

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

A regular meeting of the Bedford Zoning Board of Adjustment was held on Tuesday, July 19, 2016 at 7:00 PM in the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: John Morin (Chairman), Bill Duschatko (Town Council), Sharon Stirling, Chris Swiniarski, Len Green (Alternate), Kevin Duhaime (Alternate), and Karin Elmer (Planner I)

Chairman Morin called the meeting to order at 7:00 PM and introduced members of the Board. Town Council Alternate Kelleigh Domaingue Murphy and Alternate Gigi Georges were absent.

Minutes – June 21, 2016:

Amendments: Page 11, New Business item, motion for public hearing, “2015” should be “2016”; the motion on the public hearing should read: **“MOTION by Ms. Stirling that the Zoning Board of Adjustment recommend approving 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 heard at the July 19, 2016 Zoning Board of Adjustment meeting. Mr. Swiniarski duly seconded the motion. Vote taken - all in favor. Motion carried.”**; and, Page 1, change “Bill Duschatko (Town Council Alternate)” to “Bill Duschatko (Town Council)” and “Kelleigh Domaingue Murphy (Town Council)” to “Kelleigh Domaingue Murphy (Town Council Alternate)”.

MOTION by Ms. Stirling to approve the minutes of the June 21, 2016 meeting of the Zoning Board of Adjustment as amended. Mr. Swiniarski duly seconded the motion. Vote taken; motion carried, with Chairman Morin and Councilor Duschatko abstaining.

Public Hearing:

1. **Proposed changes to the Rules of Procedure, Article 8, Section 8.2 in order to change the required submission deadlines for Zoning Board applications from 18 days to 21 days prior to the meeting.**

MOTION by Councilor Duschatko to open the public hearing. Ms. Stirling duly seconded the motion. Vote taken - all in favor. Motion carried.

Chairman Morin asked members of public who wish to speak on this public hearing for changes to the Rules of Procedure, Article 8, and Section 8.2 in order to change the required submission deadlines for Zoning Board applications from 18 days to 21 days prior to the meeting. There were none.

Ms. Elmer stated we are doing this change to the Rules of Procedure because the newspaper that we normally post our agendas in has changed their submission deadlines to post our agendas in the paper. Their new deadline is Mondays at 9:00 AM and currently the application period doesn't end until 4:30 PM Friday and because of that it only gives us an hour to post the agenda. It doesn't give us enough time in the event things are missing that we can call the applicants and ask if they can get us some additional information or to clarify something. Sometimes the application isn't as clear as we would like to be and trying to get all of those explanations and get everything right, so we are asking to add two more days so that we have a chance to do that and still meet the newspaper's new deadlines.

MOTION by Councilor Duschatko to close the public hearing. Ms. Stirling duly seconded the motion. Vote taken - all in favor. Motion carried.

MOTION by Mr. Swiniarski that the Zoning Board of Adjustment approve the proposed changes to the Rules of Procedure, Article 8, Section 8.2 in order to change the required submission deadlines for Zoning Board applications from 18 days to 21 days prior to the meeting. Councilor Duschatko duly seconded the motion. Vote taken - all in favor. Motion carried.

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

Applications:

- 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 Ct., Lot 15-13-7, Zoned R&A. (Continued from June 21, 2016)**
- 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 Ct., Lot 15-13-7, Zoned R&A. (Continued from June 21, 2016)**

Councilor Duschatko recused himself from the two applications for Caroline and Kevin Verow. Mr. Green and Mr. Duhaime were appointed voting members on these two applications.

Caroline and Kevin Verow, 8 Connie Court, were present to address their two applications.

Chairman Morin stated I was not at the meeting last month but I did read the minutes and watched the video from the meeting last month. I am fully up to par with where we are with this case. Ms. Elmer stated you just received the revised plan from me this evening.

Mr. Verow stated when we adjourned last month the outstanding question was that we were having a pool installed, there was some uncertainty about where that pool was going to be located and whether or not the shed could fit in the backyard. We were asked to revise our plot plan with the location of the pool, as well as the septic system, including the tank and the leach field, which we have done to demonstrate that where the shed is currently located really is the only reasonable place that it could be situated on the property.

Chairman Morin stated I have one question, and I didn't hear any explanation of it from last month. Why couldn't the shed be at the end of the driveway where it blocks off to go into the garage? Your septic tank is far enough back, your leach field is far enough back, so why couldn't it be at the end of the pavement? Mr. Verow replied because there is a slope that heads right down to the back of the backyard, and there is also a fence that is in there now as a requirement for the pool. So the fence juts off just below or just behind the steps, or the chimney, I'm not sure which, that goes out to about a foot before the setback and follows the property line. Mr. Swiniarski asked so it slopes south basically right under where you have 'TYP' on the plan or for Typical on the plan? Mr. Verow replied yes. Ms. Stirling asked where does it begin sloping as shown on the screen? Mr. Verow replied at the end of the driveway it actually starts to slope down and then there is the fence, as shown. Ms. Stirling asked what is the overall size of the lot? Mr. Verow replied it is about an acre, but as you see, if you look at the lot, because of the drainage easements, a lot of that is unusable so we were limited to where we could consider putting the shed. Mr. Swiniarski asked is the area I'm indicating on the screen not usable? Mr. Verow replied there is a rock wall just off from the driveway where you were pointing, then a drop off, and in the sort of oval area are wetlands. Ms. Elmer stated the line I'm indicating is the setback line; because of the wetlands there is a 50 foot setback.

Mr. Verow stated if you look at the photos we presented, the shed is situated behind a large cluster of trees in a significantly wooded area behind a large rock. For all intents and purposes the view is obstructed for most of the year. Granted in the winter you are able to see the shed because the woods are thinning but it is also unusable as far as doing anything with that piece of land.

Mr. Swiniarski stated in my opinion, and not the rest of the Board's opinion, I think we still have the same analysis here. I don't think you can have an equitable waiver because that requires a good faith mistake and that is not what happened here. I think we should be applying the variance analysis here and seeing whether you meet those criteria. I can't see how we could make the findings for an equitable waiver, so I don't think that is the appropriate relief to do if it is going to be done. Obviously you have applied for a variance. I don't know how the rest of the Board thinks, but I don't know that there is any way to do this as an equitable waiver. Chairman Morin stated I agree with you; I think

they don't meet all of the criteria in the equitable waiver. Ms. Stirling stated I also agree. Mr. Swiniarski stated then what I would suggest is we consider the variance criteria and maybe the applicant can walk us through those criteria again. Ms. Elmer replied I would vote on the equitable waiver because they are two separate applications. Mr. Swiniarski asked we are hearing each separately? Ms. Elmer replied yes. Chairman Morin stated we will vote on each one separately. If we are going to do that, then we are going to need to go through the deliberation.

Chairman Morin asked do you have any last statements or comments on the equitable waiver piece of this? Once we go into deliberations we are going to deliberate about it. Mr. Verow replied no; I think what we tried to do when we realized that the shed couldn't go where we had initially wanted it to go, in good faith we tried to place it in a position that would have the least effect of anyone involved. We did give consideration to the rest of the property knowing we were having the pool installed with the fencing that would be required, the setbacks, the leach field, the septic tank, and where we ended up was where we ended up just by process of elimination. We didn't have a lot of options at that point. It wasn't intentional that it ended up there, but it was just that the circumstances forced us to put it there.

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

Charlie Fairman, 243 Liberty Hill Road, stated as a member of the Planning Board I know the amount of work and effort that goes into our zoning rules and regulations in this Town. These rules and regulations were all approved by our voters, and they are to protect the value of the properties that every one of us have and is to ensure homeowners that their property is protected, both the value in the case of residents and that the quality of life is protected. Protected from having neighbors do exactly what this homeowner has done, which is to build a shed, which none of us here would want 1.5 – 2 feet from our property line. I call it an egregious violation of the zoning rules and regulations of this Town. Approval of this in any way, by any means, tells me that all of the work that the Zoning Board and the Planning Board have put into our zoning requirements is null and void. Anybody can violate them and come in after-the-fact and ask the Zoning Board to waive them. If you have done this once, in the future I don't see how you can then say no to any violation of a code done post-haste. I see no reason, no hardship, nothing here that says that that shed should be approved.

Ron Pingel, 10 Connie Court, stated we noticed the shed in place, and I wasn't here for the first meeting as I was traveling out of the country, but I did read the minutes, and I also provided written comments that hopefully you have had a chance to read over since the last meeting. I am going to summarize the dates more than anything; I think you can read the other reasoning. I noticed the shed in place on September 20th when we got back from a trip. I called Mr. Verow directly and tried to reconcile with him. I was told, as he stated, that they were looking for a permanent place to put the shed that they had to take possession of because I believe the person they got it from moved. That was 10 months ago. The next day I went down to the Town, and I talked to the Planner just to

make sure what the setbacks were; I did mention the setbacks in my conversation to Mr. Verow and he was aware of them. About a month later when nothing happened, I went back to the Town office and found that there was a building permit that had been approved. I asked to see the documentation for that and found that the shed location and both the dimensions and the location were wrong. It was erroneous, it wasn't drawn to scale and it was drawn in the driveway. I pointed that out and at that point it was said that was a general representation that I needed to provide more substantial information. So I proceeded and I talked to Ken Clinton at Meridian Land Services who ultimately provided a survey for that part of the lot and located the shed within the offset. We provided that information in writing on December 11th, which was seven months ago. At that point it was clearly in violation, and in fact, behind the shed on a survey that was run maybe two years ago, there is a stake, so I can't exactly say it was 2 feet or 5 feet but it wasn't 20 feet and that was clear to the principals involved. On March 12th the Town sent out a letter asking for more information, and at that point, as I understand it, the Verow's were going to provide the information but they were also going to go for a variance. From my perspective the location was in question from the beginning and the responsible thing to do would have been to move it initially. Once it was clear this was going to go further, the prudent thing to do would have been included in the plan for the pool. All of this occurred well before a single shovel was put to the yard to put in a pool months in advance. Also, I reference our covenants and restrictions and easements for the Atherstone Development. These were approved by the Town and one of the primary reasons and references was to make sure that what we do in our development maintains the character of our development and is also in compliance with Town rules and zoning laws. We have a homeowner's association and Mr. Verow is the President of it so I know he is well aware of what these restrictions are. The covenants include more than just the shed; they include storage of RV's, boats, fences, dead foliage, noise, odors, nuisances, basically a number of things that we would want addressed to maintain the character and the investments for the properties that are there. I do believe that approving a variance for something this far out of compliance would set a very negative precedence for the next request that would come forward. Also, farm animals and other things are included in those ordinances that we would want enforced.

Mr. Green asked do we have any authority to enforce private covenants, so whatever covenants there were between the homeowner's association has nothing to do with this Board? Chairman Morin stated that is correct. Mr. Green stated that would be something of a different suit, so that is not properly before us. Mr. Pingel stated zoning laws though are stated in our covenants. Mr. Swiniarski responded, right. That would be in compliance with zoning laws.

Chairman Morin asked with the pool construction, which way did they go in to do the work with equipment? Mr. Verow replied they went down the slope along the side of the house.

Mr. Pingel stated the fence in question was put in last week.

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

(a) The violation was not discovered by any owner, former owner, owner's agent or municipal official until after the structure had been substantially completed: Mr. Swiniarski stated I think we know that that is not the case from the testimony we have had from the applicants, and as we understand it, the violation was not with malice but it was intentional, it was not a mistake, it was determined that the initial plan was a mistake and that compliance was not possible, so then the shed was placed in a space where it would not be in compliance. So I don't see how we can meet this first criterion. There was no good faith mistake here. While it was not malicious, it was thought out to be the best place, so this was not an accident. It was known that it was not in compliance when it was placed there. Mr. Duhaime stated also there were other options prior to the pool.

(b) The violation was not caused by ignorance of the law, misrepresentation or bad faith, but was instead a good faith error in measurement: Ms. Stirling stated again, we know that not to be the case. Chairman Morin stated through the testimony and what was brought forward. Mr. Swiniarski stated and in fact there was no error in measurement.

(c) The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property: Mr. Green stated we have no evidence that it diminishes or improves the value of the other properties in the area. Mr. Swiniarski stated and it is the burden of the applicant to prove the finding that we need to make, that there is no diminution.

(d) Due to the degree of past construction or investment made, the cost of correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected: Mr. Swiniarski stated I think we had testimony that moving the shed was \$800+/-, less than \$1,000, that is not no money but I don't think it rises to the standard of being completely unreasonable to remedy the situation. Ms. Stirling stated to Mr. Duhaime's point, some of the hardship was created after-the-fact. They had other options for that shed when they acquired it. Chairman Morin stated looking at some of the pictures also it still looks like it is temporarily placed. I have the same feeling on this criterion.

(e) OR, In lieu of the findings in (a) and (b) above, the owner may demonstrate that the violation has existed for 10 years or more, and that no enforcement action has been commenced against the violation by the municipality or any person directly affected: Chairman Morin stated this criterion doesn't qualify for this application.

MOTION by Mr. Green that the Zoning Board of Adjustment deny the request for an equitable waiver 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 at 8 Connie Court, Lot 15-13-7, Zoned R&A, as it does not meet any of the criteria for an equitable waiver 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 application. Mr. Swiniarski duly seconded the motion. Vote taken – all in favor. Motion carried.

Mr. Verow 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 or welfare:** The shed's location is located in an unusable and secluded part of the lot where it doesn't impact access to or use of either property, either ours or the abutters. The shed is manufactured by Reed's Ferry so it is a high-quality shed, it is a designer shed, and it is constructed of high-quality materials and visually conforms to Atherstone's aesthetics. We have testimony from some of the abutters in the area that it doesn't impact the value negatively. **2. The spirit of the ordinance is observed:** Every effort was made to locate the shed in compliance to the Town requirements and to have little or no visual or usability impact on the abutters. The shed is wedged between a cluster of trees in a heavily wooded area and a large boulder and is placed as close to our driveway as possible to have as little impact and pull it as far away from the setback line as possible. **3. Granting the variance would do substantial justice:** The location and construction of the shed does not impede the abutter's use of the property. Furthermore it does not negatively impact the property values nor does it create visual hardship and is situated in an otherwise unusable portion of the property. We can demonstrate that through the photographs that we have provided. **4. The values of the surrounding properties will not be diminished for the following reasons:** As I mentioned before, the shed is of high quality, premium materials, is visually attractive, and it was previously located within the Atherstone community. It was across the street, so there were no objections when the shed was originally put in. We don't think it has a negative impact on the value.

Mr. Verow stated you had mentioned in deliberations that the shed is a temporary situation. It is actually permanently placed there. That is the only way we could have the shed level by being placed on those stands. It is not a temporary setting; it has actually been constructed that way for safety 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: The cost to originally locate the shed was about \$800 given the layout of the lot. The drainage easements, delineated wetlands, the propane tank, etc., and as I mentioned before, the place where the shed ultimately wound up is really the only reasonable location for the shed to be. **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 purpose of the shed is to store large equipment, snow blower, lawn tractors, and other landscaping equipment that we use around the house, plus fertilizers and whatnot. Aside from that those materials would be placed out in the open, and I have two young kids that I would be concerned they would be digging into it and getting after it, so at least with the shed it is cordoned off, it is locked and

provides us as parents some security that they won't get in there. **ii. The proposed use is a reasonable one:** Given the layout of our lot, the easements for the drainage, etc., we feel like the location is best suited for the lot as it doesn't impact any of the abutters in a negative way, it doesn't impact the value of the properties as demonstrated by the abutter statements, etc. Like I said, we wound up here unfortunately but we tried to give every consideration of where we could place the shed where it would have the least amount of impact to anyone involved and that is why we are requesting a variance.

Mr. Green stated you say the shed is where it is, but how do you get heavy equipment up to it. There is no ramp. Mr. Verow replied I have temporary 48-inch ramps that I use. Mr. Green stated and basically before you started with the pool you had plenty of area to put this shed in back of your house. Did you not? Mr. Verow replied prior to putting the pool in we did, but as I mentioned at the beginning, we knew that the pool was going to be placed in the backyard so putting it in the backyard, only to have to move it again. Mr. Green stated so you made a choice; you chose to put your pool in the backyard as opposed to putting your shed in the backyard. Sometimes with zoning laws you can't have it both ways. You had a choice, you put the pool in, which is perfectly your right, but that doesn't mean you can then ignore the zoning laws and say I want to put this shed in violation of those laws. That is the problem I have with this. Mr. Verow responded I understand.

Mr. Swiniarski stated is it not possible to put it on top of the leach field? Ms. Elmer replied no. Leach fields need to breathe, you don't want to compact the soil, and you can't put blocks down on top of the leach field or anything like that.

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.

Ron Pingel, 10 Connie Court, stated I am an abutter. I wasn't asked to sign one of those letters as far as no negative impact. It does impact me directly as it is right on my property line, I do see it from the driveway, and six months of the year I see it from every front room in my house, irrespective of them shaking their heads. I am the one that lives there, so I do see it. Also, there were a couple of properties up for sale for quite a long time, they finally did sell at a reduced price, so I'm not sure I could just blanket say there is no negative impact on property values. I don't know if that was ever mentioned in any of the exit surveys, but I do know properties have been on the market for quite some time and they finally did sell at a lower price.

Charlie Fairman, 243 Liberty Hill Road, stated I wanted to point out that my previous comments also apply here. It is on the record however that the applicant willfully and knowingly built this shed in an inappropriate area. It seems to me that in that case where somebody knowingly and willfully violates the rules that to approve it in hindsight would be very bad practice.

Mr. Verow stated I just think the reason that there is an application for a variance is for situations just like this. I think a blanket statement that says that you can't make mistakes

or you try to rectify them through a variance is a reasonable request. I think it happens all the time, as I understand from talking to people in Town. Variances are requested and often are approved on a regular basis, so I have a hard time understanding why this particular variance would be so harshly criticized. We made every attempt to put this shed in a location that would have minimal impact. I would question the validity of being able to see this shed from every room in the front yard, seeing as how if I look from the back of my shed, I can't see my neighbor's house. Again, we have done everything we tried to do to resolve this and that is why we are seeking the variance. Ms. Verow stated I'd like to add that we have letters from the two people that were selling, letters from the builder and we have letters from a new property owner moving in all in favor of the shed, and I believe you have copies of those.

Mr. Swiniarski stated I definitely agree with you that having a provision in the Zoning Ordinance does not mean it is absolute. There is a reason we have provisions for variances and we have very specific criteria laid out by State law for the variance and really that is what it comes down to. It is can we make the findings that we need to make to grant the variance, because contrary to popular belief and maybe contrary to what may be the reality sometimes in some places, a variance is not just a discretionary thing, it's this Board sitting here saying we like it, we give a variance. You have in your application the five criteria; if it meets those criteria and if we can make those findings, we can grant the variance. If you can't meet those criteria, even if everybody on this Board likes it, we really shouldn't grant the variance because it really would not be upheld if it was challenged in court. I do agree with you, the by-law is not a blanket prohibition of what you are trying to do, but if you want to do something that varies from the by-law, there is a set of criteria that it has to meet and what we will be doing next is going through that criteria and evaluate whether you do actually meet that or not.

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

1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality: Mr. Swiniarski stated I think the thing to consider there in Part 1, the character of the locality. I haven't heard anyone tell us that this neighborhood or this area has any other sheds that are this close to a property line. I suspect it is because of the setbacks that we have and in general it is rare in our Town. It is hard for me to find that this would not alter the essential character of the locality given the testimony that we have heard from the abutter. And, as I have said in many other meetings, that the abutter testimony is very important to me in making that finding because who better to tell us about the character of the locality than the people who live there. Ms. Stirling stated I would agree with that. Chairman Morin stated I agree with that. **(2) Whether granting the variance would threaten public health, safety or welfare:** Chairman Morin stated I have a little bit of an issue when it comes to possible public safety. My issue is with the building 1.5 feet off the property line. I wouldn't be able to work in a 1.5 foot area to stay on my property to do any maintenance to that structure. That means I am on the neighbor's property. If something happens, what happens in that aspect, whatever it might be. Like if you fall

down and you are on the neighbor's property. Mr. Green stated or painting or repairing it. Chairman Morin stated or if for some reason the shed comes down and hits something on the neighbor's property. Mr. Swiniarski stated it is a can of worms for sure. Chairman Morin stated I don't think it meets that piece of the puzzle when it comes to that. Mr. Swiniarski stated it is a very difficult criterion to meet and I agree. I don't think we can meet it under these facts. **2. The spirit of the ordinance is observed:** Ms. Stirling stated the balance is always maximum use of your property, but balanced against criteria for setbacks and respecting those. Again, that is a balancing act that we make, so I think the problem we are having is if it were 16 feet, we wouldn't be having as much difficulty. As you say, the safety factor wouldn't be the maintenance of it and would be taken out. Again, it would be reasonableness. I think in this case it would be grossly unfair to grant the variance in the spirit of the ordinance. Mr. Green stated the one big thing that I have a problem getting my head around is there was plenty of land to put this shed in back before anything was done. The people made a conscience decision, which is their right, to put a pool in back, but there are consequences for decisions that people make, and one of those consequences may very well be if you have a pool, you may not be able to have a shed or if you have a shed, you may not be able to have a pool. They made choice A and then want us to justify their further action. I don't feel comfortable doing that. I'm not saying there is ill will, but I'm saying they were very conscience about what they were doing and that it was going to create a problem. **3. Granting the variance would do substantial justice:** Mr. Swiniarski stated I think substantial justice and the spirit of the ordinance are somewhat linked and intertwined. Substantial justice for one is not always substantial justice for the other. What we have here if we were to grant the variance, would there be substantial justice for the abutting property owner who came to a property thinking that he had certain setbacks and then finding that it was not applicable in this case and now having to live with a structure that is not abiding by the setbacks. I don't see that we could call this substantial justice. And to further that, I don't see a significant injustice in not granting the variance. Chairman Morin stated that's true. Mr. Duhaime stated I would agree. **4. The values of the surrounding properties will not be diminished for the following reasons:** Chairman Morin stated unfortunately we have no expert testimony either way on this issue. Mr. Green stated but it is not the objector's burden, it is the petitioner's burden. Chairman Morin responded that is true, but we have no evidence period to meet that criteria. Ms. Stirling stated agreed. **5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area:** Chairman Morin stated I haven't heard any special conditions of the property that distinguish it to anything different on the other lots. It is just a matter of they don't have a space to put it anywhere else. That has nothing to do with the special condition of the property. Ms. Stirling stated that's right. Mr. Swiniarski stated I don't really see any conditions being special. There has been discussion of some slopes. When you look at the pictures presented, there are slopes in other places. If you drive around Bedford, everything has slopes, we are not a flat town generally, there is really nothing so extreme, unique, or special that I think rises to the level of the finding that we need to make to grant a variance. **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 the general public purpose is to have space between the property, and this is going against that whole piece of putting a building right up against the property line. Again, it seems the hardship was created, not developed in the property, it was a created item. Mr. Swiniarski responded right; again, it is a pretty minimal hardship when we think about it. To my mind it goes back to the initial deliberations we had at the first meeting, which is was there another place, and I think it is very clear that there were other places the shed could go if we need a shed, we now have a pool. It is not clear to me that there is still no other place. It may be closer to the pool, it may be less desirable, but to say one person's preference to not have a shed close to the pool outweighs an abutting property owner's preference to not have a shed that encroaches into the setback. I don't think that at all constitutes imposition of an unnecessary hardship. I think it is quite the opposite. Chairman Morin stated that's right. **ii. The proposed use is a reasonable one:** Chairman Morin stated a shed is reasonable but the location is not. Mr. Swiniarski stated I would agree. Ms. Stirling stated that is correct.

MOTION by Mr. Swiniarski that the Zoning Board of Adjustment deny the variance application submitted by Caroline and Kevin Verow (Owners) requesting a variance 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 at 8 Connie Court, Lot 15-13-7, Zoned R&A, for the reason it has not met any of the criteria for a variance per our deliberations. Ms. Stirling duly seconded the motion. Vote taken - all in favor. Motion carried.

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

Councilor Duschatko returned to the meeting and Mr. Duhaime remained a voting member for the entirety of the meeting.

- 4. Riley Enterprises & Bedford Motor Sports Prop LLC, c/o Mini of Bedford (Owners) – Requests a variance from Article IV, Section 275-27 in order to fill 7,595 square feet of wetlands where it is not allowed for proposed parking expansion and drainage improvements for both 209 & 213 South River Rd., Map 22, Lots 26, 27 & 28, Zoned PZ.**

Attorney Jon Levenstein, Rob Roseen, Waterstone Engineering, PLLC, and Jim Gove, Gove Environmental Services, Inc., were present to address this variance application.

Attorney Levenstein stated Ms. Elmer; there was a question that you had that you raised with me before the meeting about a revision that you received this afternoon. Ms. Elmer responded yes. Attorney Levenstein stated I spoke with Mr. Gove and he says that does not affect the amount of impact at all. Ms. Elmer replied okay; that was my question. You are now going to fill the front area, so how much square feet is that going to add. Mr. Gove replied it is the same amount. That front area was always slated to be impacted. I will get into that soon.

Mr. Gove stated we did the wetlands work out there. Rob Roseen actually did the stormwater management plan that is the significant part of the mitigation that takes place here. From the standpoint of where we are actually located, this is 209 and 213 South River Road. The lots are Tax Map 22, Lots 26, 27, and 28. In a sense Mini Cooper has been a real success story, you see them all over the place, and they have done very well. They have sort of done almost too well. They are essentially outgrowing their space by a lot, and in fact, they are now parking in some of the aisles to get things through and the Fire Department has been concerned about it. Mini and Riley Enterprises got together because it just so happens that the wetland that is constricting here is in fact right along the property line. As you take a look at the Mini site, and posted is the existing conditions of the Mini site, you will see Patten Brook goes almost all the way around, and then we have this area of drainage that starts at the bottom, which would actually be on the west side, and feeds across, goes underneath their parking lot and then continues down a very steep gully before it enters into Patten Brook. At one time that was a natural intermittent stream that went through there but lots of changes have occurred in that place and I think you know about it. You have a Dunkin Donuts, you have a Target, you have a Lowe's, you have a lot of changes to the roadway out there, things have been straightened out, culverts have been put in, other areas have been done by the DOT, so the original drainage that came across there was actually diverted away. So what now is feeding that gully is essentially the detention basin that comes down from Target/Lowe's and all those other little restaurants in that section there, from Dunkin Donuts, and then the DOT actually redid a huge section, 5 acres of that road, and they proceeded to take untreated road runoff and put into that same discharge point. So in essence what you have going through there now is actually more or less stormwater. You have the 30 acres or so that is coming off from the Target/Lowe's, you have the DOT 5 acres that is not treated at all, at least Target/Lowe's have some treatment, though not to the extent of what we expect today, and it goes down into Patten Brook. It is actually causing even more erosion down in that gully; we have actually seen it dropping. The proposal is to actually impact that area, and the detention area in front, which is the blue side that is actually shown in that sort of oval type of appearance, that is actually going to be recreated, it is going to be a wetland impact, but it is actually going to be recreated into essentially a gravel wetland. I am not going to go into great detail on gravel wetlands because I have the expert sitting next to me, but essentially it is a great stormwater management system that provides an awful lot of treatment, takes up a lot of nutrients, provides a lot of water quality renovation, and then it would actually go to the next section of the gully and that would become a large stormwater management chamber to take care of the really large rain events, so we get a lot of infiltration, a lot of cleaning as well before we get any discharges to Patten Brook. In essence what we are doing here is we are taking a stormwater area going through here and we're trying to improve it, and by improving it we are also going to expand out the parking for Mini in that area so that we can actually give them some relief with the parking. And it is right next to other land that is going to become commercial, so it is not really going to be a change from the standpoint of its utilization in that area, and there is a lot of stormwater benefits associated with it. We have had the good fortune to be working cooperatively with the DES on this, we have had several meetings on it, and they are supportive of it. We have also been fortunate to have the Conservation

Commission weigh in on this and they have also been supportive of the stormwater management improvements that are going to be taking place here, and just lately, and this is what Ms. Elmer was referring to, is that we had a recent meeting with the DES and they actually thought that we should try doing a little bit more compensation for this. In addition to the stormwater management benefits that are very clear and evident, we have a couple of other things that we were thinking about doing with their suggestions. On the Riley site, which as you know is open right now and in the process of being flattened out, plus they are doing the blasting and that sort of thing, an existing detention basin on the eastern side of that, which was created, and it was created in size specifically for that site, for the impervious surface that would end up on that site. However, it is of an older design because it was designed back a ways and it has been created and has been built and it was built in uplands, so one of the things that was suggested by the DES is that we take the stormwater also on the Riley site because this system that has been designed by Dr. Roseen is way oversized and it provides a lot more stormwater treatment than even what that detention basin system was involved, take that stormwater and put it over into this much more massive system that has a lot more treatment capability and then take that area, there would be about 6,000 square feet, and make it wetlands and actually cut it down and actually provide a little more stormwater and flood storage over in that area along Patten Brook. The other thing that they also were thinking it would be a good idea if we put a deed restriction along large portions of Patten Brook, and Mr. Riley absolutely agreed with that. Anything on the southern side of Patten Brook he would put it in, obviously there is a section over here that the State of New Hampshire owns, which it will be protected, but we can't physically do anything with it, but all behind Mini, that area can be put into a deed restriction and then a little but further to the south that area where we were planning to restore the wetland, that would also be put into a deed restriction. There is a little space in between, which Mr. Riley basically would like to leave out because that is a point where there is a crossing. There is a physical crossing at that location and he knows that as he develops the northern side, he wants to be able to work with the community to put in either a river walk or some interesting places in there, that is an upland area, it has the crossing there, so work with the community to potentially do some interesting recreational features along Patten Brook. In essence that is the proposal, and maybe Mr. Roseen could go into some of the stormwater management on this site.

Mr. Roseen stated I have been working with the project team putting together essentially the stormwater management approach for this. The primary reason being what we're looking for here is trying to from the justice side of things provide a really substantial benefit that would justify the loss of wetlands here. Put simply, what we are doing here at a fairly high level is that we are providing additional treatment for about 30 acres of upstream drainage that has kind of a mixed level of treatment currently, the Lowe's has a pretty good level of treatment in terms of volume control and reasonably good in terms of quality, the existing Mini Cooper also has reasonably very good for quantity control and reasonably good for quality, but what we are doing here is really stepping it up by providing a whole bunch of additional stormwater controls that provide for volume, quality, etc. The big items here would be by providing the additional treatment for the DOT South River Road expansion and the additional drainage areas, as Mr. Gove had mentioned, South River Road used to bypass this drainage area and now it has been curbed and

dropped into this area. Then the actual proposed project area is 22,000 square feet of additional buildable land that would come with about 34 or 36 parking spaces, and what this gets is it allows the Mini Cooper to basically push vehicles back, open up the drive lanes, the fire lanes, and then in the area that would represent the property line between these two properties, put basically a 2,000 square foot bio-swale that won't look much like other than a standard grassed area in a parking lot but it would be about 20 feet across with a bunch of trees, it will have a small ponding area that will have the ability to provide a high level of water quality treatment for the impervious area. To rehash what we are doing there: we are providing essential nutrient removal, which really didn't exist much in the previous design, for about 30 acres of drainage area, and then of substantial value is there is a huge amount of stone that is coming out of the 213 South River Road parcel, the parcel that is under development currently. That will basically take about 10,000 yards of material, use that to fill this valley and then create a tremendous infiltration system. What this will do is provide both groundwater recharge and a long-term cool, clear base flow that will serve for Patten Brook. That is some real big water quality restoration benefits from that standpoint. Then I think maybe the only other item that I didn't mention, which will be referred to S-1, S-2 and S-3. For S-1 Mr. Gove had mentioned this is just a dirty ditch running through here, and this area will be excavated and there is wetland in here and the entire piece will be now constructed wetland in the form of a gravel wetland, and a gravel wetland is well established and well known for doing very good nitrogen and phosphorous removal. That will essentially be all the pre-polishing and then all the big volumetric controls will be in this sort of 10,000 yards of fill and stone and recharge area that would exist in this. That is the primary benefit within the added piece that I think Mr. Gove mentioned. We will be eliminating the retention pond that was on the previously permitted site and reroute now all of that storage, again, in through that infiltration system, and that is kind of a water quality restoration yet again the systems will all do way, way better than ponds will. Ponds heat up in the summertime and cool down in the wintertime and add additional stress to whatever receiving water you are looking at. This will all go into that infiltration system. That is really it in a nutshell.

Attorney Levenstein stated essentially we are going to fill in the wetland and as a result of filling in the wetland, we are going to increase the treatment because of the stormwater coming off the road, clean it up as it gets to Patten Brook, so that eventually when it gets to the Merrimack River we are not putting all sorts of salt and all these other things that are coming off the impervious surface, and we are also going to allow Mini to get some extra parking spots so that the Fire Department can get around if the place ever catches fire.

Attorney Levenstein proceeded to review the criteria for this 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:** Granting the variance would not alter the essential character of the locality since the wetland closest to Route 3 will be impacted to provide a gravel wetland, which will provide stronger stormwater treatment. The wetlands are of low value functioning wetlands, the impact along the property line will not alter the character as it is a small expansion of the existing commercial site and appropriate landscaping will be provided. **2) Whether granting the**

variance would threaten public health, safety or welfare: The variance will not threaten public health, safety or welfare as the new stormwater treatment system is designed to significantly improve current pollutant removal from existing stormwater. **2. The spirit of the ordinance is observed:** Stormwater from offsite locations pass through the existing wetland area, which is going to be filled prior to entering Patten Brook. A portion of the offsite stormwater is untreated and while the wetland naturally acts to provide some treatment, the proposed gravel wetland and underground infiltration area will significantly improve stormwater treatment thus the spirit of the ordinance is observed. **3. Granting the variance would do substantial justice:** Granting the variance would do substantial justice because the expansion will increase the safety of the Mini site to allow Fire Department vehicles full access and allow safe vehicle storage onsite, plus additional customer parking. Additionally, stormwater treatment will be improved significantly. **4. The values of the surrounding properties will not be diminished for the following reasons:** Filling the wetlands will not negatively affect values of surrounding properties because the development is a relatively small increase of the existing use of the property and will allow for future development of the undeveloped abutting land. Additionally, stormwater improvements benefit all of the surrounding properties since the stormwater design will improve the stormwater quality of existing offsite runoff, which is currently untreated and discharges to Patten Brook. **5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area:** Because the stormwater discharge from surrounding offsite properties and roadways discharged directly onto the subject properties and float through the wetland areas towards Patten Brook, an opportunity exists to significantly improve stormwater quality from offsite properties and roadways through the construction of gravel wetlands and infiltration systems. The existing user seeks additional car storage on the subject property since offsite storage, which has been investigated, is not an option; therefore, literal enforcement of the provisions of the ordinance 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 general public purpose of the ordinance is upheld if the low value functioning wetlands in this location are filled as the wetlands are surrounded by commercially developed properties and the benefits of a wetland to improve stormwater quality will be upheld by the stormwater improvements proposed. **ii. The proposed use is a reasonable one:** It will enable the existing development to make a small but significantly beneficial expansion to their property to allow for additional car storage. Onsite car storage can be monitored on a daily basis from security cameras and by onsite personnel. Additionally, stormwater quality is vastly improved from the current condition.

Councilor Duschatko asked you are looking to expand the fill from about 70,000 square feet or cubic yards or over 10,000 square feet? Mr. Gove responded the actual filling of the wetlands is 7,995 square feet. That front portion, the part that was kind of a ditch and is going to be turned into a gravel wetland, of that is 1,245 square feet, and the remaining is 6,350 square feet. The actual application that was put in to the wetlands bureau listed more than that and that was because the wetlands bureau said we know that Mini filled

some wetlands when they put in their driveway, so we want you to not just mitigate for what you are doing, but we want you to mitigate for the original Mini impact. So that actually pushed the total for our application to the wetlands bureau to 9,969 square feet but right now our numbers are for what exists today as wetlands, not what was filled by Mini in the past because you folks had already approved that in the past. Chairman Morin stated so we are dealing with about 8,000 square feet. Mr. Gove replied that's right. Chairman Morin stated their State application is altogether different. We are dealing with 8,000 square feet. Per say, we're not even dealing with that pond issue either. We are just dealing with this piece in the middle.

Mr. Green stated my concern is that I make no claims about understanding the engineering aspects, that I leave to engineers, but I go back to the minutes of the Conservation Commission where Mr. Drake stated "I hope that you are not back before us for relief on the undeveloped Riley property. Mr. Pratt replied we understand that the Commission does not want to see incremental impacts, but there are a couple of small impacts on that property." You referenced how this is going to impact or benefit the other Riley property and the problem I look at with this is that I have no clue as to what the scheme is for the development of this property. Everything is always in these small impacts and it is like a salami where you keep on chopping it up and then at some point you say you have to give us this because you have given us everything else without us ever having had a chance to see what is the real plan for all these properties. Mr. Gove responded the issue is that I think the Conservation Commission; again, I was there so hopefully I am not going to misstate this, and I think their reference was to the area that lies to the north of Patten Brook. So there is nothing going on to the north of Patten Brook, so what we are talking about is actually this southern side, which is essentially a separate drainage area. It doesn't have anything to do with Patten Brook other than the fact that this ditch flows into it, so in essence I know that Mr. Riley at some point will come back in and talk to you folks about what he wants to do with the north side of Patten Brook, but it wasn't the north side of Patten Brook that we were there for. It was actually this southern side and specifically this kind of manmade drainage ditch coming down through here. Mr. Roseen stated one other item on that concern about the multiple pieces of the salami. I think DES has raised the same issue in some respects from the east and west parcels as opposed to the northern parcel, so this recent piece that we showed you about the improvement on the 213 South River Road parcel, the elimination of the pond, for that reason that permit will include all of the above, not the northern parcel because there is nothing proposed there at this time. But it will make sure that the site impacts are inclusive of the whole piece so that they can evaluate that under the whole elemental piece. Ms. Elmer stated in the old days DES wouldn't let you chop on the salami. You went to DES once and that was it, but over the years because of new technologies and new regulations and new rules, people have had to go back once, twice, three times, especially in this case they had a design and then DES went and changed it because they are adding more things, so a lot of those minutes are based on the old way they used to do things not the new way DES likes to do things.

Mr. Duhaime asked does the wetland impact the area in the new handout? Mr. Gove replied that actually is not a wetland. That is an area where we are creating a wetland

but currently today it is not a wetland. It was actually an upland area, they dug it down to create a stormwater detention pond but it has never been fed. In other words, it has never been hooked up, so to speak, to an actual pipe that would feed water into it. So it stays essentially as dry holes right now. In fact, it is probably an ideal place for us to build a new wetland and actually lower it down to provide some flood storage because essentially it has already been modified in the past, there are no trees there, it is just essentially these chambered things, it has two or three of these chambers there and that is about it. There are no wetland impacts associated with that wetland creation.

Mr. Duhaime stated it was stated that offsite car storage was investigated but it was not an option. Any reason for that? Mr. Gove replied I can't tell you about that because essentially that is something that Mini came up with. They apparently have been trying to find some additional areas that they can use as offsite storage. They haven't had a lot of luck with that, but in terms of the details of how much they looked and why they tried to find stuff and what they offered to folks and that sort of thing, I can't tell you the specifics of that. Attorney Levenstein stated I know they were trying to find a place and they weren't able to. I don't know if it is proximity to the location that is the issue. There really isn't that much available along that corridor, but I really don't know either.

Mr. Swiniarski stated I'm going to try to narrow this down to the variance criteria because that is all we are here for. You are asking us to allow a use variance really, to allow a use in wetlands that is not normally allowed because these specified uses that are allowed, and from the testimony that you have given I understand that what you are proposing certainly provides a benefit in terms of stormwater management, so in my mind I would want to evaluate what we are giving up. I certainly understand from your testimony and it makes sense to me, again, that what you are proposing improves the stormwater management compared to the natural stormwater management of the existing wetland. My question is: What other benefits does the Town get from the wetland that is there? Is it for certain species? What do we get out of what we have there now? What are we losing? Mr. Gove replied that is a great question, and it is exactly the same question that DES asked when we filed our application and we had to address that. For instance, we do the obvious, we look at the Natural Heritage Bureau and we see what we have for any kind of threatened endangered species, we talk to Fish and Game about the whole situation and we were very fortunate as we actually had John McGee in one of our first pre-application meetings, who is the fisheries biologist, and in essence it was Mr. McGee's feeling, and I don't want to put words in his mouth, but essentially he felt that there wasn't a lot of value from the standpoint of wildlife habitat or fisheries to this. In fact, he actually felt there was detriment to Patten Brook fisheries because of the fact that we had this unregulated runoff going in here. So if we actually look at that wetland coming down here, it is a very defined channel, it is a very narrow gully, and at the very bottom of that gully is essentially where we have the wetlands, and as you walk down through there and you get down to the bottom of the gully, and it is like a 30 foot drop down to the bottom of the gully, it is fairly steep, you actually find that that area is pretty scoured out so there is not a lot of habitat there to begin with, and because the drop is a fairly steep incline off from the road going down, we don't have a lot of storage there as well. So some of the obvious stuff that you would expect wetlands to do like flood flow alteration

and nutrient attenuation and sediment trapping and wildlife habitat just aren't there. All we really have that is there is essentially a stormwater feature that is going down through here. In essence, like Mr. McGee said, anything you can do to basically take that stormwater flow down through there and clean them and give me cold water coming into Patten Brook, it is going to help Patten Brook. From the standpoint of loss and gain, I don't think you are going to lose a lot, and I think you are going to gain from a standpoint of a community.

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.

Chairman Morin swore in Ralph Sidore, 15 Gleneagle Drive, Village Green. Mr. Sidore stated I live across from this area. I was at a hearing last winter when they applied for some approvals to change the water flow across South River Road on the adjacent parcel and set up the road at the new intersection across from Meetinghouse Road. At the time there was no specific plan for the development of that property, they were just trying to open it up and there were some changes made to the water flow coming across there. I know that our Board spoke and talked about a concern with back up of water because of the restrictive nature of the conduits and there was a whole discussion about that. I didn't follow all the technical end of it, but it was a concern of ours because we obviously don't want our development to have an issue. I am not a member of the Board of the development; I am simply an individual resident. I see that we are, again, looking at a little piece of the whole picture, Mr. Green mentioned this, we don't know what the overall development plan is. These lots are owned by related parties, even if they are not one lot, and I think that before you give any approvals, there should be a much more comprehensive plan of how it is going to be developed. The issue of hardship in terms of the parking issues, I think the Fire Department ought to enforce its regulations. If they are required to have certain fire lanes, they should have them and if they can't park their cars there, they have to find someplace else to park them. They can't simply block necessary safety lanes for our firemen to have to fight their way through to get to a problem. As far as the wetlands themselves, I am opposed to any loss of wetlands; I understand that this is looked at as a mitigation that will change stuff, we have done more than enough changing of wetlands already. The State comes in and arbitrarily decides to dump stormwater on this property and they can do that because that is the State. There should be consequences for what they do. They should be part of the solution here not just the project enterprise that is trying to develop it, and I don't see any responsibility on the part of the State. But the biggest problem is the one I mentioned earlier. We are seeing a little piece of one part of this whole development, you are not seeing the whole thing, and that is the kind of thing you guys are supposed to do, which is help the larger plans and then look at the individual problems within it, not just take one little piece at a time and try and resolve each one of those independently.

Attorney Levenstein stated this has to go before the Planning Board before anything can be done as far as the change in what their site plan is, but obviously before it goes to the Planning Board it has to get approved here because if it doesn't get approved here, then it can't go ahead. I think that is more of a planning issue as far as getting a master plan

for the development if one can be done. Mini isn't owned by the same people; Mini is a whole separate company; they own that lot and nothing else there. Some of the other properties are related companies and at some interrelationship of ownership, but you can't basically say somebody has to develop everything they own if they have no idea of what they are going to do with it and say that you can't develop anything until you develop it all. It seems patently unfair to limit what they can do, and it is not like they are developing a 1-acre lot. These are big parcels of land that are involved here. While it would be nice to be able to get a plan and have a development and have it all set, it doesn't exist, there aren't people out there wanting to develop on that other property, and I don't think you can limit or you should limit a person or other property and say you can't use these two lots, you have to wait until everything else you own in the area is going to be developed at the same time. Mr. Roseen stated and if I can add, from the drainage perspective we have studied these parcels in combination. There is a full 30 acres that is evaluated here and there will be some additional piece that will come through as a result of what DES is now adding for the adjacent parcel at 213 South River Road, but what we have is the Mini parcel that was evaluated, we have the upstream Lowe's, which is a 26 acre parcel, we have the South River Road parcel, so to my knowledge there is nothing that touches this drainage area that hasn't been evaluated and it will be expanded to include the remainder of this now that we have asked to put the 213 South River Road into that drainage area.

Councilor Duschatko asked do we know what Patten Brook is rated in terms of water quality? Mr. Gove replied essentially everything is impaired. If nothing else, then just for pH, and that's true of virtually almost every brook here. But it is my understanding from Mr. McGee, and I don't think he actually gave an A or B or whatever, I think he basically said he thought it had pretty good water quality, it had maintained a fish habitat there, mostly warm water species, they weren't the cold water species, and in essence he felt that this would be an improvement to the water quality. As I said, unfortunately in southern New Hampshire almost all of us have impairment on almost every single stream and usually it is pH. Councilor Duschatko stated so this may cause a major problem with the new permitting process coming out. Mr. Gove responded the interesting thing is that this is the kind of project that would actually enhance, as far as the MS-4 that is going to be coming out. I'm a little bit familiar with it but probably Mr. Roseen is a lot more familiar with it, but it would be this kind of project that is going to take all of these areas and put in additional treatment is the kind of thing that would basically really help. This is what MS-4 is designed to try to promote. Councilor Duschatko asked you'll be able to mitigate the added road salt in this type of facility? Mr. Gove replied I don't think it can totally mitigate the road salt but it can help a lot. Chairman Morin stated I think probably one of the biggest negatives for that brook anyway is who knows what the country club is putting down on the golf course because that is where it goes right through. So for anything that is going in there, that's probably one of the biggest contributors depending on what they are utilizing for fertilizers or treatments of any type. Councilor Duschatko stated I was thinking more of the chlorine loads due to the shopping centers and impervious surfaces, the increased volume on South River Road. Ms. Elmer stated the Town engineer is reviewing this for the MS-4.

Mr. Swiniarski asked could you explain the MS-4 for us? Mr. Gove stated this is kind of the EPA bringing out its newest rendition of what it wants to do for the Clean Water Act. Some of your communities have already been in MS-4's for a while, but the thing is that all of a sudden they have lowered the standards for MS-4's in terms of population, so all of us in a whole bunch of new communities are being introduced, plus there is a whole bunch more of monitoring that they are asking for and trying to get some of these things, which are like almost incremental changes like take something that is pretty good water quality and trying to get it down to really, really good water quality. One of the issues that comes up is there is always a cost benefit analysis that has to go into this sort of thing. I don't want to throw out just random numbers but I have seen some of the numbers that basically say some of the communities here may be looking at between \$100,000 to \$500,000, depending on your population, of additional costs of trying to create better stormwater management systems to the discharge points that you have. That would include everything from road sweeping to trying to put in specialized catch basins, to a whole bunch of things, so in essence it is a permit. It is called a general permit, which means it generally applies to all the people who now meet the MS-4 criteria, and it is supposed to go into effect July or August of this year. Massachusetts just went into effect last month. Councilor Duschatko stated you are a little low on the numbers. Ms. Elmer stated it is in the millions. Mr. Swiniarski asked are these more stringent regulations or criteria for anyone seeking to do anything that alters stormwater management? Is that what we are talking about? Mr. Roseen replied in part. It is a municipal permit so one of the first steps the municipalities have to do is basically up the game from a development standpoint in terms of what is required for both new and redevelopment and it is managed for nutrients to deal with, to Councilor Duschatko's question about whether there is impaired water, there has to be specific management approaches for that. Early on one of the things that will happen is that these communities have to develop what is called a source identification report, which is basically identify your impaired waters, figure out what the sources of contaminants are, and then come up with a long-term plan for how to manage that. That long-term plan can be over four or five permit cycles, so we could be talking 20, 25, 30 years. The rate at which implementation is going to occur is going to be based on whatever is financially feasible, so there are questions about whether it is in the millions; it depends on what period of time we are talking about. But one of the really critical aspects of this is that when you think about how a community is going to do it, it is capturing the power of redevelopment is critical because if a municipality has to retrofit all the lands on their own, it is one number, but if it is captured as part of the natural redevelopment cycle, we see this in communities all the time where they have good stormwater regulations, the redevelopment cycle kicks in and you have properties that are being retrofitted over time. This is a perfect example as you get 30 acres of retrofitted land that now that goes in your annual report: 30 acres treated, volume reduction, nutrient reduction is the sort of thing that would be a really big item in your annual report. Ms. Elmer stated we have one engineer and that is all he does.

Mr. Duhaime stated I think we mentioned the drainage analysis on the undeveloped property. What was used? Was it current state? I know it is sort of being developed now. What was used for the grades there? Mr. Roseen replied the drainage analysis for the undeveloped property, or the in-process developed property, was a pre-development

condition. It is a good question because pre-development is all relative. So the pre-development for all the developed parcels upstream is the developed condition, but the pre-development for the 213 South River Road is the pre-developed condition. But that said, it doesn't include the entire parcel at this stage because it is only talking about a portion of that parcel that is going in, but before we are done we are going to be wrapping in that entire parcel. From the drainage standpoint we have tremendous volume reduction and tremendous peak flow reduction all the way around. Attorney Levenstein asked and this is going to be big enough to handle whatever is put in there? Mr. Roseen replied yes, easily.

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

1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality: Chairman Morin stated I don't think we are changing the essential character of the locality. The proposal is to make that front area from a ditch to a gravel type area and the middle is pretty much vegetation now going into vegetation. Mr. Swiniarski stated you are talking about such a small area also in comparison to the size of these parcels. We are talking about 1/6 of an acre essentially on large parcels and the alteration that is happening, as you said, we are taking a ditch, a low spot and making it into parking area. I don't see that as a significant alteration. **(2) Whether granting the variance would threaten public health, safety or welfare:** Chairman Morin stated if the system works like it is supposed to, it actually filters the water better than it does now. Mr. Swiniarski stated it is not going to be a great, great benefit but it is a plus not a minus. Councilor Duschatko stated I think it is going to be a very good benefit. You are draining stuff in there now that is basically untreated; the flow is very unmoderated, except when it rains heavily. I am sure it is engineered correctly and well thought out and it is something we are going to need, and frankly given the direction of the MS-4 movement that I am aware of, this is going to be coming up constantly. If we are going to do any new development within this community, we are going to be dealing with this problem consistently. It is going to cost millions of dollars. Mr. Duhaime asked the system will be checked out per the minutes of the Conservation Commission too periodically by an engineer report. Councilor Duschatko stated and the Planning Board is going to go through some of the same discussions. **2. The spirit of the ordinance is observed:** Mr. Swiniarski stated I think it is very much observed because the spirit of the ordinance that we are seeking to vary from is a provision that only allows certain uses in wetlands in order to protect what those wetlands do. Here we are talking about the function that the wetlands have in managing stormwater, so the spirit of the ordinance is to allow wetlands to continue to manage stormwater, and the variance being sought will do that better than what is there now. I think very much the spirit of the ordinance is observed. Ms. Stirling stated I would agree with that. **3. Granting the variance would do substantial justice:** Chairman Morin stated yes, per the statement by Mr. Swiniarski on the spirit of the ordinance criteria. Mr. Swiniarski stated the substantial justice is that what we have now in terms of a wetland, according to the testimony, which I have no reason not to believe, is not really doing what

we hope wetlands do, what we preserve wetlands to do, and the proposal will do that, so that is a benefit to the community, and a benefit to the community is substantial justice.

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

Councilor Duschatko stated it will probably improve the values of the surrounding properties. Chairman Morin stated again, the replacement of what they are doing really doesn't affect when it comes to the property value, per say, of the commercial properties that thoroughly surround this property. Mr. Green stated we can't tell whether it increases or decreases unless we see a larger picture but that is a different issue. Mr. Swiniarski stated in these cases I always feel the same way on this point. Surrounding property owners receive notice and they have the ability to tell us their opinion and to provide evidence to suggest that property values will be diminished. I see no evidence or testimony to that effect and the logical conclusion we can draw from the other findings we have discussed in the last few minutes is that these are benefits. So benefits to the community and to the property are logically concluded as things that do not diminish surrounding property values and quite possibly maybe likely enhance property values. Mr. Green stated I would think that they would increase property values. I can't see Mr. Riley spending a lot of money on something that is going to decrease his property value. That would be counter intuitive.

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:

Mr. Swiniarski stated the special condition is that this particular property is bearing the burden of a lot of stormwater runoff from other properties. Chairman Morin stated it is the low property in an area of that big hill where everything is just going to go there. Mr. Swiniarski stated that is certainly a special condition, so literal enforcement of this creates a hardship where you are stuck with maintaining wetlands that doesn't do what a wetland is supposed to do. Here the applicant is proposing something that will achieve the goal of what we want wetlands to do.

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:

Councilor Duschatko stated I think it is just the opposite in this case. The public benefit far outweighs any detriment.

ii. The proposed use is a reasonable one:

Councilor Duschatko stated earlier testimony has proven that. Mr. Swiniarski stated I think the statute calls for the ultimate use, which is not filling a wetland, but anything you are going to do afterwards, so this is parking in an area where we have commercial development and that is reasonable.

MOTION by Mr. Swiniarski that the Zoning Board of Adjustment approve the application for a variance submitted by Riley Enterprises and Bedford Motor Sports Prop LLC, c/o Mini of Bedford (Owners) requesting a variance from Article IV, Section 275-27 in order to fill 7,595 square feet of wetlands where it is not allowed for proposed parking expansion and drainage improvements for both 209 and 213 South River Road, Map 22, Lots 26, 27 and 28, Zoned PZ, for the reason that it has met all the criteria for a variance per our deliberations, subject to conditions of the Conservation Commission and all future compliance therewith:

1. **The Applicant shall notify the Town annually by certified letter that this stormwater infiltration system has been inspected by a professional engineer with their maintenance recommendations.**
2. **Upon completion of the maintenance recommendations, the Town shall receive a certified letter from the professional engineer certifying the completed maintenance and compliance.**

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

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

5. **Laurier Petrin (Owner) – Requests a variance from Article III, Section 275-18 in order to keep an already existing RV in the side yard where it is not allowed at 63 Wentworth Dr., Lot 41-19-20, Zoned R&A.**

Laurier (Larry) Petrin, 63 Wentworth Drive, was present to address his variance application. Mr. Petrin stated as you can see by the posted picture, there is a trailer on the side of my house. We have had trailers there since we moved into Bedford since 1986. This is the fourth trailer we have had in that same location, and all of a sudden my neighbor gets a trailer, somebody sees somebody going in and out of his trailer, they send him a letter and I get a letter because you can't do him without doing me. He has gotten rid of his trailer and I am here in front of you. This is a \$40,000 trailer, it is not a toy, I don't have anybody living in it, the only trailer that we ever used on property was a pop-up camper we had years ago and my grandsons and I slept one night in the trailer. We use this to go away and come back. There is no place else that I can put this trailer. There used to be a pool in the backyard, and the original picture that I saw online the pool was there and the pool has been gone for two years, so this trailer has been there for over two years. It is kind of strange, I have a 300 foot driveway and if you see the other pictures that we submitted; you can't see the trailer very well from my neighbor's yard, from my driveway, from the middle of my yard, from the other next door neighbor's yard, or from the hill on Wentworth Drive. It is almost impossible to see and that is a huge trailer. In the wintertime it is covered and is not used. This is something I am not used to after 30 years of doing this I am being questioned as to a trailer that I have always had.

Mr. Petrin proceeded to address the criteria in 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 would not alter the character of this locality since the travel trailer located on our property to the right of our garage is located 271 feet from the street. Our property has many trees, a long curved driveway, which is predominantly obscuring the visibility of the trailer in most views from the street. Our abutting neighbors cannot clearly see the trailer from their properties and our abutting neighbors have each stated they have no issues with parking the travel trailer on the side of our garage. A paper with their signatures is attached to the application and

photographs are also attached taken from Wentworth Drive showing the various views of our house and property. **(2) Whether granting the variance would threaten public health, safety or welfare:** The trailer is merely parked there uninhabited and is not connected to water, it is properly secured and kept locked. We have a long curved driveway with a brook flowing under a portion of it. If the trailer ever rolled down from its location, it would never reach the street nor would it roll into our neighbor's property. **2. The spirit of the ordinance is observed:** There is no other place to park our trailer. It cannot fit in our garage, it is impossible to park it behind our house due to the landscape of our property, which is narrow and sloped behind our house. The present location of our trailer is the only alternative. Its position is fairly obscured by many trees, far from the road, and not clearly visible to neighbors or anyone driving on Wentworth Drive. **3. Granting the variance would do substantial justice:** We have lived there for 30 years and have always had a trailer parked on the side of our house next to the garage. Police officers have surveyed our property when we have been away traveling and Town officials have been on our property for various reasons, including Norm Longval that you all know who is three houses away. No one ever mentioned that this was against Town standards or the Zoning Ordinance. As we drive around Bedford, we have noticed many properties with trailers parked in front of houses or on the side of houses and are clearly visible from the street. As previously stated, there is no other place for us to park our trailer. It is essentially not clearly visible from Wentworth Drive. **4. The values of the surrounding properties will not be diminished for the following reasons:** The trailer is on the side of the house surrounded by trees and not clearly visible to our neighbors. The trailer is well maintained and in excellent condition, it remains unoccupied and only parked on the side of our house. The values of the surrounding properties to our knowledge have not been diminished. The houses on both sides of me have been sold three different times for more money each time. **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:** Our existing landscape precludes parking the trailer in the back of our house. The land behind the house is narrow and steep sloped and the trailer would not fit in that space. **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 trailer parked on the side of our house does not detract from the aesthetics of the neighborhood and the Town of Bedford. It is 271 feet from the street. Given our long driveway and landscape of our property with many trees and upsloping hills between our trailer and the closest neighbor, it is not clearly visible to our neighbors or to people driving by on Wentworth Drive. **ii. The proposed use is a reasonable one:** As previously stated, the trailer cannot be parked in back of our house due the existing landscaping. Parking the trailer on the side of our house next to our garage is the only alternative. **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:** In order to park the trailer in the back of our house we have to incur a significant expense to alter the landscape of our property since it is impossible to park our trailer there given the existing landscape.

Mr. Swiniarski stated the purpose for the provision of the ordinance you can probably guess is to prevent not what you are doing but maybe what could happen. There may be a few things I would propose as conditions and see if they would be agreeable to you. I assume this is registered and has a license plate. Mr. Petrin replied yes. Mr. Swiniarski stated I would think it makes sense to have a condition if we were to grant a variance that it be registered, and the reason for that is to prevent not you but somebody you may sell this property to, the next person gets the benefit of the variance and we don't want them pulling in some unsightly, unregistered jalopy that they are going to park there. Ms. Elmer stated we do not regulate pretty. Mr. Swiniarski stated I am saying that it has to be registered or functional. Mr. Petrin asked why would I have a \$40,000 unit not registered? Chairman Morin stated the only reason he says that is because the variance stays with the property. Even if you sell the property, that variance stays with it.

Mr. Swiniarski stated from what you are describing I don't think you would have a problem with this, is that if we put a condition on it that it would be only for storage and not for use. Mr. Petrin responded no; we have had four trailers there, we used one of our pop-up campers there years ago when the grandkids were little and we slept in it. That is the only time we have ever slept in any of our trailers on property. Mr. Swiniarski stated that is something different. Ms. Elmer stated right now the provision of the ordinance allows if the camper is parked in the backyard you can actually have somebody living in it for three months. A lot of people have parents that come up from Florida for the summer with their RV's, so we do have that provision if it is in the backyard.

Mr. Swiniarski stated the only other concern looking forward is the size. Would you be opposed to a limitation on the size to the trailer you have now? Mr. Petrin replied I am not getting anything bigger. Mr. Swiniarski stated that would be my thought on the whole thing is I think in my mind I could make the findings to meet the legal criteria with respect to what we have there now, and I would always just want to be very careful to not create a situation where someone can in the future do something very different than what we are finding agreeable now, if we are agreeable to that.

Mr. Petrin asked why does the variance have to go with the house as a continuation? Why can't it just be the day myself or my wife dies or I sell the property? Ms. Elmer replied it is State statute. Variances go with the land, not the person that is living there. Mr. Swiniarski stated there is a reason for that because the criteria that you are going through, and if you notice none of it really has to do with you, it has to do with the land and the use being proposed. It makes sense that the law requires that it be granted to the land essentially and not the person. Mr. Petrin responded I understand that.

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 no members of the public present.

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: (2) Whether granting the variance would threaten public health, safety or welfare: Chairman Morin stated I don't see any change or altering of the locality from where it is or threatening the public health, safety or welfare. Mr. Green stated it has been there for 30 years. Chairman Morin stated it is out of the way, and by the pictures that were submitted you can't see anything; you can barely pick it out in the overhead picture. **2. The spirit of the ordinance is observed:** Mr. Swiniarski stated I think the spirit of the ordinance is to prevent people essentially from locating a second home that is a trailer on their property. That is my opinion, and I think that is what we intend with an ordinance that does not allow a trailer. I don't think granting the variance with the conditions discussed would do that. Councilor Duschatko stated it actually allows trailers. They just have to be put behind the house and you can sleep in them for 90 days. If it is a construction trailer, I believe it is even more. Ms. Elmer stated with construction trailers we have more than we would like. If someone's house burns down, they are allowed to bring a trailer in for a year, 18 months while the house gets rebuilt. It is a special permit to do that but it is allowed by the ordinance. **3. Granting the variance would do substantial justice:** Mr. Swiniarski stated in this case, again, we would have no problem under our ordinance with putting it in the backyard but here that is very difficult, so we're talking about a use or an activity that we don't find unreasonable, and if we had to do it in compliance with the ordinance, our applicant would have to do significant alteration to his property. Seeing that we don't have any real negative impacts, I think it does do substantial justice to allow it to continue as it presently exists. Mr. Green stated to do otherwise would do an injustice. Councilor Duschatko stated I think in this case the location is somewhat mitigated because the house appears to actually be on an angle on the lot, so the backyard isn't really clearly defined in a traditional sense of front to back. It does have to be jammed in between where the former pool was and the back of the house to fit in there. He indicates because of the trees there and the landscaping it would probably be difficult to do so. **4. The values of the surrounding properties will not be diminished for the following reasons:** Councilor Duschatko stated there has been no evidence presented. Mr. Duhaime stated he does have a positive signature from his abutter to say they don't have a problem 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:** Ms. Stirling stated I think the special condition of this property is we have that the trailer could be in the backyard but in this case the backyard is kind of impractical, and in addition, it is so far back off from the road I think that persuades me that this is a unique situation. Chairman Morin stated as Councilor Duschatko just brought up, with the angle of the house it makes the backyard even more interesting to find. **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:** Mr. Swiniarski stated it is almost like saying denial would result in substantial injustice. Chairman Morin stated I think we have hit all of the pieces in our above deliberations. **ii. The proposed use is a reasonable**

one: Mr. Swiniarski stated the use is something we allow just in a slightly different spot, so the use itself has been deemed reasonable.

MOTION by Ms. Stirling that the Zoning Board of Adjustment approve the variance application submitted by Laurier Petrin (Owner) requesting a variance from Article III, Section 275-18 in order to keep an already existing RV in the side yard where it is not allowed at 63 Wentworth Drive, Lot 41-19-20, Zoned R&A, for the reason that it has met all of the criteria for a variance per our deliberations. 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. Mr. Duhaime duly seconded the motion. Vote taken – all in favor. Motion carried.

- 6. Victor & Madeline Paul (Owners) – Requests a variance from Article III, Section 275-22.A and Table 1 in order to subdivide a lot where each new lot will have less than the required acreage at 1 Sebbins Pond Dr., Lot 25-57-3, Zoned R&A.**

Chairman Morin stated the applicants for Item 6, Victor and Madeline Paul, have requested that their application be tabled until the August 16, 2016 Zoning Board of Adjustment meeting.

New Business:

Chairman Morin stated as of last week Adrian Thomas stepped down from the Zoning Board due to time constraints. I think the Town Council will be looking at promoting one of the alternates to a full member. We also have to deal with electing a Vice Chairman.

MOTION by Chairman Morin that Town Councilor Bill Duschatko be appointed Vice Chairman of the Zoning Board of Adjustment. Mr. Swiniarski duly seconded the motion. Vote taken; motion carried, with Councilor Duschatko abstaining.

Adjournment:

Motion by Ms. Stirling to adjourn at 9:19 PM. Mr. Swiniarski duly seconded the motion. Vote taken – all in favor. Motion carried.