

TOWN OF BEDFORD
August 16, 2016
ZONING BOARD OF ADJUSTMENT
MINUTES

A regular meeting of the Bedford Zoning Board of Adjustment was held on Tuesday, August 16, 2016 at 7:00 PM in the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: John Morin (Chairman), Kelleigh Domaingue Murphy (Town Council Alternate), 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 Councilor Bill Duschatko, Sharon Sterling, and Alternate Gigi Georges were absent.

Chairman Morin stated Mr. Green and Mr. Duhaime and Councilor Domaingue Murphy will be voting tonight.

Minutes – July 19, 2016:

MOTION by Mr. Duhaime to approve the minutes of the July 19, 2016 meeting of the Zoning Board of Adjustment as written. Mr. Green duly seconded the motion. Vote taken; motion carried, with Councilor Domaingue Murphy abstaining.

Chairman Morin reviewed the rules of procedure and swore in members of the public. Chairman Morin stated we only have four voting members on the Board tonight, so we are going to give each applicant the opportunity to decide if they would like to go through with the hearing tonight or table it to next month's meeting. We give the applicants this opportunity when there are only four members sitting because if there is a tie vote, it is a no vote. Ms. Elmer stated and you can't use that as your request for rehearing. Chairman Morin stated on one of the applications there will only be three voting members. There may be another Board member arriving later, but we are not sure if he is going to make it in time.

Applications:

- 4. Victor & Madeline Paul (Owners) – Requests a variance from Article III, Section 275-22.A and Table 1 in order to subdivide one residential lot into two, where each lot will have less than the required acreage, at 1 Sebbins Pond Drive, Lot 25-57-3, Zoned R&A. (Postponed from the July 19, 2016 meeting)**

Attorney Greg Michael was present to address this application for a variance for Victor and Madeline Paul. Attorney Michael stated after looking at some information supplied to us by Ms. Elmer, we would just as soon delay this application because of only four sitting Zoning Board members, as well as other reasons, until next month.

MOTION by Mr. Green that the application for a variance submitted by Victor and Madeline Paul be tabled to the September 20, 2016 Zoning Board of Adjustment meeting and this will serve as public notice. Councilor Domaingue Murphy duly seconded the motion. Vote taken - all in favor. Motion carried.

- 1. Kevin Doherty (Owner) – Requests a variance from Article III, Section 275-22.A and Table 1 in order to construct a cupola on a home resulting in a building height of 37 feet where the maximum height allowed is 35 feet, on Cobtail Way, Lot 2-12-6, Zoned R&A.**

Kevin Doherty was present to address his application for a variance. Mr. Doherty stated I am the owner of the lot, and I am constructing a custom home for an already sold house. We are looking for a variance for a 2-foot exception on the height of a 6-foot X 6-foot cupola on top of what is going to look like a reproduction barn, very prominent from both McAllister Road and from Cobtail Way. It will be the first thing you see when you are coming down that way. I don't know that there is a hardship other than there is an architectural element that we are trying to adhere to, and there are fixes but I don't know if an exception is amenable to you. I think this is the best look for the house.

Mr. Doherty 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: (2) Whether granting the variance would threaten public health, safety or welfare:** I think it would enhance the public interest. It is going to be very prominent and hopefully you agree that it would suit the lot well. The 12-over-12 roof pitch that I'm using is in character with the New England look. **2. The spirit of the ordinance is observed:** It is a reproduction New England look. **3. Granting the variance would do substantial justice:** The roof pitch and proportions are consistent with historic precedence. **4. The values of the surrounding properties will not be diminished for the following reasons:** Two feet is not a big deal, and I think it is in keeping with the other two homes I have built in that development. I think the property only enhances the neighborhood. **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 37 feet works with the 12-over-12 roof pitch that we have, the size of the windows, everything has been carefully designed by the architect, and if that is the reason, I am hoping that we can go to the 37 feet. **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 extra height in the cupola does not affect the floor space down below. It is literally 18 feet up in the house. **ii. The proposed use is a reasonable one:** There is architectural precedence all over Bedford and all over New England for something of this scale.

Mr. Duhaime stated it says that the 37 feet is the mean. Mr. Doherty responded you can see the 37 foot dimension posted on the screen, and the 35 foot requirement is from the ground level to the average height of the highest roof structure in the house. In this case that cupola is the highest roof structure in the house and the middle of that roof is 37 feet above the ground. Ms. Elmer stated it is an odd definition of structure. That helps incorporate when you have sloped lots and it is not a flat building. Instead of taking an absolute number it is a sliding scale.

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

MOTION by Mr. Duhaime to move into deliberations on this variance application. Councilor Domaingue Murphy duly seconded the motion. Vote taken – all in favor. Motion carried.

1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality: Chairman Morin stated I don't see that at all in this. All agreed they meet this prong of this criterion. **(2) Whether granting the variance would threaten public health, safety or welfare:** Chairman Morin stated it is a 2-foot issue of the top of a cupola that I don't think the Fire Department is going to have an issue with or anything like that. All agreed it meets both prongs of this criterion. **2. The spirit of the ordinance is observed:** Chairman Morin stated it appears to meet the spirit. We are not dealing with an oversized structure. We are only talking 2 feet, so it should meet this criterion. All agreed they meet this criterion. **3. Granting the variance would do substantial justice:** Chairman Morin stated it comes down to the design of the house. The house is well designed, it looks very nice, and, again, the 2 feet really doesn't make that much of a difference when it comes to this aspect of it. All agreed they meet this criterion. **4. The values of the surrounding properties will not be diminished for the following reasons:** Chairman Morin stated at this point I don't think 2 feet extra on a cupola is going to make a difference. Mr. Green asked are the surrounding homes of the same design? Ms. Elmer replied yes they are. It is a brand new subdivision and he is doing all of the homes. All agreed they meet this criterion. **5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area:** Chairman Morin stated the regulation that we're dealing with, which is that 35-foot median height, it doesn't seem to be an issue with this property concerning a cupola. Mr. Duhaime stated he makes a point too that reducing the pitch on the house to get within the 35 feet would take away from the overall presence of the house, which I would agree with, and forcing that would be a hardship to the overall design of the house. All agreed they meet this prong of this criterion. **A. Denial of the variance would result in unnecessary hardship: i. No fair and substantial relationship exists**

between the general public purposes of the ordinance provision and the specific application of that provision to the property: Chairman Morin stated the application of a 2-foot difference in a cupola is not going to make a difference between that and the ordinance. Councilor Domaingue Murphy stated particularly if that initial height requirement was based upon old technology in firefighting. All agreed they meet this prong of this criterion. **ii. The proposed use is a reasonable one:** Chairman Morin stated it is pretty reasonable to have a cupola on this house.

MOTION by Mr. Duhaime that the Zoning Board of Adjustment approve the request for a variance submitted by Kevin Doherty (Owner) where he is requesting a variance from Article III, Section 275-22.A and Table 1 in order to construct a cupola on a home resulting in a building height of 37 feet, where the maximum height allowed is 35 feet, on Cobtail Way, Lot 2-12-6, Zoned R&A, for the reason that per our deliberations it has met all of the criteria for a variance. Councilor Domaingue Murphy duly seconded the motion. Vote taken - all in favor. Motion carried.

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

- 2. Roger Blanchette and Rebecca Martin (Owners) – Requests a variance from Article III, Section 275-21.A(1) & Table 2 to allow the keeping of up to four chickens in the General Residential Zone where the raising of livestock or poultry is not an allowed use, at 105 Worthley Road, Lot 42-56, Zoned GR.**

Roger Blanchette and Rebecca Martin were present to address this application for a variance. Mr. Blanchette stated we are the owners of the home at 105 Worthley Road, and we are respectfully requesting a variance to allow the keeping of four laying hens in our backyard in an enclosed chicken coop.

Mr. Blanchette proceeded to review the criteria for this request 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:** We intend to keep a limited number of hens, limited to four, in an enclosed, appropriately-sized coop with four walls and a ceiling so they can't fly out, in our backyard. They will not be free-range animals. **(2) Whether granting the variance would threaten public health, safety or welfare:** We believe that the chickens will not be contrary to public health, safety or welfare because they are contained. **2. The spirit of the ordinance is observed:** We believe the spirit of the ordinance is observed. Our home is right next to large farmland. It is a small lot size but our backyard is kind of hidden from the neighborhood. I suspect that most of our neighbors would not even know that we had four hens back there. They won't be visible from the street. We will not have a rooster, so the noise level will be considerably less than a situation that accommodates a rooster. **3. Granting the variance would do substantial justice:** We believe granting the variance will do

substantial justice because we would like to keep four chickens as pets. We don't intend to sell the eggs or make any commercial business out of this arrangement. We feel that this probably has less impact than having a pet dog. **4. The values of the surrounding properties will not be diminished for the following reasons:** Our chicken coop will contain the chickens and prevent them from visiting our neighbors' yards. The chicken coop and the chickens are rather temporary in nature, they have a finite lifespan, and I suspect the chicken coop will too. The chicken coop would be a portable structure, easily moved, and will not be a permanent fixture in our yard. **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 chickens won't be free-range, they are a natural alternative to pesticides, they eat lots of nasty bugs that we would not like to have around, and we could use some extra protein in our diets. **A. Denial of the variance would result in unnecessary hardship:** **i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:** We are only asking to keep four hens, there will not be any roosters, and we believe that the spirit of the ordinance is not to dictate how people enjoy their property but to allow reasonable use as long as it does not interfere with other citizens. The chickens are not free-range so their impact will be limited. **ii. The proposed use is a reasonable one:** We believe the proposed use is reasonable because we want to use them to supply us with food, they will be kept in our reasonably private backyard and there will be no commercial application. **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:** Our property cannot be used in strict conformance because the zoning for our neighborhood prohibits the keeping and raising of poultry and these animals fit that definition. We feel that our intention to keep four hens does not impact others or contradict the intentions of the ordinance.

Mr. Green asked if the variance is granted, can the variance be limited to four hens? Chairman Morin replied yes. However the motion is worded, that is what the variance will allow. Mr. Green asked and also delineate between chickens and roosters? Chairman Morin replied that's right. Mr. Green asked so somebody couldn't come in and say I want a rooster and three hens? Chairman Morin replied that is correct. Mr. Green stated 50 years ago this wouldn't have been a problem because Bedford was a farming community, but these lots are sort of like an extension of the west side of Manchester. Chairman Morin stated this is right next to the old Clark farm. Mr. Green stated and all of that area is basically small lots. Ms. Elmer responded right. Mr. Green asked when they changed the Zoning Ordinance, there had to be a reason why they said they didn't want chickens in that area in the Zoning Ordinance. Ms. Elmer responded I don't know when that changed. Most of the Town still allows them; the residential/agricultural (R/A) zone allows chickens, roosters, all of that stuff. It is the general residential zone where these homes are located that does not. Mr. Green asked are those homes in a cluster subdivision usually the smaller acreage, older homes, basically the west side extension homes? Ms. Elmer replied yes.

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

Ms. Martin stated there are quite a few chickens in our neighborhood and they don't seem to do anyone any harm, except when the free-range get in the way of your car. These won't be free-range chickens.

MOTION by Councilor Domaingue Murphy to move into deliberations on this variance 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: Chairman Morin stated I don't see a change in the locality due to four chickens there especially with older farm land in their backyard, and looking at the aerial view it doesn't seem like there is a house too close to their backyard to be able to see them. Mr. Green stated their property backs up to St. Anselm's property. Chairman Morin responded yes, which is the old Clark farm. I don't see it changing the essential character of the locality. All agreed they meet this prong of this criterion. **(2) Whether granting the variance would threaten public health, safety or welfare:** Chairman Morin stated again, I don't see how granting this variance would threaten anything within this prong of the criterion. Mr. Green stated as long as it is four chickens. All agreed they meet this prong of this criterion. **2. The spirit of the ordinance is observed:** Chairman Morin stated the spirit is to keep livestock out of the densely populated areas but looking at this specific area, yes, they are smaller lots, but between what is behind the property and to the sides of it looks like it not very populated. Mr. Green asked what is the 1.67-acre parcel next to them? Ms. Elmer replied it is just a house lot. Mr. Green asked those people don't object? Ms. Elmer replied we did not receive any objections at all from any of the abutters. All agreed they meet this criterion. **3. Granting the variance would do substantial justice:** Chairman Morin stated it gives them the opportunity to keep their pets. They get something from them, and, again, if it is to the point of four hens, then that is not going to change the noise level in the neighborhood. With no rooster it will be nice and quiet. All agreed they meet this criterion. **4. The values of the surrounding properties will not be diminished for the following reasons:** Chairman Morin stated we are not really seeing anything that would diminish any property values. As they testified, no one will probably even notice that the coop is there. All agreed they meet this criterion. **5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area:** Chairman Morin stated this includes all that we have stated previously. All agreed they meet this prong of this criterion. **A. Denial of the variance would result in unnecessary hardship: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:** Mr. Green stated it is not a hardship in the sense that they can't build, they want to do something in addition, so it is not like where people come in with a hardship that the only place they can build is within 10 feet of the boundary. This is something that is wholly voluntary that they want to add and what they don't have now. I

am a little bit concerned that it really doesn't fit within the hardship because it is a desired addition, not if they don't get this hardship they can't use the land. They can use the land with or without the chickens. Councilor Domaingue Murphy stated any time a homeowner can't use a parcel of land in the manner that they want to or would like to that isn't harming another person, then it is arguably a hardship. Ms. Elmer stated it is just like somebody that wants to add an addition but doesn't meet the setback. You have a house on the lot, it is already being used. All agreed they meet this prong of this criterion. **ii. The proposed use is a reasonable one:** Chairman Morin stated it is reasonable to have chickens on your property. All agreed they meet this prong of this criterion.

MOTION by Councilor Domaingue Murphy that the Zoning Board of Adjustment approve the request for a variance submitted by Roger Blanchette and Rebecca Martin (Owners) requesting a variance from Article III, Section 275-21.A(1) and Table 2 to allow the keeping of up to four chickens in the General Residential Zone where the raising of livestock or poultry is not an allowed use, at 105 Worthley Road, Lot 42-56, Zoned GR, for the reason that it has met all of the criteria for a variance per our deliberations, with the following condition:

- 1. The variance approval restricts the keeping of only four chickens and no roosters.**

Mr. Duhaime duly seconded the motion. Vote taken - all in favor. Motion carried.

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

- 3. Kerri & Stephen Crowley (Owners) – Requests a variance from Article III, Section 275-34.G(3)(b) in order to construct an in-ground pool 10 feet from the rear lot line where a 20-foot setback is required, at 12 Summit Road, Lot 39-44-23, Zoned R&A.**

Mr. Duhaime recused himself from this application. Councilor Domaingue Murphy, Mr. Green and Chairman Morin were the voting Zoning Board members on this application.

Tom Huot, land surveyor, and Steve and Kerri Crowley were present to address this application for a variance.

Ms. Elmer stated Ms. Crowley called me earlier and informed me that part of my staff report was incorrect. When I was doing the acreage as I was writing the staff report for the surrounding lots that already had existing pools, I went to Vision, which is our appraisal software and looked at the acreage that was being assessed on those properties. What I failed to take into consideration was that this is a cluster subdivision, and what that means is there is a small base acreage for each lot and then there is an additional portion of all the open space acreage added to each lot. So when I said each

lot was at least 1 acre or greater, that is not true. They are actually smaller than that in actual size; their assessed value is greater than 1 acre. I wanted to make that clear so you don't hold that against them as they are doing their presentation.

Mr. Huot stated what we are proposing tonight is the Crowley's would like to install a 16-foot X 32-foot in-ground pool that will have a small vinyl fence around it as required by code. The community they live in, as pointed out by Ms. Elmer, is a cluster subdivision that actually has an association. Prior to coming to the Board tonight they did apply to the association, the association does support the application for the pool, and they also support it being closer than the 20 feet to the rear lot line. We do have an email from the association if the Board wants it. Chairman Morin stated we will take that for our records. Mr. Huot stated we also have two emails from abutters that support the application that he can also bring up to you. The reason the pool is being proposed in the rear yard is because there is no compliant place on the property that the pool could work. Directly behind their lot is the open space, and with setbacks being a zoning requirement to eliminate overcrowding among lots, it seemed to be the most logical place as there is no single family home behind it, it is only the open space. They do comply with the side yard setbacks to where the homes actually are. The lot itself, as you can see posted on the screen, fits in with the neighborhood. They typically range from 3/10ths of an acre to 8/10ths of an acre, excluding the 6/10ths of an acre that Ms. Elmer was talking about that they all get assessed at for taxes.

Mr. Huot 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: (2) Whether granting the variance would threaten public health, safety or welfare:** The proposed pool is allowed in a residential neighborhood. There are other properties in this development that have in-ground pools. The proposed pool would be consistent with the character of the neighborhood and would pose no threat to the public health, safety or welfare of the community. The initial GIS map that Mr. Crowley passed out has a bunch of lots highlighted in yellow, those are all lots within the development that have pools and that is the reason he handed that out. **2. The spirit of the ordinance is observed:** Due to the location of the house, other structures and utilities on the property, there is no compliant place to place the pool. The rear of the property abuts open space and thus would not affect any abutters to their rear. Also, the association has approved the request from the homeowners to install the pool. **3. Granting the variance would do substantial justice:** There is no apparent gain to the community by denying the variance as the association has approved the request from the homeowners to install the pool and supports the variance application. **4. The values of the surrounding properties will not be diminished for the following reasons:** A new in-ground pool would bolster the value of the existing property thus maintaining the tax base of the community and not devaluing the abutting properties. Other properties in this development have in-ground pools. **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:** Due to the location of the house, other structures and utilities on the property, there is no compliant place that we could place the pool. Again, the rear of

the property abuts opens space and would not affect any abutters. Again, the association has supported the application. **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:** Due to the location of the house, structures and utilities, there is not a compliant place to put the pool on the property, the rear abuts the open spaces, and the association they live in has supported the application. **ii. The proposed use is a reasonable one:** Having a pool is a reasonable use.

Mr. Green asked did the other homes that have pools run into this same problem that because of the small size of the lot the pools may have been closer to the lot line than normally allowed? Mr. Huot replied I don't know that. I don't even know if all of the pools pulled permits when they were installed. Mr. Crowley stated I am not aware either.

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

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

1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality: Chairman Morin stated by the multiple plans we can see, I don't see any change to the locality. The pool will be in the backyard with what looks like a bunch of open space behind it, so it is not going to be a visual issue to any neighbors in the back. Per the testimony they have also said that their neighbors didn't have an issue with it. Mr. Green asked is the open space a septic system back there? Ms. Elmer replied it is strictly open space conservation land. It is not like a community septic, it is strictly conservation land. Chairman Morin stated we did get a copy of the email that they received from their association saying that the in-ground pool with fence is approved. All agreed they meet this prong of this criterion. **(2) Whether granting the variance would threaten public health, safety or welfare:** Chairman Morin stated I don't see any issues there. They did talk about a fence, which would need to be put up around it so I don't see any issues in that aspect. All agreed they meet this prong of this criterion. **2. The spirit of the ordinance is observed:** Mr. Green stated other houses in the development have pools. Chairman Morin stated the spirit for the setbacks is to not be on each other's property, but being a cluster subdivision they have smaller area, plus with the open space behind it and no issues from the neighbors and the association, so it really meets the spirit of the ordinance. All agreed they meet this criterion. **3. Granting the variance would do substantial justice:** Chairman Morin stated it gives them the opportunity to have a pool in their yard; there are no issues from anybody around them. Mr. Green stated and they are going to build a fence in accordance with the regulations. All agreed they meet this criterion. **4. The values of the surrounding properties will not be diminished for the following reasons:** Chairman Morin stated it is going to increase their value and it is not going to hurt anybody else that we can see. We have not heard any testimony. Mr. Green stated

there are other pools there so it is consistent. All agreed they meet this criterion. **5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area:** Chairman Morin stated it is a cluster subdivision so things are very tight in that area. I don't see any issues with that. All agreed they meet this prong of this criterion. **A. Denial of the variance would result in unnecessary hardship: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:** Chairman Morin stated it is not affecting the general public with the variance; actually they have the approvals already so it is the same as our previous statements. All agreed they meet this prong of this criterion. **ii. The proposed use is a reasonable one:** Chairman Morin stated a pool is a reasonable proposal. All agreed they meet this prong of this criterion.

MOTION by Mr. Green that the Zoning Board of Adjustment approve the request for a variance from Kerri and Stephen Crowley (Owners) who are requesting a variance from Article III, Section 275-34.G(3)(b) in order to construct an in-ground pool 10 feet from the rear lot line where a 20-foot setback is required, at 12 Summit Road, Lot 39-44-23, Zoned R&A, for the reason that it has met all of the criteria for a variance per our deliberations. Councilor Domaingue Murphy duly seconded the motion. Vote taken - all in favor. Motion carried.

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

Mr. Duhaime returned to the meeting.

New Business: None

Adjournment:

Motion by Mr. Green to adjourn at 7:42 PM. Councilor Domaingue Murphy duly seconded the motion. Vote taken – all in favor. Motion carried.

Respectfully submitted by Valerie J. Emmons