

TOWN OF BEDFORD
October 18, 2016
ZONING BOARD OF ADJUSTMENT
MINUTES

A regular meeting of the Bedford Zoning Board of Adjustment was held on Tuesday, October 18, 2016 at 7:00 PM in the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: John Morin (Chairman), Bill Duschatko (Town Council-Vice Chairman), Chris Swiniarski, Gigi Georges, Len Green (Alternate), Kevin Duhaime (Alternate), Bill Jean (Alternate), and Karin Elmer (Planner I)

Chairman Morin called the meeting to order at 7:00 PM and introduced members of the Board. Ms. Stirling and Councilor Domaingue Murphy were absent. Mr. Green was appointed a voting member for tonight's meeting.

Minutes – September 20, 2016:

MOTION by Councilor Duschatko to approve the minutes of the September 20, 2016 meeting of the Zoning Board of Adjustment as written. Mr. Green duly seconded the motion. Vote taken; motion carried, with Mr. Jean abstaining.

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

- 1. 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. (Continued from 9/20/16)**

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 stated as we left it at the last meeting, I had to come back to this meeting with the square footage of the food pantry in the church. I have that information and a photo. Looking at the picture you can see a total of 2,196 square feet. We eventually may use it all or we may not but it is available to us.

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 Councilor Duschatko 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: Mr. Swiniarski stated I am saying it would not be contrary to the public interest. This isn't going to alter the character of the locality at all. This, in fact, is the character of the locality and there is no use that is really changing. **(2) Whether granting the variance would threaten public health, safety or welfare:** Councilor Duschatko stated granting this variance would probably help it. **2. The spirit of the ordinance is observed:** Councilor Duschatko stated I would say given the first two considerations, the spirit is certainly observed. Mr. Green stated and it is being run by another nonprofit organization. **3. Granting the variance would do substantial justice:** Mr. Swiniarski stated I think, as we discussed in the first hearing, the motivation and the intent behind this was to actually boost donations by sort of decoupling its connection with the church. Being that it is a charitable purpose and what we are trying to do or what we are approving an effort to do is to boost the donations and certainly that would be substantial justice. Councilor Duschatko stated also it is not operating as what we would think as a normal commercial operation. It is providing food for people who qualify for it at no charge, so there is no commercial aspect, although it is technically a commercial use. Chairman Morin stated it is a service to the community. **4. The values of the surrounding properties will not be diminished for the following reasons:** Chairman Morin stated we have not heard any testimony for this. Mr. Green stated it has been taking place there for a while, and it is really just the same thing with a different organization running it. **5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area:** **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 again, there is no change to what is happening in there; people will not see a difference in what is going on in there. Mr. Swiniarski stated the purpose is to prohibit and prevent a commercial enterprise here, and that is not what we are doing here. **ii. The proposed use is a reasonable one:** Chairman Morin stated I think it is very reasonable to have a food pantry in the community.

MOTION by Mr. Swiniarski that the Zoning Board of Adjustment grant the variance requested for Bedford Food Pantry (Applicant), Bedford Presbyterian Church (Owner) for 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 non-church, non-religious organization, 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, as discussed at the September 20, 2016 Zoning Board of Adjustment meeting and per our deliberations this evening, with a condition that the food pantry use be limited to approximately 2,200 square feet in the areas shown

on the site plan as presented. Councilor Duschatko duly seconded the motion. Vote taken - all in favor. Motion carried.

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

2. Donna Pereira (Owner) - Requests a variance from Article IV, Section 275-28.A in order to construct a 200 square foot shed 31 feet from the edge of a wetland where 50 feet is required at 72 Tirrell Road, Lot 26-7-22, Zoned R&A.

Donna Pereira, 72 Tirrell Road, was present to address this request for a variance. Ms. Pereira stated my land is 6.7 acres and only about 1.5 acres is usable land, the rest is wetlands. The place I would like to build the shed is in my backyard where it would not be seen by anyone on the road, it would be constructed in the same manner as my home with the vinyl siding with the same colors, and the reason I would like it in that location is because I have a doorway to my cellar in the back and underneath my porch, which I use for storage and it has a doorway also, and both of those doorways would be convenient to the shed. The shed would be built on sonnet tubes and it would be constructed of 2-inch X 6-inch pressure treated lumber, 76 inches high, with 30 year shingles, double garage doors, two windows, and the vinyl siding. Because this would be up on the sonnet tubes and that part of the land is dry, I don't believe it would be any impact to the environment. When our builder built our home, he was very careful to put boulders all along the pond, put webbing material, put crushed stones so things will not flow into the pond, they have a natural filter, but the location that we want to put this is always dry. Right now we probably have a good 50 feet because of the lack of rain, but it would be as said about 31 - 35 feet from the pond.

Ms. Pereira proceeded to review the criteria for her variance application. This request is to place a 10-foot X 20-foot shed. **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:** This is a normal shed that we want to store our yard equipment, it is shielded from the existing road because we have shrubbery along the edge of the road, and it is just for normal yard equipment. Right now we have one of our garage bays that we are not able to use because all of our outdoor equipment is stored there. **2. The spirit of the ordinance is observed:** We are looking to put a normal shed to store yard equipment. **3. Granting the variance would do substantial justice:** The existing plot has significant wetlands that we are not able to use and the shed would only infringe on a very small portion of that. **4. The values of the surrounding properties will not be diminished for the following reasons:** It is just a normal shed, it is in the backyard, it is going to be built very nice to match the house, and it won't be visible from the front 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: A. Denial of the variance would result in unnecessary**

hardship: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property: ii. The proposed use is a reasonable one: We want the shed to store our yard equipment, equipment that is in our garage will be put in there, and it would not be a large impact, we believe, and visually it would look good. For us it would be very functional since the nature of our land is about 5 acres of wetland. It is not like we have a lot of locations where we could build this shed.

Mr. Duhaime asked the shed is 10 feet X 20 feet? Ms. Pereira replied it is. Mr. Jean stated I wanted to make note that the written application does say 10 feet X 12 feet, however; the notice does say 200 square feet, so it was properly noticed. That is the important thing.

Chairman Morin asked why not put it on the side by the driveway, although it would still impede on the wetlands? Ms. Pereira replied it would be visible from the road in front of our house, would also be about the same distance from the wetlands, and it would really be inconvenient for us because my cellar door and my porch door would all be opening up toward where my shed would be. It makes more sense in function to have them grouped together. Councilor Duschatko asked why can't you move it back toward the house? Ms. Pereira replied I can move it back, but if I do, I need to have my sprinkler system dug up and redone. I really didn't like the idea of having the building so close to my house and not being able to walk around the house and access everywhere. Councilor Duschatko stated on one side you are saying you want the convenience of the shed in that location to get to it and now you don't want it close to the house. Ms. Pereira responded no, I don't want it to impinge on my side lawn, and also, the side lawn goes up in elevation. The location that I want to build it is all nice and flat. Chairman Morin stated I think it is higher on the property on that side. Ms. Pereira responded yes, my side yard is about 4 feet higher.

Mr. Jean stated I too had a similar question to Councilor Duschatko. I drove by the site and understand there is some contour on that side of the home, but it strikes me that even if you slide that 10 feet closer to the home, you would be increasing the distance from that wetland making it a little bit more palatable. Obviously that is the variance relief you are looking for here is to try to minimize the impact into that wetland. Ms. Pereira responded exactly, and I'm willing to move it a little bit more if I have to. Mr. Jean stated from what is represented you could probably move it a good 10 feet closer to the residence I would think. Ms. Elmer stated looking at the drawing on the monitor, if you kind of slide it this way a little bit. Mr. Jean stated I understand that the grade gets a little move challenging as you get closer to the residence, but it strikes me, at least from my observation, that it could be moved. I didn't measure it, but from a visual observation. Ms. Pereira stated I have spoken to a couple of builders about it. Is it possible that we could maybe do the 35 feet? Chairman Morin asked moving it 4 feet? Mr. Jean stated that 31 feet is what we are trying to increase, the intrusion into the setback of the wetland. Ms. Elmer stated because right now your entire shed is within the wetland setback. Ms. Pereira stated I will try to see if I can have him move it maybe the 10 feet. Mr. Jean responded that would be helpful. Ms. Pereira stated that would be a reasonable

compromise so we can meet the 12 feet. What I am trying to avoid is where the land starts to go uphill, I would like to try to keep it where there is the least impact as possible, and it would be leveled on the sonnet tubes. Councilor Duschatko stated this is obviously not an official map, but the contour seems to indicate that if you moved it back 10 to 12 feet, it is about a 2-foot elevation difference, and I think that could easily be taken up with proper sonnet tube location. You might have a 2-foot high sonnet tube at the worst. Ms. Pereira responded I think he could do that. Councilor Duschatko stated and that will make everybody a lot happier in terms of the encroachment of the wetland setback. Ms. Pereira stated I would be willing to compromise and move it 10 feet more.

Ms. Elmer asked how are they going to deliver the shed? You had talked about keeping the brush on this side, but are they bringing it in from Mailloux Court? Ms. Pereira replied it is going to be built onsite. Ms. Elmer asked so you are not going to be looking for another curb cut to access it from Mailloux Court? Ms. Pereira replied no. I am doing that because I don't want to impinge on the land at all.

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. Pereira summarized I would really appreciate being able to put this shed in. It would be a great convenience and it would be nice to be able to access one of the garage bays that I have not been able to use.

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

Mr. Green asked has there been a modification? If it is going to be moved 10 feet closer, does there have to be a modification? Chairman Morin replied yes, and that would be part of the actual motion. We can just modify the motion when we get to that point.

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 it is a shed. Chairman Morin stated I don't see it changing anything in that neighborhood at all. Mr. Jean stated it is pretty typical for residential properties in Bedford. **(2) Whether granting the variance would threaten public health, safety or welfare:** Chairman Morin stated I do not see that granting this variance would threaten public health, safety or welfare. **2. The spirit of the ordinance is observed:** Councilor Duschatko stated the spirit is observed. Mr. Swiniarski stated the spirit of the ordinance for wetland setbacks is to not disturb significant wetlands, not to destroy significant wetlands, and here we are just in a setback, we are not affecting the wetlands at all, so there is really no harm to the resource of the wetlands area. I think in that regard, the spirit of the ordinance is observed. Mr. Jean stated I would agree. I believe that the spirit in the ordinance is 50 feet; historically at one point it was 25 feet, but that changed a while ago, and the fact that this is going to be elevated on sonnet tubes and the distance is going to be increased to a conditioned amount in the motion, I think that we are working

in the spirit of protecting the wetlands. **3. Granting the variance would do substantial justice:** There were no comments on this criterion. **4. The values of the surrounding properties will not be diminished for the following reasons:** Chairman Morin stated we haven't heard any testimony either way. Mr. Jean stated I believe the testimony you heard is that the building will be consistent with what the residence is, vinyl sided, pitched roof, asphalt shingles, which is pretty typical of residential neighborhoods. **5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area:** Chairman Morin stated I think the big one with this criteria is the amount of wetland that this property is on, which you have a small building area, especially a corner lot, so you have 35-foot setbacks on two sides, and the amount of wetland makes it very difficult for a location. Mr. Jean stated you compound that with the contours of the property, I think that the conditions start to restrict the position that you could put something in. **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. Jean stated I think the purpose of the ordinance is to protect the wetlands. I think with the concession that is made to move it further than what has been requested, we have made an effort to work within the purpose of the ordinance. **ii. The proposed use is a reasonable one:** Chairman Morin stated a shed is reasonable.

MOTION by Mr. Swiniarski that the Zoning Board of Adjustment grant the variance requested by Donna Pereira (Owner) for a variance from Article IV, Section 275-28.A in order to construct a 200 square foot shed at least 40 feet from the edge of a wetland where 50 feet is required at 72 Tirrell Road, Lot 26-7-22, Zoned R&A, based on the findings the Board has made pursuant to our deliberations. Councilor Duschatko duly seconded the motion.

Councilor Duschatko asked should we also make it conditional that the applicant goes back to the Conservation Commission? Ms. Elmer stated I don't think you have to. I can just update the Conservation Commission. Chairman Morin asked should we put in an updated plan as part of the motion? Ms. Elmer replied yes, that would be helpful.

Mr. Swiniarski and Councilor Duschatko accepted an amendment to the motion to add: The applicant is required to submit to the Planning Department an asbuilt plan within 30 days of completion of the shed.

Chairman Morin called for a vote on the motion as amended. With all members voting in the affirmative, the motion carried.

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

3. Sandra & Scott Smith (Owner) - Requests a variance from Article III, Section 275-22.A and Table 1 in order to construct an attached 528 square foot garage with a 72 square foot mudroom 12.5 feet from the side property line where 25 feet is required at 20 Southgate Drive, Lot 26-4-31, Zoned R&A.

Sandra and Scott Smith, 20 Southgate Drive, were present to address their request for a variance.

Ms. Smith proceeded to review the criteria for their variance request. Ms. Smith stated we are requesting to put a small mudroom on the side of our house attached to a 2-car garage. **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 addition will add value to the property, neighbors have agreed and are pleased with all of the improvements already made to the house's exterior, the addition will also blend in, so it should not be obtrusive in any way, nor threaten public health, safety or welfare. **2. The spirit of the ordinance is observed:** There are many surrounding properties with existing 2- to 3-car garages, so we are keeping consistent with the character of the neighborhood. By stepping the addition back several feet, the garage/mudroom will be more obscure as well as keeping the roof height slighting lower and carrying the same roofline. There are also trees between the property line so the neighbors will have a buffer. Since the addition is a garage, it will not impose on the neighbor's privacy. **3. Granting the variance would do substantial justice:** It will allow the vehicles to be protected by the elements, especially ice and snow, will allow storage for items in a locked structure given the current situation in town with so many cars being broken into. The mudroom allows the family a place to deposit shoes and clothing from the elements to protect the home's new wood floors. **4. The values of the surrounding properties will not be diminished for the following reasons:** The values would not be diminished because by adding a side entrance mudroom and 2-car garage it will bring the house's property value up and keep with the existing neighborhoods aesthetics. Both adjacent neighbors have 2- to 3-bay garages and another neighbor diagonally from us just completed a 3-bay garage addition. **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 previous owners had converted the old garage into a family room, so currently it is the only place to have a sitting area; the TV is there, so it is unavailable to be converted back into a garage. There is also a secondary heat source, a wood stove, in that space, and on the other side of the house to the left of the property has a buried propane tank and other buried lines, as well as lines above that would make putting the addition there unsafe and pose unnecessary challenges. **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:** There is no other reasonable location to put the addition. Although the setback will be reduced, there is still ample room to move around the property and not disrupt the neighbors. There is also access to the backyard from the left side of the house. **ii. The proposed use is a reasonable one:** New England weather is inevitable and

unpredictable, which can lead to precarious situations. Having a vehicle protected by the elements allows for one to safely exit the garage in an emergency. With three children, one with a medical condition, having a car you can easily access gives you peace of mind.

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: With the current side setback rule of 25 feet, a garage that will fit two cars would not fit. Based on the current property market, expectations of future buyers and cost to build a single-car garage, it is a reasonable request to add a small entrance/mudroom with a 2-car garage to add function and value to the house.

Mr. Duhaime asked will the driveway location change? Ms. Smith stated it will. It will go off to the right, so we looked to see if that would pose a problem across the street, and the driveway across the street will not line up, they will still be staggered. Mr. Jean asked it will be a new curb cut? Ms. Smith replied it will be. Councilor Duschatko asked is the tree being removed? Ms. Smith replied yes. It is causing a lot of problems currently with the amount of acorns being dropped this year.

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.

Ellen Belanger, 19 Southgate Drive, stated I live across the street from the Smith's. I have no objection whatsoever. Everything they have done has enhanced our neighborhood; they have come in and fixed up their house, and I am looking forward to them putting on this addition. I think they are the only house on the street without a garage, so it will be in line with the neighborhood.

Ms. Smith summarized being a mom with three kids and not having a garage, and dealing with the ice and the snow storms, it has been difficult. I feel like it is a reasonable request because we live in New England and I would love to have that peace of mind to make sure at least one vehicle is safe and ready to go at any given moment.

MOTION by Mr. Green 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: Chairman Morin stated I don't think there will be any change in the character of the locality. As they said, and I know that neighborhood, it is one of the few houses that doesn't have a garage. It just appears that it will fit into the area. Mr. Green stated apparently it had a garage originally and then the garage was made into other space. **(2) Whether granting the variance would threaten public health, safety or welfare:** Mr. Swiniarski stated it is hard to conceive how it could. **2. The spirit of the ordinance is observed:** Mr. Green stated there are no objections from the neighbors. Mr. Jean stated the spirit is to provide a buffer from adjacent properties, and I think they have actually been pretty reasonable

in their request in so much this is not an oversized garage by any stretch, it is only 22 feet, maintaining as much, and they have considered other locations on the site, but due to other constraints, it is not feasible in other locations, so as a result of that, I think it is a reasonable and just request. **3. Granting the variance would do substantial justice:** Ms. Georges stated that has been the testimony and it is fairly obvious that there would be justice in being able to park the vehicles inside and having a mudroom as well given all of the elements with New England winters. **4. The values of the surrounding properties will not be diminished for the following reasons:** Mr. Green stated this will probably enhance the values if there is another house with a garage. Mr. Swiniarski stated it should certainly enhance the values of the surrounding properties. **5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area:** Chairman Morin stated it is a pretty narrow lot, it just makes it in frontage, and there is not really a lot of room to put this. They tried to pick the least evasive spot that they could, and as Mr. Jean mentioned, they are not overdoing it at all. We have heard nothing from the neighbors, other than the neighbor that is across the street, that this would an issue. Mr. Swiniarski stated and one of the special conditions that make it have to go here is the location of the propane tank. The propane tank is located in the only other conceivable place for a garage, so that is a unique factor that really makes this the spot to go. Mr. Jean stated and it should be added that even if you consider on that side of the residence, moving the propane tank, which is unnecessary, it would still have an impact on the setback either equal to or greater. Chairman Morin stated and a major curb cut. **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 this goes back to Bill's reasoning. The purpose of the setback is to have a buffer, so there is a buffer maintained and there is no objection from the abutting neighbor, so the purpose of the ordinance really still remains intact. We are not really in flagrant violation of what the ordinance is trying to achieve. **ii. The proposed use is a reasonable one:** Chairman Morin stated a garage with a small mudroom is very reasonable, especially in this area.

MOTION by Ms. Georges that the Zoning Board of Adjustment grant the variance requested by Sandra and Scott Smith (Owner) for a variance from Article III, Section 275-22.A and Table 1 in order to construct an attached 528 square foot garage with a 72 square foot mudroom 12.5 feet from the side property line where 25 feet is required at 20 Southgate Drive, Lot 26-4-31, Zoned R&A, for the reason that it has met all of the criteria for a variance per our deliberations. Mr. Swiniarski duly seconded the motion. Vote taken - all in favor. Motion carried.

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

4. **Jeffrey Falvey (Owner) – Requests an Equitable Waiver from Article III, Section 275-22.A and Table 1 in order to keep an already existing in-ground pool and pool house 19.8 feet and 8.9 feet respectively from the rear property boundary where 25 feet is required at 67 Ministerial Branch, Lot 9-1-51, Zoned R&A.**
5. **Jeffrey Falvey (Owner) – Requests a variance from Article III, Section 275-22.A and Table 1 in order to construct an 1,800 square feet detached garage 5 feet from the side property boundary where 25 feet is required at 67 Ministerial Branch, Lot 9-1-51, Zoned R&A.**

Raymond Shea, Sandford Surveying and Engineering, was present to address both the request for an equitable waiver and request for a variance from Jeffrey Falvey.

Mr. Shea stated recently Mr. Falvey obtained approval from the Planning Board for a lot line adjustment with his neighbor to the north, and during the course of our surveying his property for that application, we found that the existing pool and pool house were over the building setback on the east side of the property. I believe the pool and pool house were constructed maybe in mid-1980. I don't think Mr. Falvey has owned the property for more than 3, 4 or 5 years, so it was prior to his purchase of the property. One of the conditions of the Planning Board approval was that we come before the Zoning Board of Adjustment and apply for an equitable waiver for the pool and pool house.

Mr. Shea proceeded to review the facts supporting this request for an equitable waiver for a pool house constructed 8.9 feet from a property line where 25 feet is required and a pool constructed 19.8 feet from a property line where 25 feet is required. **(a) The violation was not discovered by any owner, former owner, owner's agent or municipal official until after the structure had been substantially completed:** The violation was discovered during the course of a survey for the present owner in May of 2016. It is believed the pool and pool house were constructed in 1986. **(b) The violation was not caused by ignorance of the law, misrepresentation or bad faith, but was instead a good faith error in measurement:** There are no rear boundary markers or delineation of the rear lot line so it is assumed that the construction was intended to conform with setback requirements but was not measured corrected. **(c) The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property:** The structures have been in place for 30 years with no reported nuisance or adverse effect on properties in the area and do not encumber other properties or affect their uses. **(d) Due to the degree of past construction or investment made, the cost of correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected:** The pool and pool house had been constructed and in use for 30 years. To dismantle or relocate them at this time would be a financial hardship that would far outweigh the benefit to the public or abutters. **(e) OR, In lieu of the findings in (a) and (b) above, the owner may demonstrate that the violation has existed for 10 years or more, and that no enforcement action has been commenced against the violation by the municipality or any person directly affected:** The structures were

built 30 years ago and it appears there has been no enforcement action taken for the setback violations.

Mr. Swiniarski asked do you know what the status is of the property behind this? It looks completely undeveloped. Is that undevelopable? Mr. Shea replied it is actually Charles Place cluster subdivision. It is a 9-lot cluster subdivision. This property abuts a portion of the 15-acre open space of that subdivision. The nearest building lot is approximately 200 feet from this property. So there is a substantial buffer that will remain between that, and the property to the north is the property that worked with Mr. Falvey to do the lot line adjustment.

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

Chairman Morin stated now please address the criteria for the variance application.

Mr. Shea stated the lot line adjustment that Mr. Falvey did with the property to the north was basically to help accommodate a proposed structure that he is looking to build. And, also, if you drive up Mr. Falvey's driveway, that area seemed like it was part of his lot but actually most of it was on Mr. Shea's property to the north. So the lot line adjustment basically gave the Falvey's the land that was just beyond their driveway and gave the Shea's land out towards the road, which was more adjacent to their driveway and that area. That was the purpose of the lot line adjustment.

Mr. Shea stated the proposed structure that Mr. Falvey is looking to build is a 32-foot X 57-foot nice garage. It is not very tall, no taller than a normal 2- or 3-car garage, it does have length to it, it is backed into that corner away from the road, it is buffered to the property to the north, Mr. Shea's property, and as we discussed, it is at least 200 to 250 feet from any building on the new lots that are to the east. The way the house is laid out there really is no other place to put an additional garage.

Mr. Shea proceeded to review the criteria for the variance application for Mr. Falvey. **1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality:** The proposed garage would be architecturally compatible with the neighborhood and is well screened from the road and abutting houses. **(2) Whether granting the variance would threaten public health, safety or welfare:** The garage would be 200 feet from the roadway and would be of no threat to the general public. **2. The spirit of the ordinance is observed:** There remains sufficient distance from the proposed structures, which is the purpose of setback requirements. **3. Granting the variance would do substantial justice:** It would allow the applicant the ability to provide an additional storage area for vehicles and equipment that he is presently unable to keep out of the weather. Also, the garage would allow for storage of future vehicles and equipment that may come for the applicant and his seven children. **4. The values of the surrounding properties will not be diminished for the following reasons:** The proposed garage is screened from the

public and abutters' view and will be designed and used compatible with other structures and uses in 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:** Because of the location of the existing driveway, septic system, house, and pool, the only logical location for the proposed garage is in the northeast corner 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:** The setback requirement is to provide an adequate buffer and visual screen between residential uses. This proposal maintains an adequate buffer and visual screen between the abutting property uses. **ii. The proposed use is a reasonable one:** It would allow the applicant the ability to use his property and additional garages as others in the neighborhood are using their properties. **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:** To be able to access his doors in the new garage and allow an area for snow removal and storage, the setback violation is necessary.

Chairman Morin asked why so big of a garage to make such a setback on two lines? Mr. Shea replied it is a small lot, most of the lots in the area are about 1.1 acres, it is an older subdivision, it is a nice neighborhood, he would like to stay here long term, and he feels to be able to do that he would like to plan ahead and not have space and storage constraints in the future. Chairman Morin stated I just have an issue with such a big project tucked in a corner when you are pretty much on the property line. You are looking at 5 feet in two corners, how do you stay off the other property when it is being built? Mr. Shea replied it is possible, and obviously care must be taken. We would certainly delineate the property line, put up some type of temporary fencing so that we are certain and aware of where the line is. Mr. Swiniarski asked how many cars are going in this garage? Mr. Shea replied I think he has a boat, etc. Mr. Swiniarski asked how many bays is the garage? Ms. Elmer stated looking at the posted drawing; you can see two 2-car bays and then the three bays in the front. Mr. Shea replied I think the three in the front also open into open space. It is a big area, again, and it would probably fit seven cars, kayaks, the boat, lawnmowers, and the usual. Mr. Swiniarski asked and the existing house has a garage? Mr. Shea replied yes, it has a 2-car garage on the end.

Chairman Morin asked why not bring it up towards the house a little more like level with the driveway? It would give a little more space in the back and a little more space on the side to try to give some more space in the buffer. It doesn't have to worry about snow falling on the next door neighbor's property and it lines up a little bit with the driveway. Mr. Shea responded you could come a little bit forward then you just get into the angle of the lot line. If you go too far towards the pool, getting in and out of those doors and clearing the snow out could be a little bit of an issue, but certainly there is some room for movement. Mr. Swiniarski stated the problem is it is so hard to meet the variance criteria. How do we say this is a reasonable use; a nine car garage for a single family house. This is essentially building a second structure, a storage structure. It is very hard to make the

criteria with this. Mr. Shea responded if he had a 3-car garage and built a couple of sheds, he has a lot of kids and as they get older they will have cars. Again, he is looking at this long term from the discussions I've had with him. It is a nice neighborhood, it is a quiet neighborhood, so that is kind of the way he is looking at the long term plans. Mr. Swinarski stated I don't think it is necessarily a bad thing; in my mind a lot of these types of variances when you are encroaching into a setback, my primary concern is the neighbor to the north. In this case we know the neighbor to the north does not object but just the same, we are not a board of czars here who just say it looks good, let's do it. When we get to the deliberations, it is very hard for us to articulate the criteria that we need to without looking ridiculous. Mr. Shea responded and I agree, the effect on the neighbors is usually one of the primary concerns, and in this case as we had discussed, the neighbor to the north has worked with Mr. Falvey to adjust the line to accommodate a structure in this area, and with the abutters to the east there is substantial amount of open space. Again, is there room for a little bit of compromise in moving it. Mr. Swinarski stated or shrinking it. It is enormous. It's a seven car garage on a 1 acre lot. Chairman Morin asked what is the square footage of the house compared to the garage? It is just enormous. I am having a hard time finding any way to say this is okay; it is so enormous on a lot that is restricted, I understand that, but right up against the property lines. Mr. Jean stated I think it does question a little bit of the reasonableness. It is a small lot, and there was testimony that the design is compatible with other structures in the neighborhood, but I doubt there are other 1,800 square foot garages next door. I know there may be in the Town of Bedford but not in this particular neighborhood on 1 acre lots. 32 feet X 57 feet seems a little excessive to me, however, if it was able to fit on a lot and it didn't require any relief, that is a whole different conversation. But I think the fact that you are pushing it to the limits of the property line here, with 5-foot setback requests on two property lines, I think is a little bit unreasonable. I can understand getting into that setback to some degree, but I think there is the ability to reposition and to resize this structure, which would have much less of an impact on that setback.

Ms. Elmer stated there seems to be a lot of struggling going on with the Board. Would you like to table this so that you can have a chance to talk to your client? Mr. Swinarski stated that is an excellent suggestion. Mr. Shea replied I am getting from the Board that you are interested in working with this. There are a couple of severe issues. Unfortunately he had a business commitment and he is out of town, and I have discussed options with him. He would like this but I think if the Board were to table this, I could discuss a couple more options with him and it might be helpful. When I come back, possibly we can come to some type of term, and I appreciate the suggestion for tabling it.

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

MOTION by Mr. Green to move into deliberations on the equitable waiver application. Councilor Duschatko duly seconded the motion. Vote taken – all in favor. Motion carried.

(a) The violation was not discovered by any owner, former owner, owner's agent or municipal official until after the structure had been substantially completed: (b) The violation was not caused by ignorance of the law, misrepresentation or bad faith, but was instead a good faith error in measurement:

Chairman Morin stated Items (a) and (b) are moot due to Item (e) as it has been over 10 years. As he said, the structure was built 30 years ago and there appears to have been no enforcement. What we are looking at are Items (c) and (d).

(c) The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property: Mr. Swiniarski stated I think we can make that finding specifically because this particular property abuts land that will not be developed in the future, so I don't think it is likely that this can be found to create a nuisance for that rear property, which is the property that suffers from the encroachment. **(d) Due to the degree of past construction or investment made, the cost of correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected:** Chairman Morin stated that is definitely an issue with them being there for 30 years.

(e) OR, In lieu of the findings in (a) and (b) above, the owner may demonstrate that the violation has existed for 10 years or more, and that no enforcement action has been commenced against the violation by the municipality or any person directly affected:

MOTION by Ms. Georges that the Zoning Board of Adjustment grant the equitable waiver requested by Jeffrey Falvey (Owner) from Article III, Section 275-22.A and Table 1 in order to keep an already existing in-ground pool and pool house 19.8 feet and 8.9 feet respectively from the rear property boundary where 25 feet is required at 67 Ministerial Branch, Lot 9-1-51, Zoned R&A, for the reason that it has met all of the criteria for an equitable waiver per our deliberations. Mr. Swiniarski duly seconded the motion. Vote taken - all in favor. Motion carried.

MOTION by Mr. Swiniarski that the Zoning Board of Adjustment table the variance request of Jeffrey Falvey (Owner) for a variance from Article III, Section 275-22.A and Table 1 in order to construct an 1,800 square foot detached garage 5 feet from the side property boundary where 25 feet is required at 67 Ministerial Branch, Lot 9-1-51, Zoned R&A to the November 15, 2016 Zoning Board of Adjustment meeting, and this motion will serve as public notice. Ms. Georges duly seconded the motion. Vote taken - all in favor. Motion carried.

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

6. Peter & Dina Murphy - Requests a variance from Article V, Section 275-34.G(3)(b) in order to construct a 192 sf shed 5.2 feet from the rear property boundary where 20 feet is required at 1 Adams Green, Lot 38-10-22, Zoned R&A.

Peter Murphy, 1 Adams Green, was present to address his request for a variance. Mr. Murphy stated our lot is ½ acre located in the Greenfield Farms subdivision. You will notice from the plot plan that the house is surrounded on three sides by streets. As noted, I am requesting permission to have a 12-foot X 16-foot shed of 192 square feet to be located within 6 feet of the rear setback. The shed will be of like construction and color of the existing home, will have a pitched roof, and have asphalt shingles. Ms. Elmer received two notes today from abutters, and I have an additional one from an abutter at 2 Bailey's Green. The site was chosen to be the least objectionable to neighbors and as least invasive as possible to the neighbors; it is located between two groves of trees, and space from an existing fence is enough to allow access to that shed. The shed will allow us to park our cars in the existing garage and to protect the cars from the elements and make it more secure. There are other locations that it cannot be located because of an underground propane tank and a sewerage discharge tank and associated plumbing.

Mr. Murphy 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:** Sheds are common in the neighborhood as eight of my neighbors have sheds, and therefore, does not adversely affect the character of the locality and is also screened by trees. **(2) Whether granting the variance would threaten public health, safety and welfare:** The design and quality of the shed would not pose a threat to the public health, safety or welfare of the community. **2. The spirit of the ordinance is observed:** The ordinance will be observed because a visible buffer to adjacent properties will be maintained, and the chosen site is the least visible from the street. **3. Granting the variance would do substantial justice:** The shed would allow the homeowner to store lawn equipment, kayaks, paddle boards, and out-of-season lawn equipment out of site. **4. The values of the surrounding properties will not be diminished for the following reasons:** The shed is of similar design and quality of other sheds in the neighborhood and will match the color of the existing home. The shed will also help hide a utility trailer. **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:** Due to the location of the house, existing fence, existing trees and fruit trees, compliant locations would not allow access to the shed with lawn tractor and other compliant locations would be more noticeable from the street. **ii. The proposed use is a reasonable one:** The proposed

use is a reasonable one because the shed will be less noticeable from the street, it will help keep the neighborhood clean, and the homeowner's association has already approved of the location.

Chairman Morin stated I have three letters from abutters and all have no objections to the plan. They are from Philip Alexacos, 6 Bailey's Green, Yvonne and Brett Jaffe, 1 Bailey's Green and Danny Todd, 2 Bailey's Green. These letters will be included in the file in the Planning Department.

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

Beth Fitzgerald, 3 Adams Green, stated I am the abutter that would be closest to this shed, and we have no problems with the shed being built. We fully support the shed being built where it is proposed to go. As you can see, the Murphy's live on a property where three sides of it are on roads and they really have no privacy to their backyard. The location that they are proposing is probably the best spot for any privacy of this shed, of not being so visible from the road, and with myself being the closest abutter, I don't have a problem with the shed's proposed location due to fact that there are trees and bushes between our two properties, which will help to hide the shed.

MOTION by Mr. Green to move into deliberations on this application. Ms. Georges 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. Jean stated I think we heard testimony that there are a number of residences in this cluster neighborhood that have sheds, so I don't see where it would impact the character of the locality. Mr. Green stated and the association has given its blessing. **(2) Whether granting the variance would threaten public health, safety and welfare:** Chairman Morin stated it doesn't appear that it would. **2. The spirit of the ordinance is observed:** Chairman Morin stated the ordinance is for enforcing buffers. They are small lots, there are not a lot of other locations to put it, and you have the direct person who is affected by it here testifying that she is in favor of it. Mr. Green stated and three streets make it sort of unique as far as exposure. **3. Granting the variance would do substantial justice:** Mr. Swiniarski stated residents need places to store things and this shed will help the applicant with that. **4. The values of the surrounding properties will not be diminished for the following reasons:** Ms. Georges stated we have heard no testimony that it will diminish property values in the area. **5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area:** Mr. Jean stated this particular parcel is abutted on three streets requiring setbacks on all of those streets and adding additional constraint to the lot, so I think some relief is within reason for that. **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. Jean stated the purpose is for a buffer and I think we are maintaining a buffer and it is ample to provide maintenance and circulation around the shed. We have not heard any opposition during testimony tonight. **ii. The proposed use is a reasonable one:** Chairman Morin stated a shed in a residential neighborhood is reasonable.

MOTION by Ms. Georges that the Zoning Board of Adjustment grant the variance requested by Peter and Dina Murphy from Article V, Section 275-34.G(3)(b) in order to construct a 192 square foot shed 5.2 feet from the rear property boundary where 20 feet is required at 1 Adams Green, Lot 38-10-22, Zoned R&A for the reason that it has met all of the criteria for a variance per our deliberations, with the condition that the applicant supply the Planning Department with a certified plot plan within 30 days of completion of the shed. Mr. Swinarski 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 Duschatko duly seconded the motion. Vote taken – all in favor. Motion carried.

New Business: None

Adjournment:

Motion by Councilor Duschatko to adjourn the meeting at 8:20 PM. Mr. Swinarski duly seconded the motion. Vote taken – all in favor. Motion carried.

Respectfully submitted by
Valerie J. Emmons