other bays.

Mr. Allen proceeded to review the criteria for his variance application. **1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality: (2) Whether granting the variance would threaten public health, safety and welfare: 2. The spirit of the ordinance is observed: 3. Granting the variance would do substantial justice: 4. The values of the surrounding properties will not be diminished for the following reasons: 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: ii. The proposed use is a reasonable one: B. If the criteria in subparagraph A are not established, explain why the property cannot be used in strict conformance with the ordinance and why the variance is therefore necessary**

to enable a reasonable use of it: Granting the variance would not be contrary to the public interest. We spoke to our neighbors and they are all in agreement with it. We have put a lot of time and effort into the yard itself; we have spent a great deal of time clearing things out, improving the land, it is not going to change anything in regards to safety. I don't see any reason why it would be anything different to the community than what it is now. It has a very similar appearance to it. The original house was built in 1962 and the current setbacks, as I understand, the footprint is identical to what it is now, we're not looking to change that, we're just looking to change the foundation. The benefit would be a remodeled garage, the entranceway is without further burden in the neighborhood, and, again, there would be no change with that. The existing garage would be significantly renovated up to code; it is completely out of code now. We have actually cut off all the electric; there is a beam in the center that is sagging. We were very concerned last year because I had to shovel it about six times. It will definitely increase the efficiency and the benefit of the project itself. The project is not meant to change anything, it will definitely add value to our property, and I don't think it impedes anything any further than that.

Councilor Duschatko stated the plot plan that you are showing us now indicates that the existing garage is already in violation to the setback. Mr. Allen responded it has been that way since 1962. Ms. Elmer stated when houses were built back then they didn't require survey plans, so a lot of the houses were not built to meet that setback. It is existing, non-conforming. Mr. Swiniarski asked did we have the setback requirements in 1962? Ms. Elmer replied yes. There were no survey plans required so they just built it. There were no checks and balances back then. Councilor Duschatko asked why do we have these rules if we don't enforce them? Ms. Elmer replied because they didn't require survey plans in 1962. Councilor Duschatko asked when did that come into enforcement? Ms. Elmer replied probably not until the mid-1980's.

Vice Chairman Thomas swore in Kevin Allard. Mr. Allard stated we were a little bit surprised with this; it is kind of a learning curve for me also. When we first discussed doing the addition, we looked at the setbacks that are the current setbacks and I was assuming this was the side of the home because it is the side of the house, and the front is facing Oak Drive, the side is on Glenn Drive, which is actually the side of the house, so when we first talked about it, we said the side setback is 15 feet. When we talked to the Town and we were within those side setbacks, so we went ahead and surveyed the lot, got the plans done, moved forward, put in the permit like it was a no-brainer, and then we said all of a sudden this is considered a front setback. Any side of your house facing a road is a front setback not a side setback. That was another thing that we just assumed it was a side setback all along. It really is the side of the house but it has to go to the front setback, and actually this house has three front setbacks and only one side setback. Mr. Swiniarski stated it is perfectly plausible that that is the reason for the mistake back in 1962 as well.

Vice Chairman Thomas 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 application. Mr. Swiniarski 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: (2) Whether granting the variance would threaten public health, safety or welfare: Vice Chairman Thomas stated I see that based on the testimony that this would not alter the essential character of the locality considering that they are basically going to keep the same appearance, and I do not see any reason how this would threaten public health, safety or welfare. All agreed they meet these two prongs of this criterion. **2. The spirit of the ordinance is observed:** Vice Chairman Thomas stated per the testimony, there is still a generous setback there and the property was built before survey plans were needed, so I think that there is still a setback, and the spirit of the ordinance is to prevent overcrowding and I think it is being observed. All agreed they meet this criterion. **3. Granting the variance would do substantial justice:** Vice Chairman Thomas stated it would allow them to use the property in the way in which it was meant to be used, which is to have a garage. Mr. Green stated also it is a danger in the current condition. All agreed they meet this criterion. **4. The values of the surrounding properties will not be diminished for the following reasons:** Vice Chairman Thomas stated we do have a letter from Southerby's that actually says by doing these renovations it would actually increase the value of this property, which would then obviously increase the values of properties surrounding it. All agreed they meet 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 obviously the special conditions are that the property was created in 1962 before the site plans were required, so even though that did violate the setback, there really was no enforcing it at that time. Mr. Swiniarski stated and triple frontage is a special condition also. All agreed they meet this prong of this criterion. **ii. The proposed use is a reasonable one:** All members agreed that the proposed use is a reasonable one. All agreed they meet this prong of this criterion.

MOTION by Ms. Stirling that the Zoning Board of Adjustment approve the variance application submitted by Kevin Allard (Applicant), Karen and Allen Albert (Owner) requesting a variance from Article III, Section 275-22.A and Table 1 in order to build a garage addition 26.5 feet from the front property line and a porch addition 34.1 feet from the front property line respectively where 35 feet is required at 24 Oak Drive, Lot 12-45-10, Zoned GR for the reason that it has met all the criteria for a variance per our deliberations. Mr. Swiniarski duly seconded the motion. Vote taken - all in favor. Motion carried.

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

MOTION by Councilor Duschatko that the Zoning Board of Adjustment temporarily adjourn. Ms. Stirling duly seconded the motion. Vote taken - all in favor. Motion carried.

Vice Chairman Thomas reopened the June 21, 2016 Zoning Board of Adjustment meeting after a temporary adjournment.

Councilor Duschatko stated I have just been presented with a memo that we were asked for a rehearing. I am totally surprised by this request for a rehearing; I had not seen it until five minutes ago, I have not had a chance to read it, it has been alleged that it was delivered to me, but I did not receive it. I think it is premature to act on it, and reading it very quickly I saw a couple of allegations that myself and Ms. Stirling were in conflict with statutory law. I happen to disagree with that absolutely, and I would also like to go on record that I was confronted after our meeting by the appellant and told I didn't know what I was doing, that I asked him to do things illegally, which if you go back to that particular hearing, you will find out that I did not. I suggested that if he wanted to change zoning, he could go through the proper channels and if he wanted to add something to the Zoning Ordinance, he can. I wasn't asking for spot zoning. That is ridiculous and I am really insulted, I know we have to listen to this rehearing, but I am insulted personally, and I am sick and tired of this attempt by absolute bullying of this particular applicant on this type of thing. That is all I want to say.

Vice Chairman Thomas stated with regard to your request, obviously requests for rehearings have to be filed within 30 days of the hearing itself, so time is of the essence starting with when the actual hearing happened. I think that from a rule standpoint, and Ms. Elmer you can correct me if I am wrong, this is the time period in which a request for rehearing kind of has to be placed. And from the standpoint of notice of rehearing, I know that all of us, and obviously I don't know your email situation, but we had received the notice of the rehearing with a revised agenda. Was that revision filed also with the Town? Ms. Elmer replied we posted a revised agenda. Vice Chairman Thomas asked as of June 16th? Is that correct? Councilor Duschatko stated you had not posted a revised agenda in a public paper. I understand the rules of a rehearing. Vice Chairman Thomas stated so for the purposes of this current meeting, because we do have parties here that need to be heard who are not involved in the rehearing, which is our 5th item on the agenda, I feel that we should move onto the next two items on the agenda, and I think you had said that you need to recuse yourself from those two, so I think with that timeframe you then read the request for rehearing that the rest of us had gotten, and if you feel like there is adequate time for you to then come back in and comment appropriately, whether you think we should grant the rehearing or not. I think that would be the best thing for the Board and for the public at this time. Councilor Duschatko stated I will agree with you. I am just voicing my concern about how this was handled. Vice Chairman Thomas stated and I think you can continue those concerns, to voice them when we do the application

for the rehearing, because I think that is the time when it would be most appropriate because that is really what we are going to be looking at here, whether we should grant this rehearing or not based on evidence that they are giving us based on what happened. All of those comments that you made are on the public record and anything else that you have we can talk about when we get to the rehearing, which is Item 5 on the agenda.

Councilor Duschatko recused himself from the following two applications. Mr. Duhaime was appointed to vote in Councilor Duschatko's absence on the following two applications.

- 2. Caroline & Kevin Verow (Owners) – Requests an Equitable Waiver from Article III, Section 275-22.A & Table 1 in order to keep an already existing shed 1.6 feet from the side property line where 20 feet is required at 8 Connie Court, Lot 15-13-7, Zoned R&A.**
- 3. Caroline & Kevin Verow (Owners) – Requests a variance from Article III, Section 275-22.A & Table 1 in order to keep an already existing shed 1.6 feet from the side property line where 20 feet is required at 8 Connie Court, Lot 15-13-7, Zoned R&A.**

Kevin and Caroline Verow were present to address their requests for an equitable waiver and a variance. Mr. Verow stated we purchased a shed from a neighbor last August and made plans to have the shed relocated from another lot in the area to our property. I had applied for the permit to move the shed over and hired a shed moving company to come over and relocate the shed for us. When I had initially submitted the plans for where the shed was going to be located, we had every intention of putting the shed within the variance of our property, which is to the far right of where it currently sits on the revised plot plan. Unfortunately, when the company came over to relocate the shed, what we found out was because of the size of the shed and because of the terrain where the shed was going to be located, we have pictures in our proposal that you can take a look at, the shed would not fit in the area either lengthwise or vertically because of the rocks. What we were advised to do was relocate the shed to its current position, which unfortunately it abuts the variance.

Mr. Green asked who advised you? Mr. Verow replied when I said advised, we were looking for a next best place to put the shed. Initially we had sought the Town's input on where we could put the shed and we were told that nobody from the Town will come out and advise us on that, we would have to apply for the permit, suggest where it is located, nobody was going to come out to verify it, and that is what happened. Because of where we had wanted to put the shed was reasonable, we slid the shed over a few feet to the opposite side and unfortunately we wound up coming in on the setbacks. So we are requesting an equitable waiver to allow us to leave the shed where it is.

Vice Chairman Thomas asked when was the shed placed? Mr. Verow replied last August. When we found that it couldn't go where we originally planned it to go, we just moved it

over to what equated to about 6 feet to the left. Vice Chairman Thomas asked where on the posted plan were you going to put it? Ms. Elmer stated it is in my packet. Look at my staff report for what they submitted with their original building permit. Mr. Verow stated on the plan posted on the screen I am indicating where the original location was going to be, and where it ended up was a few feet over to the left.

Ms. Stirling asked walk me throughout the property as to why it couldn't be moved to be conforming and any other location? Mr. Verow replied the shed is meant to store a heavy duty snow blower, large-scale commercial lawnmower so we didn't want to have it set back in the rear part of the backyard so that kind of ruled that out. Mr. Green asked why not? Mr. Verow replied because we have a pool going in the backyard. Mr. Green asked is it there now? Mr. Verow replied no, but we knew it was going to be going in there. Mr. Green stated so you made a choice. Mr. Verow responded we made a choice, but if you look at the back of our yard, you will see that we have a drainage easement that cuts through half of the backyard; the other half of that backyard is our septic system and leach field, which would have given us probably less room to put the shed. We also looked at maybe sliding it down on the side of the driveway but then we would have come closer to the wetlands that are designated by the Town. Ms. Stirling stated so in answer to my question, with the pool you have planned, what size pool is this. Mr. Verow replied it is 22 feet X 44 feet. Ms. Stirling stated it is a pretty big pool, so you're saying that between the pool and septic and leach field that this shed, which is 12 feet X 14 feet, there is no other feasible place that it could go? Mr. Verow replied unless I wanted it right in the middle of the backyard, which I didn't think would be reasonable. Ms. Stirling stated and tell me again why it wouldn't be reasonable to have it in the backyard? Mr. Verow replied it wouldn't be reasonable to place the shed right in the middle of the backyard between the leach field and septic; but first of all, to try to move that shed in, we would have had to take every piece of equipment and drive over the leach field, which in and of itself would have caused problems. We knew that we wanted to have the shed where we had originally placed it but we weren't able to do that.

Mr. Verow stated when we were notified that there was a complaint issued, we reached out to our abutters and asked them their opinion of whether or not that shed was causing any issues for them and we have provided their responses. The shed doesn't cause any issues in terms of value to the properties, it doesn't detract from the aesthetics of the property, nor does it impose any usage impairment for any of the abutters. The shed is basically lodged between a cluster of trees and a large boulder, and those pictures are also in your packet. Mr. Swiniarski asked your neighbor that objects to this is the neighbor that abuts you on that property line? Mr. Verow replied that is correct. If you look at the picture of the attachments that we included, like I said, the shed is nestled between a large rock and a cluster of trees in a wooded area, and I think Ms. Elmer also has a sky view of the property that shows that. Ms. Elmer responded it is in their packets.

Mr. Swiniarski stated the problem with the equitable waiver request is that it is really impossible for us to meet the legal criteria for that; hard for us to make the findings we need to under the legal criteria. The first criteria is that the violation was not noticed or discovered by any owner, former owner, agent, or representative, etc. until after a

structure violation had been substantially completed. Mr. Verow responded and that is true. Mr. Swinarski responded that is not true. You noticed that you couldn't put it there because there were rocks there so you put it somewhere else. Mr. Verow stated that is true; we didn't realize that we were within the setback when we located the shed there. Mr. Swinarski stated so that is a finding of fact that we would have to make. I have to tell you that it is hard for me to make that finding because you have a plan showing that you are right on the setback and you know where it goes and you realize you can't put it there so you move it several feet in this direction, so it is hard to say you didn't know you were going in there. Mr. Verow stated we knew we were going in, we didn't realize that we would actually wind up being within the setback; we thought we had more room when we were putting the shed there. In fact, we tried to pull the shed forward as much as we could to make sure that we gave ourselves enough room with the setback, and unfortunately that wasn't the case. There was no malicious intent to intentionally drop the shed right on the property line.

Mr. Green stated it seems that you want two things, none of which are necessary to the house or its maintenance. The first is a pool and one is a shed. Your problem is you may have to decide which one is more important because you may not be able to have both because you could put the shed in back but that would block your pool. Mr. Verow responded we could put the shed in the front yard too. Mr. Green stated but that would violate the ordinance. Ms. Elmer responded no it wouldn't. Mr. Green stated then put it in the front yard. Mr. Verow responded if you look at the front yard, you have the pedestrian drainage easement running through $\frac{3}{4}$ of the front yard. We tried to find a place that would have the least amount of impact to anyone that wouldn't affect the neighbors, that wouldn't affect the usage of any area, and if you look at the area that is in there, it is a wooded area, it is not accessible, and is not used for anything. Vice Chairman Thomas stated I understand where you are coming from, from the standpoint that you wanted to put this thing in a place, as you say, best usage possible and the least amount of infringement upon neighbors and setbacks, but also on top of it though, the least amount of infringement upon your future usage for the land. I think is where some of the questions of the Board are coming from where it would be different if this had been there when you got there because a lot times with these equitable waivers and lots of them are putting in sheds, the question is, and could it have gone somewhere else. We ask that a lot when people ask for variances; can it go somewhere else. Most times it is no, and the reason it is no is because of the septic system, gas, something that prevents it from physically being in a different place, and I think that when this had come up you have the as-built site plan that showed that it was going to be out of the setback, which was fine, but then it was for all intents and purposes intentionally moved into the setback. And I'm not saying intentionally from a malicious standpoint, but just from a factual standpoint. You knew where you were and you moved it over, whoever moved it over, and they put it there so you knew you were going to be in the setback, but your question probably was how far into the setback am I going to be, and from the standpoint of abutters I would say from the packet that most of them are supporting it, but then there is someone who comes in and says technically I don't support it. So I think that that is where some of the questions from the Board are coming from. Mr. Swinarski stated the way I look at all these requests, because we get a lot of requests like this, is we do have setback rules

and the reason for those rules is pretty simple, which is to keep a buffer between neighbors. So when a request like this comes in, if the abutting neighbor doesn't object and this doesn't affect anyone else, but here the abutting neighbor objects and that is the only thing that hangs me up on these every time.

Ms. Stirling stated I'd like to also say that this comes back to something that we go through time and time again. I call this the Zoning Board of Adjustment and adjustment is tweaking, it is minor things, we don't rewrite the Zoning Ordinance, and with 1.6 feet, I always say you have the right to enjoy your property, but we have these rules and when is it just too much, and I think that is what I come up against. We are not talking about 16 feet like the last application. We are talking about a 1.6 feet, which you are talking about completely trampling our ordinance, so that goes to my mind more than what a Zoning Board of Adjustment should be doing. It is essentially eliminating a side setback. Mr. Verow responded I think you have to take into account where the setback is and the usage of that property because it is not as though the shed is being placed 1.6 feet from his backyard where it is going to be visible to every view. It is in an area that is not usable by either of us. Mr. Swiniarski stated well with this proposal you are using it. Mr. Verow stated technically it is still on our property, but granted it is within the setback, but also if you look to the right, we're trying to be sensitive to the wetlands and we're trying to be sensitive to putting it someplace where it is not going to be visible to our abutter every time he looks out in his backyard. Mr. Swiniarski asked does your abutter have any suggestions or any alternative proposals? Mr. Verow replied no. Vice Chairman Thomas stated I think the hardest part for us sitting up here right now is the concept that this is the only place that this shed could go.

Mr. Verow stated if I could ask you a question. Vice Chairman Thomas replied absolutely. Mr. Verow asked if I were to have moved the shed into the middle of the backyard, is it a reasonable thing for me to do knowing that I am having a pool installed the following year, to move the shed to the middle of the backyard knowing that in 12 months or less I am going to have to relocate the shed. Is that what a reasonable person would expect? Vice Chairman Thomas responded that is not what we are discussing. It is the concept of the fact that the pool is not there. If the pool were there, it would be different. Vice Chairman Thomas swore in Caroline Verow. Ms. Verow stated the pool is in; it is about two weeks prior to completion, so the footprint is there, everything is there; we went through proper permits for that as well. Vice Chairman Thomas asked so the pool is done? Mr. Verow replied the pool is in construction. Vice Chairman Thomas stated what you are telling us then is that you physically cannot put it there. Mr. Verow replied that is correct. Vice Chairman Thomas stated the rest of us were under the assumption that because it is not on the plan, that there is no pool. So there is this huge backyard where it can be placed and that is why a lot of us are saying why not just put it there. If you told me that there is a hole in the ground, and I guess the question from my standpoint is where is the pool, because I need to know where the pool is on that property to be able to say where you might be able to place the shed. We could still say there is some room for you put the shed there, which would be within the setback from a reasonable standpoint, which you may not get push back from your abutters on. Mr. Green stated I have a far greater problem at this point that you knew of within the reasonable space of time should have

known that there was an issue that you unilaterally went ahead and dug the pool, which in effect can block out using the backyard. That I find very troubling and very concerning. Vice Chairman Thomas stated I don't think it was done maliciously. Mr. Green replied I'm not saying maliciously, but it is changing the facts on the ground to the point where we are boxed in and I don't appreciate that. Vice Chairman Thomas stated personally I don't think that we are boxed in because I think there is still data that we don't have. If there is data that we do have, that changes things, then that is different, but if there is data that states that they can, and the plot plan where the pool goes lets you know that they can still put the shed back there, then we are fine. Mr. Green stated that wasn't presented to us. Vice Chairman Thomas stated that is the point I'm trying to ask Ms. Elmer about. Ms. Elmer responded you can table the meeting and ask them to locate the pool. Mr. Verow stated I could tell you where the pool is located. Vice Chairman Thomas stated but you could have told us where the shed was going to be too, but the shed is not where that is. So I think it would be better to actually have a plan that shows us where the pool is on the plan so that we know exactly what we are dealing with, where the setbacks are, so that in all honesty this kind of mistake doesn't happen again, because then you may not even need to apply for a variance, you may need to apply for an equitable waiver but it won't be this difficult of a process because you may even have the pool and have the guy say this is where the setback is just move the shed to within the setback and then guess what, you don't need us. I would rather have it all in front of us, shown on the plan, because, again, they had a plan that had the shed where it was supposed to go and now we are here because the shed didn't go there. At least with the pool there, it gives everybody an exact idea of where things are going and it gives you an idea of where you can put the shed or what our decisions are going to be like. Mr. Verow stated if it would help the Board, we have some photographs on our phones of where the pool is and will give you perspective to see where the pool is in relation to the backyard. The pictures actually encompass the backyard. Ms. Stirling stated but it doesn't help us because it doesn't show it within the system where we then can look at the side setbacks. We need to see the drawing and where it goes in the drawing because we have the setback line drawn. You are showing me on your phone where that is is not helpful to this drawing. Mr. Verow stated the setbacks are clearly marked because the Town came in and staked them out. Ms. Elmer responded the Town did not stake anything out. Mr. Verow stated no, Meridian Land Services came in and staked them at the request due to the drainage easement. Vice Chairman Thomas stated again, I know that this pushes things back for you and I don't want to do that, but to me this is the difference between whether this works out for you and whether it doesn't. I think that you would be better suited to bring us a proper plan that has the exact dimensions of the pool where it is going to be so we can see as a Board where it fits within the setback, so it gives us a better idea of what we are going to be dealing with. Right now in the end if you just show us pictures, they might agree, they might disagree and we are going to be right back here with the same questions that are being asked. Mr. Swiniarski stated and it is not as if this is holding up construction. The shed is where it is right now; nobody is telling you that you have to move it tonight. Just to summarize what we would like to see, that is a plan that convinces us that there is nowhere else this can go because that's what we have to be able to say to your neighbor in good conscience, because otherwise it is you versus your neighbor asking us to decide who wins, and the law, the regulation, is on your neighbor's

side. So you need to give us something that really, really, really convinces us that there is no other way to do it and a plan is the bullet proof way. Ms. Elmer stated not that that is a guarantee. Vice Chairman Thomas stated no, but at least it gives us objective data to look at, which is what we need. It is better than subjective data; objective data is always going to work out better.

MOTION by Mr. Swiniarski that the applications for an equitable waiver and variance from Caroline and Kevin Verow (Owners) from Article III, Section 275-22.A and Table 1 in order to keep an already existing shed 1.6 feet from the side property line where 20 feet is required and in order to keep an already existing shed 1.6 feet from the side property line where 20 feet is required at 8 Connie Court, Lot 15-13-7, Zoned R&A until the July 19, 2016 Zoning Board of Adjustment meeting and this will serve as public notice. Ms. Stirling duly seconded the motion. Vote taken - all in favor. Motion carried.

Mr. Swiniarski stated if you can't get the plan in time for the July meeting, you could certainly send an email or letter to Ms. Elmer asking to continue it again until you can get that plan. I would think you probably can since most of the work is already done.

New Business:

4. Review of proposed changes to the Rules of Procedure, Article 8, Section 8.2 Application Filing Deadlines.

Ms. Elmer stated whenever the newspapers change dates on us for submission deadlines, it screws everybody up so we are doing this to every single board that we have to try to get our deadlines pushed out a little bit more so it gives us more time to review things before we have to get them to the newspaper. This will give me a few days to review the applications that we have received, and it also helps us if Monday is a holiday and we need to have it to the newspaper by Friday, and this still gives me an extra couple of days when there is the Monday holiday. If you approve this change, then we will make it as a full public hearing with public notice for the July meeting. Vice Chairman Thomas stated so the Board is going to vote on requesting a change of the Rules of Procedure to change the submission deadline for the Zoning Board of Adjustment from 18 days to 21 days, and if we do agree with this, then it will be scheduled for a public hearing at the July 19, 2016 Zoning Board of Adjustment meeting.

MOTION by Ms. Stirling that the Zoning Board of Adjustment approve the changes to the Rules of Procedure, Article 8, Section 8.2 Application Filing Deadlines from 18 days to 21 days. A public hearing on this change will be held at the July 19, 2015 Zoning Board of Adjustment meeting. Mr. Swiniarski duly seconded the motion. Vote taken - all in favor. Motion carried.

MOTION by Mr. Swiniarski that the Zoning Board of Adjustment take a recess. Ms. Stirling duly seconded the motion. Vote taken - all in favor. Motion carried.

Vice Chairman Thomas called the meeting back to order. Councilor Duschatko returned to the meeting.

5. Request for rehearing: May 17, 2106 ZBA application: 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 Route 101. Lot 20-39, Zoned CO.

Voting on this request for rehearing was Vice Chairman Thomas, Mr. Swiniarski, Ms. Stirling, Councilor Duschatko, and Mr. Green.

Mr. Swiniarski stated I wouldn't be opposed to a rehearing on the matter. I was not here, nor did I have a chance to scrutinize the minutes and compare them to what was raised in the request for rehearing, but I don't see a problem with a rehearing. Mr. Green agreed. Councilor Duschatko stated frankly I have no problem with a request for a rehearing.

Councilor Duschatko stated I do have a very large problem with Item E, which I think goes out of its way to make both Ms. Stirling and myself look like predisposed people. I can guarantee you from my point of view that that is not the case. I doubt it was Ms. Stirling's, and I just think it is a very insulting comment. I want that in the public record and I want to keep it that way. Mr. Swiniarski stated I would be shocked if either one of you had any sort of predisposition or bias, and my thoughts are, as I'm sure everyone else's thoughts are, thinking it is not a bad idea to have a rehearing, it doesn't necessarily lend any credence to anything that was stated in the request necessarily. There are some things in here that in my mind could suggest that there is different information that we could consider or maybe an error that we could reconsider it, but it does not in any way, in my mind at least, mean, nor do I intend for it to mean, that I agree with any of these assertions here at all. Councilor Duschatko stated thank you, Mr. Swiniarski.

Councilor Duschatko stated I would like to make another statement because it came up on another meeting we had where we were saying we are sort of strict constitutionalists. I am; I go by the letter of something that is written. If we have a Zoning Ordinance that is passed by the community, then I believe that is what the community intended at that time. I am not saying that will last forever because I do think it is a living document, and there are ways to amend that Zoning Ordinance to accommodate people's needs. I have nothing against a self-storage warehouse in a commercial zone. I think it is fine if it works, but unfortunately the Zoning Ordinance that was adopted says that it is not allowed. Somebody said that the role of the Zoning Board is to approve all the variances because the zoning is wrong. I happen to disagree with that tremendously. I think our role here is to enforce our zoning as best we can with practical judgments about what happens. All the time we are dealing with little site changes, major site changes, sometimes use

changes, and use changes are very different than dimensional changes within a site, or doing something because somebody did something 50 years ago doesn't conform with what happened in a zoning change 20 years ago or 30 years ago. In this particular case it has been clear for years this is a non-permitted use. All I am saying is if our role is to only sit here to rubberstamp somebody's desire to change something for their benefit, then why are we even here. In the testimony it was indicated this is to be predominantly used by businesses for recordkeeping and other storage requirements. No evidence was ever offered to us that it is geared toward homeowners, which is Statement 6 in this particular piece, and I hate to bring it up but at this particular point in time, and as you know, within the last hour is the first time I have even seen this. This is nothing to do with the rehearing; I am all for the rehearing, but I just want to get my particular ideas in the public forum. I think that both Ms. Stirling and I have been unfortunately miscast in this particular thing, and I am insulted. I am very sorry Ms. Stirling that you have to put up with people that want to go after me.

Ms. Stirling stated I have two points to make. I am not opposed to a rehearing either. The first thing I want to say is that I am consistent on this because two or three years ago you might remember the Market Basket project, which I voted against because it was not zoned, and subsequently the zoning was changed by the voters and that project went forward. I am consistent; it is the same thing with the sign ordinance. If we have a sign ordinance and until it gets changed, it is what it is. I want to make one comment about the property. Somewhere in the resubmission something was mentioned about this is a single owner of a large piece of commercial property with several stores, a bank, and this small piece of the large parcel the owner is currently using this property as a commercial property. This parcel that we are discussing is within the larger context of a commercial parcel and being used as such. Nowhere in our ordinance does it say that you are entitled to find any way to fit something else in every square foot of your commercial property. Again, I have no problem with the rehearing, but I wanted to go on record for those two things. Vice Chairman Thomas stated I am glad you said that because I wanted to make sure that we focus on the rehearing concept because every comment that you guys do make that is in regard to the usage of the property can't be responded to by the applicant, so I think that it is unfair to have those comments posted right now because they can't respond. Ms. Stirling stated I understand; we know we are going to have a rehearing.

MOTION by Mr. Swinarski that the Zoning Board of Adjustment approve the rehearing request for the May 17, 2106 ZBA application from 209 Route 101 Realty, LLC c/o Dick Anagnost (Owner) requesting a variance 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. Ms. Stirling duly seconded the motion. Vote taken - all in favor. Motion carried.

Adjournment:

Motion Ms. Stirling by to adjourn at 8:21 PM. Mr. Swiniarski duly seconded the motion. Vote taken – all in favor. Motion carried.

Respectfully submitted by
Valerie J. Emmons