

**TOWN OF BEDFORD**  
**September 20, 2016**  
**ZONING BOARD OF ADJUSTMENT**  
**MINUTES**

A regular meeting of the Bedford Zoning Board of Adjustment was held on Tuesday, September 20, 2016 at 7:00 PM in the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: John Morin (Chairman), Bill Duschatko (Town Councilor), Sharon Stirling, Chris Swiniarski, Gigi Georges, 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. Kelleigh Domaingue Murphy (Town Council Alternate) was absent.

Ms. Elmer introduced Mark Connors, the Town's new Assistant Planning Director.

**Minutes – August 16, 2016:**

**MOTION by Mr. Green to approve the minutes of the August 16, 2016 meeting of the Zoning Board of Adjustment as written. Mr. Duhaime duly seconded the motion. Vote taken; motion carried, with Ms. Stirling, Mr. Swiniarski, and Councilor Duschatko abstaining.**

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

**Applications:**

- 1. 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. (Continued from the August 16, 2016 meeting)**

Chairman Morin stated we did not hear this request at the last meeting, it was just tabled, so all the regular members will be voting on this item this evening.

Attorney Greg Michael and Attorney Michael Klass were present to address this request for a variance to subdivide one residential lot into two.

Attorney Michael stated we are here representing the Paul's as it relates to the application before the Board, which is to subdivide approximately 2.437 acre parcel into two parcels. I would point out that whatever action the Board takes, this still has to go to the Planning Board for their review and approval. I wanted to make that clear.

Attorney Michael stated this is a rather unique parcel; it has 575 feet of road frontage, which is very unusual for that area if you look at the other lots that are near or abutting this particular piece. My client intends to put Town water at the site, and on that point I'd like to refer to one of the letters that Ms. Elmer handed me prior to the meeting and one of the abutters indicated a concern, who is Lynn Healy-Mohave, and basically her concern was water and a well. I point out right at the outset that the intent here is to not only provide town water to any new structure that might be built on the lot that we are requesting but also Mr. Paul intends to hook up to Town water for his own existing house to reduce any impact to the water in this particular area. In any event, I would point out that the lot differential we are looking at, 1.5 acres is ordinarily the requirement in this area. Just as a footnote, if we were in the General Residential area with Town water, and Town sewer, an acre lot with 120 feet of frontage would be appropriate. I would point out that the frontage here is going to be a bit more than what is required for both parcels, and again you can see from the plan that we have presented that it is significant as far as the frontages are concerned. I would also point out that a number of lots in this area do not necessarily have legal size and frontage. I would point out that a number of lots, although the sizes exceed 1.5 acres, the frontage is the barebones minimum. If you drive down the street, I would suggest to you that this lot is going to look larger and more spacious than those specific parcels. I guess beauty is in the eye of the beholder but my point is that we have significant frontage and when you look at this parcel driving by, I would suggest that no one would be able to tell that it is approximately 1,600 feet less, an area probably 20 feet x 60 feet, 1,600 square feet less than what might be required. Again, this isn't a request for setbacks, it is not a request for wetland encroachments, and it's not a request for anything other than subdivision. I do note that Mr. Morin filed a letter with you, and I believe his counsel is here as well to speak to you when we are done. I would point that Mr. Morin of course would like this land to remain as it is, and I can appreciate that. But I would point out that in this particular zone there is nothing to stop my client from cutting the trees down, installing some form of agricultural use and I would point out to the Board that we are prepared as a condition of a variance to assure Mr. Morin that we will not do that and it would be a covenant that would not allow any of these "chickens, hogs, or anything like that" and I recognize that you can't raise commercial hogs in the zone but you can raise your own hogs in the zone. It is an interesting distinction but one that is contained in your regulations nonetheless. But we could cut down trees; we could change the view shed tomorrow without doing anything. It is not the Paul's intent to do that; their intent would be to construct a home that otherwise meets zoning. One of his concerns was "a house being close to the road." Here we could have 100 acres of land and still build within 35 feet of the road. A lot size does not necessarily dictate setbacks as the Board is well aware. You folks are as familiar with the ordinance as I am. It is not our intent to build right on the road, in fact; it is not the intent to build right at the 35-foot setback. What is intended is to do the right thing and assure everyone that what is built makes sense, looks good, will not have any impact on property values. I will allow Attorney Klass to discuss his issues, which are the five points, and again, as the Chairman indicated we may have a few points to discuss once Mr. Morin and his counsel make their statement to the Board.

Attorney Klass proceeded to review the criteria for this request for a subdivision. **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:** As the courts have said, to be contrary to public interest the variance must unduly and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives. Here we are seeking a variance from Section 275-22.A concerning minimum lot size. That section of the ordinance doesn't specify a specific purpose, sometimes they do, this one doesn't, however it is generally understood that the minimum lot size requirements are intended to ensure appropriate development with appropriate density, which in turn protects against unreasonable or dangerous congestion and seeking to use the Town's infrastructure in a reasonable and proper manner. Ultimately as with all zoning cases before you, the purpose is to ensure that the Town's health, safety and general welfare is protected and that is in the purpose section of Section 273-3. Here the requested variance would allow the property to be subdivided into two lots, each consisting of approximately 1.1 acres, as depicted on the plans before you, and each to be used for single family residential use. We suggest that the proposed lots are consistent with the purpose of Section 275-22 of the ordinance. Both lots are proposed to tie into Town water so no well is necessary for the new lot and actually the existing well will be removed. The lots contain more than adequate area for a proposed single family residence and septic systems, I believe that observation is consistent with the staff report. Notably the lot area variance is the only relief requested as mocked up on this conceptual design. You can see there is a septic box in there and there is a building envelope in there and there is adequate area on the proposed new lot and on the existing lot to support this request. As such, the lots don't unreasonably or in a dangerous manner increase the congestion in the neighborhood. Also, the proposed addition of a second single family lot is consistent with the overriding purpose, which is to ensure the town's health, safety and general welfare. There is case law that talks about the character of the neighborhood in this prong, when talking about the public interest and this variance will not alter the essential character of the neighborhood. The neighborhood is residential, contains parcels of various size and consistent with what is proposed sort of echoing on what Attorney Michael mentioned in the packet before you there are a couple of plans that depict the shape of these lots, many on the other side of the road are very long and narrow with the structures sort of clustered toward County Road. Also, those plans depict the sizes of the surrounding parcels and just noting an abutting lot of 1.16 acres, next to that is 1.15 acres, I have a 1.1 acre here, and so the point is that these lots have 1.1 and 1.12 acres are consistent with the neighborhood. As has been mentioned previously, I think if this were to be allowed and if a home went in as planned, when you drove down this road, you really would not be able to tell what was allowed previously and what was allowed through this variance as all the structures, the homes, are really sort of central on that corridor along County Road. In conclusion, granting this variance request will not be contrary to the public interest. **2. The spirit of the ordinance is observed:** The spirit of the ordinance is observed in granting this variance, and I will acknowledge that redundancy in these first two prongs, this analysis is related to the public interest discussion that we just had. The spirit of the ordinance is minimum lot size requirement is to protect against new development, which would result in overcrowding, either in terms

of impact on neighbors or the Town's resources, all to ultimately ensure the health, safety and welfare of the town and its residents. Here the proposed lots would be adequately sized to safely and reasonably allow for the addition of a second single family home to be constructed on the property. Consistent with the staff report the lot would have adequate area for onsite septic and would be serviced by Town water so there would be no new concerns about a well, and in fact, we propose to remove the existing well and tie into municipal water. The driveways for these two lots are separate. You can see that the existing driveway comes in off Sebbins Pond Drive; the new proposed driveway would come off from County Road. There is a fair distance between those two. Furthermore, as discussed, the proposed lots would not alter the character of this neighborhood given that they are residential in nature and consistent with the other lots' uses and homes in the neighborhood. In conclusion, the spirit of the proposed ordinance is observed in granting this variance. **3. Granting the variance would do substantial justice:** The test on this, that substantial justice is done when the loss of denying a variance exceeds the gain to the public in strictly enforcing the ordinance. In this case, in this balancing test, denying the requested variance will not result in any appreciable gain to the public given that the request proposes the creation of a second residential lot in a reasonable and safe manner, in a manner that will not harm the Town's health, safety or welfare. Likewise the proposed lots are consistent with the existing use and character of the neighborhood. On the other hand, denying the application will result in a substantial loss to the applicant by preventing the safe and reasonable use of an unused portion of the property in a manner that is consistent with the neighbors. In conclusion, granting this variance will result in substantial justice.

Mr. Green asked isn't that an argument coming after-the-fact. When this was set up, everybody knew what the lot size was; the house was built on the lot size, so it is not that this person has been denied use of his lot, it is just that he now wants to subdivide and probably for the purpose of selling the land and making more profit. It is not something that blocked him until at this moment. It is I can make more money this way. Isn't that really what the purpose is? Attorney Michael replied when this lot was created, the rules for variances were different, and the Supreme Courts dictate and Simplex had not been made, which is boards should be sensitive to the property rights of property owners, wherever they are, wherever they might be, and as you well know, the rule for hardship, which is the most difficult prong back in the day was very different and that prong was similar to you statement just now. That is Governor's Island and in that case the court pretty much said, that was probably the most stringent Supreme Court case on this subject prior to Simplex stated that basically if you could use it for most anything or whatever it might be, then there must not be a hardship, which led me to conclude back in the day with Governor's Island came forward there really hasn't been a good variance probably since 1932, but that is a different issue. But my point is that we have had Simplex, we have had Boccia, which of course distinguished between use and area, that was pretty much abolished by the Legislature when we legislatively enacted the hardship criteria. The Supreme Court has come a long way; they have said economic issues are a consideration. If you take a look at Garrison v. Henniker, that case the court said you can look at economic issues, you can look at the total package in terms of property rights. I can appreciate your comments, I respect those comments. Having said that, the

purpose of the Board is to take a look at these cases one by one, individually, to determine a fairness and the criteria have been met. We feel they will be met; we haven't gone through all of them yet, and we believe that they are. One final point is that this particular Board in granting the variance draws a line in the sand. You are not building house, you are not subdividing a lot, you are drawing a line in the sand, and I think it is important to remember that we must go the Planning Board to actually create the lot that would be subject to any further development. It has to go there for that particular action. In point of fact, if you want to take the old Governor's Island approach, sure, he is there, he is using his lot, but I would ask you to take a look at this lot, look again at the uniqueness of it, take a look at where the Paul house was built and the thinking being that zoning might change, circumstances may change, they may bring Town sewer and water in, it may be this would turn into a general residential area, which would allow for this lot. I hear you, but with all due respect, we believe at the end of the day the criteria have been met and we believe we are entitled to the variance under the more enlightened view of variance law. Remember when you lay out areas, it is a big paintbrush, and in it you get small lots, bigger lots, minimal frontage lots, and it initially happens. It is not necessarily a scientific approach where the Town goes out and analyzes every parcel of land and you don't want zoning lines that look like something out of a picture puzzle, all over the place. So consequently the purpose of the Board, I don't need to tell you your purpose, is to carefully look at these, look at this lot and this environment, and understand whether it is a practical, reasonable request to facilitate a person's further use of their property.

**4. The values of the surrounding properties will not be diminished for the following reasons:** The values of the surrounding properties will not be diminished in granting this variance. As discussed, the requested relief will not diminish the character of the neighborhood, granting this variance will allow for the creation of a new single family home on the property, which will not produce significant or different traffic, noise, odors, or any other sort of detrimental impacts to the surrounding area. As such, the values of the surrounding properties will not be diminished. **5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area:** It is a corner lot, it benefits from an excessive amount of frontage on both roads, the existing lot was placed such that it is accessed from Sebbins Pond Drive and it can allow for this subdivision with no side intrusions without impacting the surrounding properties. Most of the lots in the neighborhood are long rectangles with relatively small amounts of frontage in proportion to their area, large portions of backlands. Here the property is uniquely oriented in that it's long side runs parallel with the frontage and that sort of goes to the point that this subdivision can be allowed in a manner that is consistent with the surrounding lots. **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 policy behind the ordinance's is minimum lot area requirement is to protect against unreasonable dense development that would crowd neighbors or unreasonably stress local resources and infrastructure. Here, given the particular facts of this case, the creation of a second lot on 1.12 acres of land where 1.5 acres is required, would not result in overcrowding or unreasonably dense development, rather the

proposed lots contain ample space for the proposed single use in a manner that is consistent with the surrounding neighborhood. Given the absence of the fair and substantial relationship between the policy behind minimum lot areas and its application to this piece of land, requiring strict compliance with the ordinance would result in unnecessary hardship. **ii. The proposed use is a reasonable one:** It is reasonable as this is a use that is permitted by right in the R/A district, which is single family residential.

Mr. Swiniarski asked when did your clients purchase this property? Attorney Michael replied that is 1984 and they live there.

Chairman Morin stated you brought up lots in the area. Minimal frontage but they meet the frontage. Then you brought up other smaller lots. On those smaller lots, weren't those smaller lots approved back when that was okay? Attorney Klass replied yes, and that is noted on the materials before you. The lots of 1.15 and 1.16 acres were in 1948, there is a 1953 piece and a 1959 piece, but I don't think that that changes the character of the community. We are talking about character of the neighborhood, regardless of when these lots were accepted, when you go out there and look around; the lots are what the lots are. Chairman Morin stated I understand that but you said it verbally so for the people in the audience that don't have the application in front of them, they don't realize that was okay back when those lots were made, where this is a different issue. There are certain standards now. Attorney Klass responded I don't disagree whatsoever. Councilor Duschatko asked is it true that the current lot exists only because of the two abutting lots owned by Lacourse and Duchesne back on the original subdivision plan that prohibited two lots being put on the corner. Attorney Michael replied I am not following your question. Councilor Duschatko stated if you look at the original subdivision plan that was presented as part of the package, Lot 25-057-003 was created solely because they couldn't make two lots out of that in that particular corner because the abutting properties were already sold. Attorney Michael replied that may very well be. An inference could be drawn from that.

Councilor Duschatko stated you also say there is not diminution of any of the properties. Do you have any evidence to that particular segment? Attorney Michael replied yes. We had Sue Machos of Keller Williams take a look at this and she reported back to me, she is here, she is sworn in, and she is prepared to make a couple of comments about it. In summary, her view of it (she has been in the business for 21 years) is that a home built in that area based upon the area will in no way diminish surrounding property values. In fact she took a look at a couple of smaller lot homes, one at 1 Meetinghouse Road and one at 2 Meetinghouse Road and took a look at the assessments, and if you take a look and I believe the 1 Meetinghouse Road was built later, the early one was built quite a while ago, and if you take a look at the string of the tax assessments, there has been no negative impact on the other lot, the older lot in question. She is here and she can certainly testify on her own, but I'm just letting you know that we did have someone take a look at it and her conclusion as an expert real estate person in the business was that there would be no diminution of value by the proposal that we are discussing in this particular area, in particular if you look at the area and the current housing and the current lot sizes that are there.

Chairman Morin asked the public for those wishing to speak in favor of this application. There were none.

Chairman Morin asked the public for those wishing to speak in opposition to this application.

Attorney Joe Mitchell stated I am here to represent George Morin, who is an abutter to this property. Mr. Morin has lived at 222 County Road, which lies to the north of the property that is in question tonight, and he has lived there for 38 years, and his parcel is 3.04 acres. We would like the Board to consider that this application does not meet the five criteria or probably any one of the criteria that has been gone through this evening. We believe that this request for a variance is of no benefit to the public interest. The granting of a variance like this would be contrary the integrity of your Zoning Ordinance which very specifically requires, and for many years that lot size have a minimum size of 1.5 acres. Also, although this would create no legal precedent because you get to consider each new application on its merits without legal precedent, it does create kind of a moral quandary for the board because you will have a lot of other lots like this in the Town that are on corners that have extensive frontage that will want to take a conforming use and make it into two lots that are now nonconforming uses. We believe this application is contrary to the spirit of the ordinance because it creates nonconforming lots rather than preserves the spirit of the ordinance, which is to encourage conforming lots, and it is actually just the opposite of the spirit of the ordinance, which, again, is to make sure that everybody is treated the same. With regard to the third criteria on whether or not the granting of this application would do substantial justice. I think one of the tenants of justice in general on how we treat our fellow townspeople is that we treat everybody the same. We have these ordinances so that not everybody will do the same thing but the same minimums apply. So we don't tell people really what they should be doing, we tell them that there is a floor on what they cannot do and the purpose of an ordinance is to get everybody public notice. That when they come before a board of they apply for a permit in the town, everybody will go by the same standards at a minimum, and the granting of this particular application would do the opposite. With regard to the fourth criteria, the values of surrounding properties not being diminished: We don't have an expert here to testify or proffer evidence before you on that regard, however, Mr. Morin for years has cherished this being a lot across the street from him, which is undeveloped in this part, Attorney Michael is correct that certain things could be done to make it less attractive than it currently is, but at least in its present state, it is undeveloped, and even if it were developed, it would at least be a vacant part of this particular lot that has applied to you today. The fifth criteria is one that has had a lot of activity in the court systems as well as a lot of activity in the Legislature. This particular statute has been amended several times and one of them is to directly deal with this unnecessary hardship issue. We believe that literal enforcement would result in no hardship to this parcel, it has been in conformance since approximately 1984, it is perfectly suited to its existence under your Zoning Ordinance then and your Zoning Ordinance today, there are no special conditions other than other than a lot of other corner lots in this town that make it unusual, and it can be used in its present use. A lot of the applications that come before boards like this have

a parcel that is shaped either in dimension or in slope so that it cannot be used in a certain way in which it is zoned and therefore they need a variance. This one, however, has been in conformance with your Zoning Ordinance since at least the mid 1980's and it is presently in conformance with your conditions and there are no special conditions about it that would merit a variance. In addition to that, this would create two substandard lots and reading from the statute: RSA 674:33 For the purposes of this subparagraph unnecessary hardship means that owing to special circumstances of the property that distinguishes it from other properties in the area. No fair and substantial relationship exists between the public purposes of your ordinance and the specific application of that property." They have to be able to show demerit a consideration of a variance from you that there is no substantial relationship between the general public purposes, which is residential/agricultural and the specific application. As they come before you today, of course, their use and their area does meet your special public purposes so there is no reason to change it. In addition to that, we are not going to argue the point the proposed use is a reasonable one. The statute further says if the criteria in Subparagraph A, which I just read, are not established, an unnecessary hardship will be deemed to exist if and only if owing to special conditions of the property that distinguish it from other properties, the property cannot reasonably be used in strict conformance with the ordinance. This property is in strict current compliance with the present ordinance; therefore, a variance is not necessary. There is other language in here to clear up what used to be the law, which there was difference between a variance for a use and a variance for an area, a dimension, and that is no longer in existence by mandate from the Legislature. Mr. Morin stated I stand by what I wrote in my initial letter and summary I just sent in to the Board. Attorney Mitchell stated with that being said, we respectfully request that the request for a variance be denied.

Chairman Morin asked the public for those others that may wish to speak in opposition to this application. There were none.

Attorney Michael stated I want to make it clear that I respect the comments of the abutter. The issue I have is that the comments don't ring with the law and how it is to be applied. If we listen to Mr. Morin's counsel, then I think the Board can pack its bags, go home, we don't need a Zoning Board of Adjustment. Their view of the world is if it can be used, which is the old rule; there is no reason to do anything, no reason to provide relief when appropriate. This lot is unique; the Board is well aware that what you do does not bind you to anything, and any variance you grant is always a waiver of the law, always, by definition. I ask the question, does 1,200 – 1,600 feet, a very small area, 20 feet x 60 feet, really make a difference. I find it fascinating that my client's property rights that he would like to exercise on that small area that we are talking about, in particular where we have plenty of frontage. In particular when you look at this lot, it will appear larger when you drive by than many of the other lots. Mr. Morin's lot is 150 feet and it goes uphill backwards. You can't tell that he has more than 1.5 acres when you look at his lot; it is very difficult to see that because of the way the alignment of those parcels are. So I ask the Board, does it really make a difference. I find it fascinating that we are here looking at this issue when we are looking at a small amount of difference, and I think that the purpose of the Board, the purpose of the statutes, the purpose of many of the Supreme

Court cases is to look reasonably on each and every case. That is why we are here, and I respect the legislative definition of hardship. This is a unique parcel if you take a look at the maps that have been given to you, if you take a look at many of the long parcels, if you take a look at what is around, you will find that there is nothing quite like it that borders the road in this area because the issue is what is here not what may be in some other areas of Bedford where others of us may live, it is what is here, it is a unique parcel here, and it is. We believe that the criteria have been met, there is no significant public gain by denying this, no significant public purpose in denying it, there is nothing unsafe about it, we are going to be using Town water not wells, and we respectfully suggest that the conditions have been met, we believe it will not diminish values, I had an expert take a look at it, we respectfully request the Board grant this variance.

Chairman Morin asked for further questions and comments from the audience. There were none at this time.

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

**1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality:** Mr. Swiniarski stated when you first look at this, this seems pretty straightforward, but we are actually on the borderline of several criteria here. So when we apply the two prongs of the first criteria, do we think it alters the essential character of the locality? The character of the locality is basically in my mind what the other properties are. So when we look at the map that shows the lot area of the other properties, what do we think? We have mostly conforming lots; we have a few that do not conform with 1.5 acres because they were prior to the 1.5 acre requirement. The immediately surrounding lots we have all but one that are 1.5 acres or more. It is a tough call. I think if it was me, I couldn't say with certainty in making a finding that it does not alter the character. I think it does. Ms. Stirling stated I lean in that direction. Councilor Duschatko stated I think it does also. Ms. Georges stated I think it has potential too, and I think in looking at this piece one of the prongs is this notion the question of overcrowding of the land is a specific tenant of this, and I have a real question on that piece of it in particular. **(2) Whether granting the variance would threaten public health, safety or welfare:** Ms. Georges stated I don't see that as being a problem. Mr. Swiniarski stated I would agree. Those particular things are not threatened by the reduction in size from 1.5 acres, but I don't know that we need to even address that if we cannot meet the first prong of that. The bottom line is do we think this is contrary to the public interest or not based on the two prongs, and I think me personally would be that it is contrary to the public interest. **2. The spirit of the ordinance is observed:** Councilor Duschatko stated I don't think allowing the potential subdivision into two nonconforming lots adheres to the spirit of the ordinance whatsoever. Ms. Stirling stated I agree with that. Mr. Swiniarski stated I would agree too. When we think of the spirit of the ordinance in terms of lot sizes, as we have all said, and I don't think anyone argues, I think both sides of the testimony we have heard would agree that the spirit of this particular part of the ordinance is to regulate density. We are clearly going beyond the regulation that was passed, whether it was by a large amount or not,

does not really go to the spirit. The spirit is to regulate it; we are going past the regulation. So I don't think we are observing the spirit of the ordinance. Chairman Morin stated I agree with that too. Taking one conforming lot and making it into two nonconforming lots is definitely going against the spirit. **3. Granting the variance would do substantial justice:** Councilor Duschatko stated I guess the question is justice to whom. The present owner might benefit from it but it is apparent that at least two of the abutters disagree with it, so I believe they also have their rights. Mr. Green stated It almost seems like in the past as Attorney Michael pointed out; the law as was interpreted was very restrictive. The Supreme Court as he pointed out has gone a long way to making it far less restrictive. The question is did it make it so far less restrictive that we are bound to grant anything, and I'm not so sure that it has gone to that point as of yet. Councilor Duschatko stated turning his argument around, if we follow that argument, then he said there is no reason for us to exist as a Zoning Board of Adjustment, I guess that same argument would occur, we could pack up and leave also. Ms. Stirling stated I would agree with that. Mr. Swiniarski stated one thing is that counsel for both of these parties has done a very good job in laying out the legal criteria in addressing it, and if we turn to their application materials, we have really a very good way of evaluating this criteria. It is just one sentence, which is substantial justice is done when the loss of denying a variance exceeds the gain to the public in literal enforcement. Really the best way to address this is simple balancing. What is the loss to the applicant versus the benefit to the public. The benefit to the public, specifically the abutters, I have to put a lot of weight on that. I think when you purchase a property and it is already developed in conformance with the zoning regulations, you do have a reasonable expectation to think that it will remain in compliance. I don't think that is true for people who argue that I moved in next to undeveloped land, I don't want to see a development, I don't buy that at all, and those people have a great option as they can buy that land and not develop it. That is not the case here. We have people who own property next to a conforming lot that has existed for a while; they do have a reasonable expectation to think that it will remain in compliance. Now, weigh that against the loss to the applicant of denying this, I don't know how we evaluate that loss. Granting the variance is potential for monetary gain, that is valid, there is nothing wrong with making money, but is that a particularly significant loss given the totality of the circumstances here, which is that this particular applicant has lived here for 30 years. This is really not a big loss here, this property existed the way it does for a long, as intended, in compliance. I don't really see any significant loss to the applicant. Chairman Morin stated everything you just said looking at the application; again, it is written here on the other hand, denying the application with result in a substantial loss to the applicant by preventing a safe and reasonable use of the portion of the property in a manner that is consistent with the neighboring lots. My issue is with this piece is consistent with the neighboring lots; the neighboring lots were all sized at certain times within the guidance of the ordinance. It doesn't make it consistent with the neighboring lots. It does just the opposite. Mr. Swiniarski stated I agree. Ms. Stirling stated I agree. **4. The values of the surrounding properties will not be diminished for the following reasons:** Councilor Duschatko stated I don't think there is evidence that has been presented one way or the other. Ms. Georges stated I agree with that. We would need more evidence on both sides; it is not there. Ms. Stirling stated I agree. **5. Literal enforcement of the provisions of the ordinance would result in an**

**unnecessary hardship. Special conditions of the property distinguish it from other properties in the area: A. Denial of the variance would result in unnecessary hardship: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:** Mr. Swiniarski stated in my mind is always the real criteria of significance, it is the most specific criteria and even the application before us were to satisfy the first four, I think in my mind it is impossible for this application to satisfy the fifth criteria. I don't find that there are special conditions to this property; the only special thing is that it is a corner lot. If a large subdivision is a square that can only be 4-corner lots, so are all of them unique and entitled to a variance because of that uniqueness for that criteria? No, I don't think so. I don't think being a corner lot creates any uniqueness, other than that there is nothing particularly unique about this. The size of it is larger than some lots in the particular area; smaller than some lots in the particular area, and all in all I think if you were to average all of these land areas, this might be slightly larger, if that, maybe it even is the average, but I don't find it being unique in any way. Then when we come to finding an unnecessary hardship, we touched upon that in substantial justice, third criteria, as we almost always do, because the two are somewhat related in my mind. What is the hardship here? We have a property that has existed and a use that has been exercised by the applicant for over 30 years. There is really no hardship, there is no problem with this property as it exists to remain in compliance the way it has remained since 1984. I am not really seeing any hardship at all here. Ms. Stirling stated I agree with that. Chairman Morin stated I agree with you also about the corner lot. Councilor Duschatko stated I agree. Ms. Georges stated I agree completely on that one. **ii. The proposed use is a reasonable one:** Mr. Swiniarski stated that is not really applicable here, depending on what you interpret that to mean. The proposed use of a single family home is reasonable and allowed, but I think it is moot. There is really no reason to address this criteria. **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:** Chairman Morin stated they didn't give us any input on this. Mr. Swiniarski stated the applicant didn't choose to proceed on that path, but we can still address this criteria, but I don't think it is necessary and I don't think that the applicant is making the argument that that portion of the criteria applies. Chairman Morin stated I agree with that.

**MOTION by Mr. Swiniarski that the Zoning Board of Adjustment deny the request for a variance from Article III, Section 275-22.A and Table 1 from Victor and Madeline Paul in order to subdivide one residential lot into two at 1 Sebbins Pond Drive, Lot 25-57-3, Zoned R&A, for the reasons set forth in 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. Councilor Duschatko duly seconded the motion. Vote taken – all in favor. Motion carried.**

**2. John & Dina Weber (Owners) – Requests a variance from Article III, Section 275-22.A & Table 1 in order to construct a shed 8 feet from the front lot line where a 35-foot setback is required, at 15 Kennedy Drive, Lot 27-18-29, Zoned R&A.**

John and Dina Weber were present to address this request for a variance. Mr. Weber stated we have been residents of Bedford on this property since 1984. I want to apologize that with confusion between myself and my wife in dropping off the actual application. I didn't realize it was not completely filled out, so the copy you have I think you will find that there may be some unanswered questions in there. Ms. Elmer stated you answered them all, but I think the email just had some other stuff added to it.

Mr. Weber stated as background you have the lot plan in front of you. It is really a wonderful lot, it is flat and open, and we used to have soccer goals in there for our kids to play soccer in the backyard. The problem with the lot in terms of the use that I am requesting is if you look at the location of the house, it is virtually on top of Roosevelt Drive. The access to the house in terms of in and out is either from that end of the house or if you see the patio in that layout, there is a door on the south end of the patio. What I have attempted to do is create storage space that I could use year round. An additional fact that I will mention is that that house was built in 1972 or 1973 as one of these all electric houses, so everything in that house is a little bit smaller than they build today. The garage holds two cars and maybe a couple of garbage cans, I can squeeze a snow blower in there in the winter but it is so tight that I'm worried about hitting it with a car. So the reality is my snow blower lives outside. If you look at the layout on the right side there is an existing shed. The shed shown in the posted photograph I built in 1984 in the fall of the year that we moved in, which was a very dry year, and I thought I would be all set and I had pretty good access. As you can see, this picture was taken in April or May and almost every year I go for about two months where I can't get to the shed unless I walk through woods, come around the backside, if I'm storing equipment, tractors and stuff like that, I can't to it, I can't get in and out. Mr. Green asked even this year with the drought? Mr. Weber replied right now it is bone dry. The posted picture was taken this year, there was at least a month where I really had no access to that shed. Regardless of the decision that is made tonight, that shed is going to get torn down, it has been there since 1984, it is just about falling down anyway. If you look at what is happening now, in the last 1980's and early 1990's I built a playhouse for my kids, and they have since grown up, so it has been kind of a storage shed but it is not a very good one. I just throw stuff in it. What I was proposing to do was to tear the old, old shed and put in a 10-foot x 20-foot nice, prebuilt shed, you have a copy of a quote for that in your package, in that area abutting the patio. I would have double doors at that end of the shed, so I would have access to store my lawnmower, my riding mower, my snow blower and just the kind of stuff that you usually end up with, both in summer and in winter. I would say that also in specifics that this shed would not be put on a slab, it would just be placed so that if someone decided in the future that it needed to go, it will be easily removable, it will have no electric, water or any kind of service to it, and I wouldn't be removing any trees from the driveway so that it would be shielded from view by both the trees in the driveway and a fence on Roosevelt, which fence we would probably also replace because that is about 40 years

old as well. As a side comment, if this were approved, I would also hope to bury the propane tank and get that out of the way, get it further from the road and just out of sight.

Mr. Weber 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 granting of the variance would in no way be contrary to the public interest as this building will replace existing sheds on the same property. The main shed shown on the photo has been in place for approximately 20 years, and that is what I call the playhouse, the original shed has been in place for 34 years. The proposed shed would be shielded from street view by both a fence and a line of evergreen trees along the driveway edge. Visually the replacement will be an improvement from the existing structures. **2. The spirit of the ordinance is observed:** The utility shed will be positioned such that it will blend into the existing landscape. In addition, the shed will not be connected to any utilities, such as water or electricity. It will strictly be used for storage. **3. Granting the variance would do substantial justice:** Other properties in the area have sheds and the proposed shed will improve the appearance of both the subject property and the neighborhood. **4. The values of the surrounding properties will not be diminished for the following reasons:** The proposed shed will improve the appearance of both the subject property and 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 layout of the property locates the house within 31 feet of Roosevelt Drive. All access to the house is from the Roosevelt drive end of the house, there is no access from the north end of the house. Locating the shed in the open area north of the house provides difficult access. Similarly, locating the shed on the east edge of the property provides limited access and detracts from the appearance of the east yard of the property. **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:** As previously mentioned, the location of the house on the property makes other locations much less accessible and virtually inaccessible in winter. The other locations are visually inferior to that which is proposed. **ii. The proposed use is a reasonable one:** It allows reasonable use of our property without any adverse impact to any of the abutters, either with a partial view or no view of the shed. **B. If the criteria in subparagraph A are not established, explain why the property cannot be used in strict conformance with the ordinance and why the variance is therefore necessary to enable a reasonable use of it:** We believe the variance will allow for a reasonable use of our property.

Mr. Weber stated the only other comment I will make is I have reviewed this with two of my neighbors, one across the street, who is Flagel, who has, of all the neighbors, the most view of that particular area and he has no issues with it at all. The other one is Armand Viveur who abuts me to the north and he thinks it is fine.

Councilor Duschatko stated my question is based on really the location. Where you currently have it there is a plastic building next to it and then the propane tank. Mr. Weber responded that is correct. Councilor Duschatko asked in the general area where the 200 shows up, why can't you move it back in that particular area and move it into the setback line? Mr. Weber replied that is exactly where the shed is that gets water one or two months a year. It is in that corner of the lot where I have the water problem. Councilor Duschatko asked you are saying that your backyard is under water all of the time? Mr. Weber replied that corner of my side yard/backyard, where we say the label existing shed, that area has water in it typically for four to eight weeks a year in the spring. Councilor Duschatko stated I viewed it and I agree with you. There is obviously a swale. Ms. Elmer stated you can see the culvert that goes underneath the road. Councilor Duschatko stated but there seems to be a fair amount of land, either rock or moss, coming toward the house. Mr. Weber stated that is a big rock. I wouldn't want to put anything on that. Councilor Duschatko stated there is room in the side lot isn't there. Mr. Weber replied I am not arguing that there is room in other parts of the property. You can't argue when you look at the lot plan. The problem I have is access. I am requesting a variance in order to get access particularly in the wintertime to get my snow blower in and out, and just to have everything convenient. It is a convenience and an access issue.

Ms. Stirling asked where the walkway is, to the left of that would that not give you access? Ms. Elmer stated that is the front door of the house. Ms. Stirling stated you come in on Roosevelt Drive. Mr. Weber stated our driveway is on Roosevelt. When you see the word walkway and then the line to the right going into the house, there is a farmer's porch there and then that has a door into the garage. Ms. Stirling asked what about behind the patio area? Mr. Weber replied you go to the end of the patio, up towards the house; there is a door right there, as shown. Ms. Stirling asked what is the topography of that area? Mr. Weber replied going to the overhead, if you look at the roof of the house and then go towards the top, you will see that there is a line of bushes and that defines a side yard. Doing anything inside there would completely destroy the character of the yard. I would have to rip out all of the bushes. So the only other place I can go is to go further east, which is towards the top of that picture. There is space there, and if the variance is denied, I will have to find a way to do something in that area. But, again, in terms of the utility of the shed and meeting my needs for storage and access, particularly in the winter, it is just not going to do the job very well for me. Mr. Green stated it is not like you have a problem with either septic or water if you moved it back there. Mr. Weber responded no I don't; that is correct. Ms. Georges stated I just want to understand when you said it might be a problem with access. I think we are all getting at the same question, and if that is, if you had to choose an alternate spot and you were to go behind that line of bushes, would you have access to it, would it be slightly more inconvenient but you would have access or would it be a problem of access. Mr. Weber replied in the summertime for six or eight months of the year, the non-snow months, access would not really be a problem. But during the wintertime, because I have a lot of things stored out there and frequently I need to get to them in the winter, tools and equipment, then in the wintertime I would have real difficulty getting to the shed. I keep my snow blower on the patio as I have been doing; I could cut a path all the way out across the yard, so I could technically get to it. Ms. Georges stated that is helpful to have it clarified because I think we are all

trying to determine this question of whether this is truly the only accessible spot for you to place this shed, so we really need to try to rule that out in order to rule all of these other options out in order to consider that this is worthy of the variance. I think that is really why we are keying in on this.

Chairman Morin asked in the winter do you snow blow your walkways in the front of the house? Mr. Weber replied yes. I do the front, back, driveway. Chairman Morin stated I know it is not right on the walkway, but I'm just thinking too a possible is towards the back of the house, to the left of the picture, to the left of the house on the picture, that is toward the end where if you put the shed there and came right out, you are talking a very small distance to the edge of your walkway. Is that correct? It is hard to see exactly what is there. Mr. Weber replied there are a two problems with north of the house. There is a fairly narrow yard between the house and a full cluster of pine trees. If I park the shed in that side yard, you are going to see it from Kennedy Drive, and it is going to be very unattractive. Much worse than what I am proposing. The second is I have to cut down a dozen pine trees to get enough space to put it in. I understand your comment and it probably looks okay on paper, but I just wouldn't do it. Chairman Morin stated where the shed is up against but turned the other way. Instead of being long-wise, you would have it going the other way. Mr. Weber replied I wouldn't care. Chairman Morin asked and if it was up towards the patio, we are talking probably 18 feet instead of 8 feet. Mr. Weber responded correct. I could do that. Mr. Swiniarski asked you are just talking about a 90 degree rotation? Chairman Morin replied yes, so we would have the 8 feet plus 10 feet and it would be going the other way and still have accessibility. Mr. Swiniarski asked does that make us comply with the setback? Ms. Elmer replied no; it still needs a variance but a lot less of a variance. Chairman Morin stated to the road is a 35 foot setback. Ms. Stirling stated I think that is the problem I'm having. Eight feet versus 35 feet, that is kind of a huge leap. I could be a lot more comfortable if it was something like 18 feet.

Mr. Swiniarski stated obviously the idea here is how close it is to the road and people can see and it is very good that your neighbor across the street doesn't have a problem with it. The one thing I would have thought of, because I don't see this as problematic personally but I do understand all of your comments, I would require to just throw an evergreen tree right next to the existing one just to cover it up a little bit. Is that something you would have a problem with? Chairman Morin stated there are already some trees there. Mr. Swiniarski stated if you are looking at it from Roosevelt Drive, there is a fence and trees. Mr. Weber stated if you go up Roosevelt Drive, there are three spruce trees that we planted about 20 years ago as little saplings and they are now big enough that they have grown together as almost a hedge, but you can't quite see it in the posted photo. Mr. Swiniarski stated what I was thinking, and maybe I'm not seeing the pictures for reality, I was thinking you have a line of trees as shown and one tree right around this area but no trees here. Is that right? Mr. Weber replied correct. Mr. Swiniarski stated I was thinking if you just put one evergreen tree where indicated, it would really alleviate any visual concern. Mr. Weber responded I would be very willing to do that. Mr. Swiniarski stated I would think that that is not difficult and actually may enhance the appearance for you as well. That would be my thought of how to make it all okay. The other alternative of rotating it is viable too. Mr. Green stated rotate and put in the tree.

Mr. Weber stated if I rotated it, I would probably want to put in more than one tree because now it is 20 feet instead of 10 feet. My personal opinion is that I think visually the orientation that I have proposed is the least objectionable visually as you walk up the hill, down the hill, look at it from any angle, it kind of nestles it right against those hemlock trees and it becomes very unnoticeable. As I said as part of this, I would replace the entire fence, which is falling down at this point anyway. If you saw on the one picture there is a gap in the fence, that was there when I used to have a boat that I would pull the trailer in for the winter. I would close up that gap and make it a continuous fence all the way up to the spruce trees that go up the hill. Mr. Swiniarski stated I understand your point and I tend to agree. You have a nonconformity being close to the road; you can make it further away from the road but you are exacerbating the nonconformity by now making it wider. If you keep it this way, you have more of a nonconformity being close to the road, but it is not as wide. After having this discussion, I honestly would go either way; I don't see this as problematic either way because you have the nonconformity issue, which the distance is reduced if you rotate it 90 degrees but the width of the nonconformity from a visual perspective is increased that way. If you keep it as is, we have a narrower nonconformity that is closer to the street. To me there is no real difference. I wouldn't vote one over the other.

Chairman Morin asked for questions and comments from the audience. There were none.

Mr. Weber stated I would like to say that I believe the orientation that I have proposed has the least impact visually on the property and the neighborhood and I thank the Board for its consideration of the request.

Councilor Duschatko asked where is the main door on the proposed shed? Mr. Weber replied it would be on the 10 foot narrow, patio end. I don't know if it matters at this point, but I was thinking that I might also need to put a set of doors on the right side as we view that layout. Since it is 20 feet long, it might be a long distance not to have some kind of access halfway down. The shed I got quoted just had double doors at the patio end of the building and then a couple of windows along the side. Councilor Duschatko asked what is the height of the shed? Ms. Elmer replied the door height is 72 inches and then it just has a little pitch on the roof, so it is not that tall. It is not garage sized. Mr. Weber stated I think height-wise it would slip right under the trees and my hope is that I wouldn't even trim any branches. Councilor Duschatko stated the reason for my question was figuring out the height of the fence was going to cover most of the mass of the building. Mr. Weber responded I think so, yes.

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

**1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality:** Mr. Swiniarski stated I don't think it would alter the character of the locality at all. It is a shed and people have sheds. Chairman Morin stated and there are probably some other sheds

in the area and there is something that it will be replacing, so it is not like it is going to make that much difference. **(2) Whether granting the variance would threaten public health, safety or welfare:** Ms. Stirling stated I don't think it would do that. Chairman Morin stated I don't see anything with this prong either. Mr. Swinarski stated I agree. **2. The spirit of the ordinance is observed:** Mr. Swinarski stated I think the spirit of setbacks, in my mind, is to not encroach into what would be considered a visual buffer between one property and another. Here we have the street, we have a neighbor across the street who does not feel this is an encroachment at all, and in my mind that is the person whose opinion matters most in terms of this particular prong of the analysis for a setback variance. **3. Granting the variance would do substantial justice:** Ms. Stirling stated certainly a shed is a reasonable use. I think that we have looked at kind of the alternative with his lot between trees and bushes and the low lying land with water a couple of months of the year, so I think that those all feed into my mind that this would still be within the spirit of the ordinance. Chairman Morin stated and the existing trees in that area helping to block it and things like that. Mr. Swinarski stated I agree. **4. The values of the surrounding properties will not be diminished for the following reasons:** Mr. Green stated there is no evidence. Chairman Morin stated we haven't heard anything either way. **5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area:** Ms. Georges stated we have heard testimony that access is extremely limited and in that sense it would be an unnecessary hardship for the owners with the water issues and difficulty getting to it at some seasonal periods. **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. Swinarski stated it is very similar to the spirit. We are not trying to necessarily prevent someone from having a shed or a place to store things that you don't want to store inside your home, and in this case for the reasons we said in evaluating the other criteria, not allowing it in this particular space becomes problematic. **ii. The proposed use is a reasonable one:** Chairman Morin stated a shed is reasonable, and with everything else we have talked about, the location does make sense.

**MOTION by Ms. Stirling that the Zoning Board of Adjustment grant the variance requested by John and Dina Weber from Article III, Section 275-22.A and Table 1 in order to construct a shed 8 feet from the front lot line where a 35-foot setback is required, at 15 Kennedy Drive, Lot 27-18-29, Zoned R&A, for the reasons set forth in our deliberations. Councilor Duschatko duly seconded the motion. Vote taken - all in favor. Motion carried.**

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

- 3. Bedford Food Pantry (Applicant), Bedford Presbyterian Church (Owner) – Requests a variance from Article III, Section 275-21.A (1) and Table 2 in order to**

**convert the management and ownership of the existing food pantry at the church to a private entity, changing the use category from a church to a commercial use which is not permitted in the R&A Zone at 4 Church Road, Lot 20-107, Zoned R&A.**

George Reese, 26 Old Farm Road, stated I am currently an elder at Bedford Presbyterian Church and I am the current director of the food pantry at Bedford Presbyterian Church.

Mr. Reese proceeded to review the criteria for this 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:** The food pantry has already been in existence and has been in operation at Bedford Presbyterian Church since January 2016, and the property is not going to be changed in any way. **(2) Whether granting the variance would threaten public health, safety or welfare:** The food pantry operates under the guidelines published by the New Hampshire Food Bank, which has public health and safety and welfare as their primary goal. **2. The spirit of the ordinance is observed:** The food pantry promotes the health and welfare of the Town of Bedford, specifically those members of our community who are food insecure. **3. Granting the variance would do substantial justice:** Having a community based service group, such as the Bedford Lion's Club, be responsible for the food pantry creates more opportunity for community involvement and access than having a solely religious institution running the pantry.

Mr. Green asked, so you have somebody that's ready and willing to come in and take over? Mr. Reese replied the Lion's Club is. There are other groups in the community, such as the Rotary, The Bedford Men's Club, and so on but a community based service organization is what we would like and the Lion's club has agreed to take on ownership of it. Mr. Green asked it would be a nonprofit? Mr. Reese replied yes; it would have to be a 501c3 organization.

Mr. Reese continued with reviewing the criteria. We see only a gain for the general public as this variance will increase cooperation between service, religious, business, and social organizations. **4. The values of the surrounding properties will not be diminished for the following reasons:** The existing hours for the pantry would not go beyond the hours that the church property and building are in normal use. We do not anticipate a marked increase in traffic and there is an abundance of parking. The variance will not require any change to the building or parking lot footprint. **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 other properties in the area are either residential or businesses. Having a food pantry in a centrally located church building helps to serve the goals of the community based service group that would be taking it over and meet the mission goals of the church. **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:** Community participation and donations would be stifled because some businesses or school related

entities would not donate to a religious organization. Having a non-religious organization operate the food pantry takes religious issues off the table. **ii. The proposed use is a reasonable one:** Using the church building for this purpose is reasonable as people know that the Bedford Presbyterian Church provides assistance to people in need. Having a community based service group take responsibility for our onsite pantry only expands the access.

Mr. Green asked could you just give a little background as to the usage of the food pantry. Mr. Reese replied the food pantry serves the people of Bedford; you need to be a Bedford resident to take part in the food pantry. That doesn't mean if you do show up and you are not a Bedford resident, we will not give you food, but then we would direct you to the food pantry or place that you are supposed to go in your town. There are 100+ food pantries across the State. Most towns have some sort of good pantry, church or something that we would direct them to. But if they came in and they are not a Bedford resident, we give them food and direct them to where they should be going. Mr. Green asked in the course of the year, how many families use it? Mr. Reese replied we have been open since January 2016 and we have given out in the first two quarters 1,800 meals and at the end of the third quarter we should be well over 2,500 meals. Mr. Green stated so even in a town as affluent as Bedford, there is a need. Mr. Reese replied there is a definite need in the Town of Bedford, but as far as right now, nowhere near the number of people who need assistance use the food pantry.

Chairman Morin stated Ms. Elmer, I am confused about how this works. How does this work with the property putting a commercial entity? Ms. Elmer replied basically what you are doing is taking the running of the food pantry away from the church and putting it into a different group, not limited to the Lion's Club. What this means is this will follow the land as a food pantry. It does not mean a restaurant can move in, it does not mean a business office can move in, no bank can move in. You are granting the variance for a food pantry only. Mr. Swiniarski asked is the location separate from the church? Mr. Reese replied no; as of 1998 it is connected to the church. Ms. Elmer stated it is almost like a leased space. It is within the church, in their building. Chairman Morin stated I am thinking of the Back River Road daycare that we did. It is the church that will be running the daycare, but it is being run out of their school that is owned by the church. Ms. Elmer responded correct.

Ms. Georges stated when you say it can only be used as a food pantry, is attached to that that it can only be run by a 501c3? Ms. Elmer replied not for zoning purposes. Ms. Georges asked it is simply that the designation is around who runs the food pantry or what type of entity or what regulations are attached, we have no interest in or say. I just want to make that clear. Ms. Elmer replied no, it is everything that is stipulated, like no increase in traffic, they are not going to run it 24 hours a day, 7 days a week, you are not going to have busloads of people coming in at 5:00 Sunday morning. Chairman Morin stated and that is a Planning Board issue. Ms. Elmer replied they are going to the Planning Board if they get approval tonight and all of that stuff will be further delineated. It goes to the Planning Board because it is commercial. You are converting the use of the property. Mr. Swiniarski stated I understand the position. The church remains, and

I'm not saying we can't get around this, we can, the problem is you don't want to create a situation where if the church closes down some day, that this is in any way deemed to now be a commercial property because of this variance. Ms. Elmer stated it is not a commercial property. If the church goes out of business for some reason and a homeowner buys it and wants to convert it to a house, that small portion that is being a food pantry, can still be a food pantry, nothing else.

Chairman Morin asked can we add the square footage to our motion to limit the space of where that pantry is? Ms. Elmer replied probably. Give yourself a little wiggle room in case you want to get a little bigger. Chairman Morin stated it is the existing area. Mr. Reese stated on the site plan it is designated. Ms. Elmer stated we don't have the site plan. Do you remember what the square footage was? Mr. Reese replied off the top of my head, somewhere around 900 square feet, I think. Don't hold me to that. Mr. Swiniarski stated that was my point. You don't want a scenario with this operating as a food pantry if the church is gone. Ms. Elmer responded correct, and that will be limited by the Planning Board but you can put a maximum if you want on it. Chairman Morin stated we can put a limit on the space. Ms. Elmer stated in case they want to move it three offices over from where it is now, you want to give them a little bit of flexibility but you don't them to be able to take over the entire space that is not the parish hall.

Ms. Georges stated you say they will not beyond the hours that the church property and the building are in normal use. Can you give a sense of what those hours are? Mr. Reese replied I would guess from probably 8:00 AM to 9:00 PM. By use I mean there is somebody in the office, there are people going in and out, we have meetings in the evenings, we have meetings in the mornings, we have the women's club, and the quilter's club. If I had to pick numbers, I would say from 8:00 AM to 9:00 PM, and on Sundays it is a little more crowded. Ms. Georges stated on the hardship discussion you talk about this notion that community participation and donations would be stifled because some businesses and school related entities would choose not to donate to a religious organization. Is that sort of to mean that you anticipate or hope that the participation would actually be significantly larger? Mr. Reese replied before we started this, we spoke to and visited a number of other food pantries as part of the planning committee that we had, and most food pantries started in churches like ours did. Ours started in the church but our original food pantry was a 3 foot x 6 foot closet in the basement and if somebody walked in the door, you would open up and they would take what they wanted, and that is how most food pantries started. We visited a number of food pantries and most of them eventually grew, left the church and formed their own 501c3 corporations and so on. The ones that have done that have all told us that when they did leave and did move, participation increased as well as monetary donations increased. I used to work for a company that if I donated to the Boy Scouts, they would match my donations. If I donated to my church every Sunday, they would not. The evidence is from other food pantries that the further we move away from a church affiliation, the better it gets. We get more people to come and more donations. Right now it is called the Food Pantry at Bedford Presbyterian Church. This would be the Bedford Community Food Pantry, a program of the Bedford Lion's Club, and we believe that just that alone would encourage more people to participate. Mr. Green asked volunteers to help? Mr. Reese replied no, people to

actually come and pick up food. Our biggest challenge now is not volunteers, our biggest challenge is getting people to come and actually take part in the food pantry, and the statistics that we have, there is a tremendous need, not just a little need; there is a tremendous need in Bedford. And right now we have a fraction of that coming and taking advantage of the food pantry. Mr. Swiniarski asked because it is affiliated with the Presbyterian Church? Mr. Reese replied probably for a number of reasons, we can't pick why everyone doesn't come, but we have evidence from other food pantries. People may not come if you are associated with a church, if you are in a church, if you have a church name, have Bedford pride or don't want neighbors to know that I am going there.

Chairman Morin asked, would you be agreeable to put a size type limit on this? Mr. Reese replied I wouldn't want to do it right now. I would want to go back and measure the size that I have. If that would be one of the conditions, yes, and I might want to include something maybe not just for the size of the food pantry as it exists now, but expanded because we want to have some storage space and so on. Chairman Morin stated it would make me feel a lot more comfortable. It almost sounds like Mr. Swiniarski had the same thought size. Ms. Stirling stated I was thinking the same thing. Chairman Morin stated that way it can't take over the whole building. Mr. Reese stated the parish house has a basement and upper floor. It is only a small size of the whole total church, so if that would be the case, I would want to make sure I had enough room for storage and so on. But that is fine. Ms. Elmer asked do you know which Planning Board agenda you are on? Mr. Reese replied no. I am picking up the site plan from the surveyor tomorrow, so I haven't submitted the application yet. Ms. Elmer stated it might not be until the November meeting. If everyone would be more comfortable, if you want to ask more questions, we can table this application and he can still come back here before he goes to the Planning Board so that you can double check your size, then you can make a recommendation and narrow your variance down. I don't think that is going to slow him down. Chairman Morin stated I think that is a great idea. Mr. Reese replied you would probably need the size of the total square footage? Chairman Morin replied say if it is 900 square feet now and you look at some expansion room, possibly 1,200 or 1,500 square feet, a number that we can at least put into the proposal to make us feel a little more safe with it. Mr. Reese replied that's fine. Mr. Swiniarski stated there is probably a way around that but because you could come back here before you go the Planning Board anyway, we may as well do it that way. If there is a reason that you feel that that's too much to ask, I think we can figure out a way around this right now. Mr. Reese replied no, I'm fine. I'll come back with what I think we need. Chairman Morin stated that would be wonderful. Mr. Reese stated going beyond that, if we met that need two years from now, would I have to come back and reapply? Ms. Elmer replied yes. Mr. Reese stated I am fine with that. If I could come back and say I need more space and I have a place for it, that would be great.

Councilor Duschatko stated I know that over the past number of months you have been looking at alternative spaces, primarily because of the nuances with the church involvement. Mr. Reese replied yes. Councilor Duschatko stated I take it those other plans have fallen apart. Mr. Reese replied the ones that we have been looking at are always open. Councilor Duschatko asked what would happen if you moved because we

are going to put a variance on this particular property. Mr. Reese replied the only thing that could go in it right now if you grant this, would be a food pantry. Ms. Elmer stated you could have a second food pantry. It can only be a food pantry. If they move out and open one somewhere else, the church could still continue their food pantry, the Men's Club could come in and run the food pantry, there is no limit to the number of food pantries you can have in town, but it would still meet those criteria, however many square feet. And then if it did cease to exist, if nobody ran it anymore, after a year the variance would go away and it would no longer be allowed. Councilor Duschatko asked why does it go away? Ms. Elmer replied because that is the way the variances are written. You have to use your variance or lose it. So a variance goes with the land unless you discontinue it. Once something is discontinued for more than a year, then you lose that variance. Councilor Duschatko stated I wasn't aware of that.

Councilor Duschatko asked how does this differ and how do we treat the farmer's market being at Elizabeth Seaton Church? Do they have a special variance to hold a commercial operation? Ms. Elmer replied I can't answer that. Councilor Duschatko stated I am just trying to figure out if we are treating all of these things equally. That is truly a commercial operation versus this. Ms. Elmer stated that is a different zone; that is not a residential zone. I would have to check what the zone is. I think they have a site plan but I don't know how that works.

**MOTION by Mr. Swiniarski to table the application of Bedford Food Pantry (Applicant), Bedford Presbyterian Church (Owner) requesting a variance from Article III, Section 275-21.A (1) and Table 2 in order to convert the management and ownership of the existing food pantry at the church to a private entity, changing the use category from a church to a commercial use which is not permitted in the R&A Zone at 4 Church Road, Lot 20-107, Zoned R&A to the October 18, 2016 Zoning Board of Adjustment meeting and this motion to serve as public notice. Ms. Stirling duly seconded the motion. Vote taken - all in favor. Motion carried.**

**New Business:** None

**Adjournment:**

**Motion by Ms. Stirling to adjourn at 8:45 PM. Councilor Duschatko duly seconded the motion. Vote taken – all in favor. Motion carried.**