

**TOWN OF BEDFORD
November 15, 2016
ZONING BOARD OF ADJUSTMENT
MINUTES**

A regular meeting of the Bedford Zoning Board of Adjustment was held on Tuesday, November 15, 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), Sharon Stirling, Chris Swiniarski, Gigi Georges, 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. Councilor Domaingue Murphy and Alternate Len Green were absent.

Minutes – October 18, 2016:

Amendment: Page 4, last paragraph, midway down the paragraph, “move challenging” should be “more challenging.”

MOTION by Councilor Duschatko to approve the minutes of the October 18, 2016 meeting of the Zoning Board of Adjustment as amended. Ms. Georges duly seconded the motion. Vote taken; motion carried, with Ms. Stirling abstaining.

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

- 1. Jeffrey Falvey (Owner) – Requests a variance from Article III, Section 275-22.A & Table 1 in order to construct an 1,800 sf 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. (Continued from October 18, 2016)**

Ms. Stirling recused herself from this continued variance request as she was not present at the October 18, 2016 Zoning Board of Adjustment meeting. Mr. Duhaime was appointed a voting member for this variance application.

Jeffrey Falvey was present to address his variance request continued from the October 18, 2016 Zoning Board of Adjustment meeting.

Mr. Falvey stated as you can see from the plan, what I would like to do in the top left corner of my lot is put in a detached garage, and it is my understanding that probably what you are looking to vet through and assess is what impact does this have on the neighborhood and the neighbors and the overall look and feel of the community. I have

thought about that very carefully in collaborating with my neighbors and obviously as you can see from the posted chart, the only folks that it would impact in any way are the existing house to the left, who are my neighbors Kevin and Marlene Shea. Before I ever started this I talked to them about it, they have seen all of the plans and all the blueprints and everything. They feel that they are actually gaining from this because we are adjusting the property line on the frontage to the right so they will have more frontage and, in fact, more woods and protection and privacy for their own lot and then where the garage is proposed it is just raw land and woods. It is not really impacting anybody from a visibility standpoint. We could have done it smaller, pushed it more to the right so it had a greater variance and pulled it up, and it is not obvious from this chart, but actually that would make it more visible to the neighbors because, you can't see it on the chart there but there is a very thick wood line, behind the swing set you can see where the garage would be. Then if you look at the front, you can see the boat from the top of the driveway, the outer edge of the garage would just be visible from behind that boat. That picture was taken a few days ago with the leaves down, it is barely visible, it is 200 feet from the road and I think it is going to benefit all of our neighbors because, as I mentioned in my note, my wife and I have seven children and they are getting older, so the last thing I want is a cluttered driveway with a bunch of cars. We already have four cars, we are going to have more as the kids get older, and we just have things that I would like to be able to store in the garage, and to just have a nice clean, well-organized property for the benefit of myself and my neighbors. I have tried to be very thoughtful on the architecture and make sure it fits in with the house and also to make sure that the garage is as low as possible. I don't want to build this 2-story monstrosity. I designed scissor trusses; I have a boat that is about 12 feet high and I wanted to make the roof as low as possible but still be able to fit the boat in, so through that middle garage door that is possible and have done so through these scissor truss designs, otherwise I would have had to make the walls about 12 feet high and then make the roof an A-frame above that, and, again, I want to make it as low profile as I can. To summarize: I have a lot of stuff, a lot of kids, I want a well-organized property and I want to make sure that my neighbors are not impacted in a negative way whatsoever. I have had no complaints; in fact, from compliments from my neighbors that they think it would be a really nice project.

Chairman Morin stated we went through all of the criteria last month.

Mr. Swiniarski stated I don't think anything has changed since what we talked about last month. It may be helpful for you to go through the criteria from your perspective because I know we had a little bit of a hang-up on making some of those findings based on what is being proposed here. In my mind the criteria of the use being reasonable is difficult. I understand everything you are saying and it is great that the neighbors are in agreement and the design works for your particular needs, but a variance is not just a decision we can make by saying we like it and it is good enough. It takes more than that. There is a criteria and it is very difficult for us to say that it is a reasonable use to go into the setback so that this 1-acre lot can have a nine car garage or whatever it is. Mr. Falvey stated it would depend on the size of the vehicle. For the size of our vehicles, it would probably be a 6-car garage, but it is multiple vehicles for sure. Mr. Swiniarski stated I thought it had six additional bays and there is a 2-car garage with the house already. Is that correct?

Mr. Falvey replied that is true. We can't fit our Suburban in the existing garage. Mr. Swiniarski stated it is difficult to come to that conclusion. It is hard for me to sign my name to something that says it is reasonable to go into the setbacks because we need to add a 6-car garage on a 1-acre lot. That is very hard to say. Chairman Morin stated it is a very big building and the hard part for me too is that you are encroaching two property lines so close. If we get enough snow, snow coming off of that building ends up in your neighbor's yard, or two neighbors' yards depending. It is automatically encroaching on your neighbor right off the bat, and that is something we have to look at and be reasonable about, and that is one of my major issues, which is that the building is so close.

Mr. Falvey stated I'd like to address those two points. Regarding encroaching two neighbors if we could post the plot line plan first. If we are looking at this plan first, I believe the top of the chart is to the east and to the left is to the north, the "neighbor" to the east at the top of the chart is completely undeveloped land. It was acquired a year or two ago by a developer and they are building three or four houses way back in the woods nowhere near that line. When I first thought of this, I went to the office above the police station and they told me no one will ever build back there, that it is just completely woods. I can't even see another house from there even with the leaves down. So in regard to a "neighbor" back there, there really isn't one. He even said you could take it all the way up to the lot line because that will just be open land and it will never be developed. So that one I don't think is a concern from an encroachment on a neighbor standpoint. The second one to the north, that is all just raw woods as well. The neighbor's yard is kind of denoted by the squiggly line and that is really where their grass is and that is all raw woods. They will barely be able to see it as well, and, again, we have gone through this with my neighbors and they are totally fine with this setup. They don't feel that any snow or any runoff or anything would have anything to do with their yard. Again, I am very sensitive to that. I don't want to do anything that would impinge upon anybody. I feel that it is covered with that. If there was somebody right behind us, sure, it would probably be a different story plus if there weren't any trees there. To Mr. Swiniarski's point, I am having a hard time understanding what you are asking for. Did you want me to walk through the bullet points in the criteria and talk through them? Are you trying to gauge what is reasonable? Mr. Swiniarski replied there is a set of criteria which you have in your application. We did get the explanation of the criteria from your engineer and that is fine if you want to rest on it. Mr. Falvey responded I don't think I should rest on it because it seems like there is still some concern. Mr. Swiniarski stated I thought maybe you wanted to expand upon those a bit.

Mr. Falvey stated in summary, with regard to what is reasonable or what is normal; I guess if there are some aspects of me and wife that aren't normal. Mr. Swiniarski responded it is not about you, it is about these criteria and that is why I brought it up. I can appreciate what you are explaining about your life and that is good, but the variance criteria exist because this goes beyond your life. Ms. Elmer stated variances are based on the land not the lifestyle of the person that is using the land because these go on in perpetuity through multiple property owners. Mr. Falvey asked which criterion can I zoom into? Mr. Swiniarski replied I think it is best to run through all five of them for your own benefit. You don't have to because your engineer did go through them. Mr. Falvey asked but you are

still not satisfied based on the engineer's explanation? Chairman Morin responded it is your chance to give that additional input if you have any.

Mr. Falvey proceeded to review the criteria for his variance request. **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:** You are trying to get an understanding of how it would not be contrary to the public interest? Chairman Morin replied yes. Mr. Falvey stated the reason why it would not be contrary to the public interest and, in fact, beneficial to the public interest is that it is going to be a better organized and safer area. If I don't build this garage, I am going to have a bunch of cars in the street parked on the curb. I have a huge family; we have people over at our house at all times. We also live at an intersection where Stonehenge Road intersects with Ministerial Branch right at my house, so there are cars constantly going in and out, and if you have cars parked at an intersection, it is just more dangerous. I have had cars parked there and have had my kids come down the driveway and it is a blind spot. There is also a curve right before our house. It actually benefits the public interest because there is going to be fewer cars on the street. I also believe that it is not contrary to the public interest because it will make the neighborhood more attractive. Our neighbors will benefit from it. If I have a driveway as it exists, which is too small, no storage, I'm just going to have clutter and have cars all over the place and my stuff outside and that's just not an appealing visual from both myself and my neighbors. I believe it is not contrary in any way. It is barely visible from the street. It is not like anybody would drive by and say what is that. It probably wouldn't even catch their eye. **(2) Whether granting the variance would threaten public health, safety and welfare:** For similar reasons as stated above. I feel I have covered a few of those points, and I actually think it would make things safer for my family and for other kids and people walking down the street as there will be less vehicles in the street. **2. The spirit of the ordinance is observed:** There were no comments from Mr. Falvey on this criterion. **3. Granting the variance would do substantial justice:** I think I am being a little redundant here but I believe it is the same answer. I do believe it would do substantial justice because it would increase safety and the visual appeal of the neighborhood. Not for just myself but for my neighbors, especially my neighbor who is right next to me who is going to get more road frontage. The value of his and her home will actually go up. I am not a real estate guru but I understand that if you have more frontage that is generally a positive thing for a property. **4. The values of the surrounding properties will not be diminished for the following reasons:** Mr. Swinarski stated these criterions do frequently overlap. Mr. Falvey stated I believe this criterion is the same reason. I do believe that the surrounding properties will not only not diminished but enhanced. Again, I have shown the plans to my neighbors, I have no objection from any of my neighbors, I don't believe any of them are here tonight, and if they are, they are welcome to speak up. **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:** If I want to do this, this is really the only spot. In fact I inquired on buying some land that is to the east that is at the top of the posted chart, and I understand it just wasn't feasible given all of the other zoning and ordinances and everything with the neighborhood that is being built there, so I couldn't buy that land, so this was really the only spot to do it. Again, I am willing to be

flexible there but it looks like that wasn't feasible. Also, again, my wife insists on driving all of our kids to school, she can't fit her vehicle in the garage so she has to get out there every morning in the winter and scrape the car off when I am traveling on business and having it in this garage would be really nice. The same is with my other children who have their licenses. That is not exactly a hardship but that is one minor item. **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:** I don't need this for any commercial purposes; it is just for my own residential benefit. I would consider moving though if I can't do this. I might end up moving to a property that would allow me to do this, and that would be a hardship and be very expensive. **ii. The proposed use is a reasonable one:** Again, I just believe it is reasonable because it allows me to do what I want with my home and my property and doesn't inhibit anybody in any way. I have tried to be very respectful of my neighbors and make sure that it is totally okay with them, which it is, and, again, I believe they actually benefit from it, especially my neighbors to the left, Kevin and Marlene Shea, because they will have more road frontage. I have also let them know that if there is ever any need to have additional privacy, I would be happy to put up landscaping, trees, shrubbery, etc., because if you looked right in between our house and theirs, it is actually a little bit more sparse and open where there is more visibility. The proposed structure is set further back where the woods are very thick, but if they ever wanted me to put up shrubbery or something to help with their privacy, I am happy to do that.

Mr. Falvey stated I don't know if I have just been redundant here and repeated what was already stated. Mr. Swiniarski responded no; it is helpful to have your perspective. I think it was good for you to go through those.

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.

Councilor Duschatko asked is there any possibility in reducing the size? Mr. Falvey replied I thought about that, but, again, with the size I was hoping for a 12-foot clearance on the door in the middle and we designed for that and designed the scissor trusses to allow for a lower roof with a bigger door. If we shrunk it any further, the clearance would be reduced and I wouldn't be able to fit my boat in and it would really defeat the whole purpose on why I thought to do this in the first place. So if I couldn't do something with that 12-foot clearance, it is probably not even worth doing because I couldn't fit my boat in in the first place. That is why I had the idea from the beginning.

John VanHouten, 49 Seaton Drive, asked how old is this lot? Mr. Falvey replied the house was built in the mid 1980's; I think it was 1986. Mr. VanHouten asked what were the requirements of the lots back in that year? Ms. Elmer replied I don't know. Mr. VanHouten asked what is the requirement of a new lot today? Ms. Elmer replied 1.5 acres roughly with 150 feet of frontage. Mr. VanHouten asked is this lot 1.5 acres? Ms. Elmer replied no. Mr. Falvey stated it is 1.1 acres. Mr. VanHouten asked what is the size of the house in square footage? Chairman Morin responded it is the proposed garage that we are

dealing with. What we are looking at is a setback issue, so that is what we are dealing with. Mr. VanHouten stated but the lot is 1 acre and the new lots today are 1.5 acres. The sideline is 25 feet and the sideline is being brought down to 5 feet. What kind of a can of worms will be opened up by the existing homeowners in Bedford who have an acre lot who want to expand their property by a larger addition away from the main building, which will affect the neighboring homes? The reason I ask the question is because I am confronted with a future proposal from a neighbor. Having said that, the complexion of the Town has changed dramatically, but I would call the Board on the carpet for changing the old rulings because you are changing something to a new ordinance, which is 1.5 acres. This is not a 1.5 acre property, it is an acre, and I see nothing but trouble going from 25 feet to 5 feet for personal satisfaction. My suggestion is that the building for the additional garages be affixed to the property. I think I heard that he wants to give a certain amount of feet to a neighbor and the neighbor is not here this evening. But as a resident and a taxpayer of the Town, I am concerned with the acres that are buildable and I am also concerned because of when I built my house 45 years ago. I knew what the requirements were and you can't expand on your property just by saying that your neighbor can lose 20 feet, and you can't encroach upon somebody's property by going from 25 feet to 5 feet. I also understand from what I heard from Ms. Elmer is that this is something that is going into the future but it also reflects on everybody who is in this building tonight, because their property is in jeopardy by their neighbor asking for a variance. I think the variance ideas back 40 years ago were very sound and they should be sound today. My suggestion would be denial.

Mr. Falvey responded this gentleman has his lot and his neighbors; I have my lot and my neighbors. If my neighbors had any issue or felt impinged upon in any way whatsoever, I wouldn't even be here tonight; I wouldn't even bother going through his process. Sir, you might feel that in your scenario you would be impinged upon and there is some can of worms scenario. If there were a future similar proposal to this and a neighbor said I don't like this, of course it would be denied because the neighbor has every right to ask for that denial. If my neighbors were here and they said I don't like this, case closed. I don't believe someone else has the right to tell me that this is wrong because of some other area in his town. This is my property and my neighbors and we are all good with this. If that gentleman has issue with something going on with his property, he has every right to refute it and I am sure that you will deny it because he has the right to do so. Mr. Swinarski stated I just would like to clarify. To some extent you are both right and to some extent you are both not quite right. We have regulations for the setback that it has to be X number of feet, you can vary from that regulation and that is where we get the word variance, not if your neighbors say it is okay, not if this board thinks it looks great or it is a great idea or we like your smile, none of that matters. Those five criteria matter and that is why I had you run through those; that is the only legal way we can say yes to this is if we can make the findings required by these five criteria and say that we made those findings. It doesn't matter what the neighbors say unless we think the neighbors' opinion matters for these criteria. Mr. Falvey stated thank you for that clarification.

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

1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality: Chairman Morin stated I think it definitely does not meet that only because, yes, somebody might have an unattached garage, but this is 1,800 square feet and that is not a norm in the locality. Riding through the neighborhoods up in that area I have seen nothing close to that. **(2) Whether granting the variance would threaten public health, safety and welfare:** Mr. Swinarski stated I don't see that this variance would really threaten public health, safety or welfare. There is always the slight chance that it could. I found it interesting that one of the arguments was that this would enhance safety, but I don't think we have the right to create safety issues just because we don't have a variance, so I don't think that is really a valid argument. But I don't think we fail on that. Ms. Georges stated I don't think it threatens public health, safety or welfare. **2. The spirit of the ordinance is observed:** Chairman Morin stated I have a hard time with the spirit of the ordinance being observed due to the size of the setbacks and the size of the building that are right on those lines. The spirit is to have the distance, to have the buffer, and there is definitely no buffer here and especially it would impinge. Councilor Duschatko stated I think in this case there is a buffer to the east but that buffer doesn't come from the setback line, it comes from the development behind it. I think that is sort of out of the spirit of the ordinance. Mr. Swinarski stated that is for one of the abutters. With the abutters to the north the buffer only exists if the abutting property chooses to maintain the buffer or keep a buffer. I don't see how we are observing the spirit of the ordinance if we grant this. Councilor Duschatko stated it is also created by the lot line adjustment, which we don't know where the original lot line is from this map. I would assume when he made the adjustment to give them more frontage that he got the back side. Mr. Jean stated additionally, I don't think they displayed any consideration on repositioning or resizing. I think there is an opportunity to do that and either lessen the encroachment or eliminate the encroachment. **3. Granting the variance would do substantial justice:** Mr. Swinarski stated in this context granting the variance will grant convenience to the applicant, but when we think of substantial justice, I think we have to think of it as not granting the variance would be unjust if we are going to find that granting it would be just. Ms. Georges stated I think I would just pick up on that; we also try to think of this in relation to the loss or the injustice to the applicant in relation to the potential gain to the public, and I think we have to consider both sides of that coin. In that context, we can't just think of it in terms of that inconvenience or that injustice on its own. Mr. Swinarski stated I agree. **4. The values of the surrounding properties will not be diminished for the following reasons:** Chairman Morin stated we didn't get any expert input considering this issue. **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. Swinarski stated here, when you think about the testimony that we have heard, there are no special conditions of the property. There may be special conditions of the applicant; that is the gist of the testimony we have heard that has been focused on those special conditions but not actually anything special about the

property. Indeed when we look at the property I don't see anything particularly unique about it, it is a slightly small lot but it is not sufficiently unique or distinguishable from anything really. Councilor Duschatko stated that whole neighborhood basically has lots of that size, so it is not unique that it is smaller than the others or it is unique that it is bigger. Mr. Jean stated and there are not any slopes or wetlands or other things that are unique about that parcel that are forcing this to be encroaching the setback. Again, I will restate, I think there is the opportunity with this lot to reconsider positioning it to lessen the impact or eliminate the impact. **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 and runs parallel with our discussion of the substantial justice component. We are not really finding that there is any particular issue here for what would be deemed a reasonable use of the property. What we are finding is that this is merely a request for convenience. **ii. The proposed use is a reasonable one:** Chairman Morin stated personally I don't think it is a reasonable one due to the size of the building. Mr. Swiniarski stated it is hard to attach your name to that. Chairman Morin stated like Mr. Jean brought up, which we talked about last month too, of moving or downsizing or doing something to fit it a little better into the allowable area, but something that big is not reasonable in that type of neighborhood. Just looking at what was written on the application to allow an applicant the ability to use his property, an additional garage as others in the neighborhood. As I brought up earlier, I don't think there is a 1,800 square foot garage in that area that I could see driving through it. Mr. Duhaime stated there is also a maintenance component with it being that close to the property line, where there could be a good chance that when you are raking the roof, you are probably on your abutter's property doing that.

MOTION by Mr. Swiniarski that the Zoning Board of Adjustment deny the request made by Jeffrey Falvey (Owner) for a variance from Article III, Section 275-22.A & 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, for the following reasons per our deliberations:

- 1. The spirit of the ordinance is not preserved as the spirit of the ordinance, the setback requirement, is to create some sort of buffer between one property and another and here we are finding that the proposal unreasonably encroaches into that buffer and diminishes it to the point of being almost non-existent.**
- 2. We also do not find that granting the variance would do substantial justice because we have found that in this case there is really no injustice by not granting the variance, so there is really no way to find justice here if not granting the variance does not create any injustice.**
- 3. We do not find that literal enforcement of the provisions of the ordinance would result in a unnecessary hardship because the Board has specifically found that not granting this variance does not result in any significant hardship other than an inconvenience for the particular use or desired use or lifestyle of the applicant but not in fact the property. We**

did not find that there is anything unique about this particular property that would be significant enough to warrant a variance.

4. The Board did not find that this was a reasonable use. The magnitude of this proposal on a property like this is simply not reasonable.

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

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

Ms. Stirling returned to the meeting.

2. Old Bedford Road Realty, LLC – Requests a variance from Article III, Section 275-10, 275-21 and Table 2 to permit a mixed use development, with commercial uses, ten workforce housing units (not age restricted) and elderly housing with single family homes, multiplex homes and apartments in the Residential and Agriculture Zone where it is not a permitted use at 18 & 20 Olde Bedford Way and 24 Old Bedford Road, Tax Map 10, Lots 50-3, 50-5 & 50-6, Zoned R&A.

3. Old Bedford Road Realty, LLC – Requests a variance from Article III, Section 275-21 B.(2)[1] to permit a reduction of affordable housing units from 25% to 10% and to permit the units to not be age-restricted at 18 & 20 Olde Bedford Way and 24 Old Bedford Road, Tax Map 10, Lots 50-3, 50-5 & 50-6, Zoned R&A.

Attorney Karen McGinley, Devine Millimet & Branch, Chris Rice, T. F. Moran, and Gary Beaulieu, Old Bedford Road Realty, LLC were present to address this variance request.

Mr. Rice stated I will give a quick project overview. The site is approximately 19.5 acres; it encompasses three existing residential properties that each currently has a single family residence on them. Just looking at the overall plan to place the development, to the south of us is the Bedford Grand Hotel, to the west are residential abutters that live off from Arrowhead Drive, to the north we have a few residential abutters along Galloway Drive, where this lot is a residential home with a home occupation use for a landscaping business, then the Bedford Hills development to the east, then a little further to the north on the right is the Bedford Animal Hospital, and the school as you go further up the road.

Mr. Rice continued I did want to touch base on the property itself. I prepared this plan to give you an idea of the grade change throughout the property. From Old Bedford Road to the back property line we have an approximate 80 foot grade change and then from the rear property line of our property to the closest residential house along Arrowhead Drive, it is approximately another 120 to 130 foot elevation change, about a total of 210 feet from this location to the road.

Mr. Rice stated we did go to outside consultants when we were starting this project to basically have a market analysis done to see what is the highest and best use of the property, what the demands are in town, and basically what we are proposing is what that market analysis showed. In the front section of the lot we have called for a 7,000 square foot fitness facility, which is intended to be yoga classes, tie chi classes, really to compliment the residential aspect of the project. We have also called for a 13,000 square foot retail complex, which would include what we are thinking is stores like a provision store similar to Angelino's in Manchester where you can pick up homemade breads and sauces, we are also thinking about a flower shop and a tux rental and photography studio that might compliment the wedding operations to the south of us, and based on the meeting that we had with the neighbors, we have agreed to not propose any fast food restaurants, nothing with a drive-thru and no pet or dog grooming to not compete with the animal hospital down the road. The project also includes two 36-unit apartment buildings for elderly housing, it does have covered parking underneath both of the buildings, and there are 32 single family cottages for elderly housing, which is proposed to be a mixture of duplexes and singles. The 10 workforce housing units that were discussed would be above the commercial businesses. The proposed road is coming off from Old Bedford Road and that road is approximately 1,000 feet long right now. We have provided a minimum of a 50-foot buffer around the property where we border everything except for the Bedford Village Inn, which is a commercial use on that side.

Mr. Rice continued we do feel that this is in keeping with the spirit or the intent of the Town Master Plan. This site is not specifically noted as one to become a commercial property but our understanding of the intent of the Master Plan is to increase the tax base and increase the commercial property where it is practical and where it makes sense to do so. We do have access to sewer and water with this property, we have close proximity to Route 101 and the highways, and we felt that it was a reasonable development for this lot. We have submitted a variance application for two variances for this project, which Attorney McGinley will review those. For the sewer and water we did have to extend the water up Olde Bedford Way to loop the main to Old Bedford Road. We had to do that work in advance because of the moratorium. After that road was just paved we would have had to wait five years; and similarly with sewer, we did extend sewer just to our property line from the Bedford Village Inn before they completed that project because once that was completed, we would not have been able to extend the sewer line. We are working with the Sewer Commission to attempt to get the project serviced by sewer. Part of that is that we are not in the sewer district but we are working to remove the existing pump station that is associated with the Bedford Village Inn that is in the right-of-way along Route 101 that currently pumps to a gravity manhole that is at the Constitution Drive/Old Bedford Road intersection and we would be, as part of this work, removing the pump station and installing a new public gravity line from the Bedford Village Inn to the existing gravity line right in front of Constitution Drive.

Mr. Rice stated we did submit to the Planning Board some preliminary elevations, and I will show you those to give you a flavor of the project. We were thinking this first one is for the commercial aspect that was in the front, now is an elevation view of what we were thinking of for the two apartment buildings that are in the middle of the site, and then also

in the packet were two options for the cottages where they just had some different features relative to colors and pitches on the roofs in certain locations. We have gone for a colonial style, peaked roofs with traditional trim details, shutters, etc. We also had submitted some 3D models to help people, as sometimes those plans don't give an accurate representation of how the development will look on the property, so we hired a firm to actually do some 3D modeling for us. This view is from Old Bedford Road looking straight towards the rear of the property towards Arrowhead Drive, then an aerial shot from the Old Bedford Road/Olde Bedford Way intersection up in the air kind of looking towards the corner of Arrowhead Drive and Galloway Lane, now posted is kind of super-elevated looking down on the project to get a feel for the layout and the green space that is associated with the project. At our neighborhood meeting there were some concerns about lighting for the project, so we had a night view done for the project. This slide might not be dark enough, and I think the actual pdf's I submitted to the Town are more accurate for what you are looking at. We did have an expert put together a night view of the project, and I apologize to the crowd that it doesn't show up very good on the screen, but if you look at it on the computer screen, they did take some time to do this. What we have proposed for lighting are the same poles and the same fixtures that are used at the Bedford Grand Hotel, so we gave those light specifications to this modeler and this is 98 percent accurate. This is basically as accurate as you can get it for what the lighting would look like at night using those fixtures, which is what we are proposing. We also had an alternate night shot from the front looking at the first commercial building. If any of the abutters would like an actual imagery shot, I would happy to send it to anybody that would like one.

Mr. Rice stated we also did some drone shots because we know that there were some concerns from the abutters of what they would see. We hired a drone company to do some photos. What is posted is shown from the property directly behind us on Arrowhead Drive and this is 117 feet above their finished floor. If you look out into the property, you can barely make out Mr. LaPointe's barn, which is the corner of our property as shown, then we superimposed in the development on the same shot. These drone shots were taken two or up to three weeks ago, when some of the leaf cover was down. This shot is from approximately where the apartment building would sit but 100 feet looking back towards Arrowhead Drive, and you can see the one house on the hill. Then the same shot from 40 feet up, which is the height of roughly the apartment building. You can just make out the roofline behind the vegetation.

Mr. Rice continued what we also submitted to the Planning Board was that we had a fiscal impact study prepared and it showed a positive fiscal impact of \$830,000 to the Town, plus an additional \$11,000 in estimated ambulance revenue. We will have to update that report should things move forward because when that report was prepared, it did not include the 10 workforce housing units. That was the only thing that was not included, so there would be a slight adjustment to the fiscal impact due to that item.

Mr. Rice stated as I mentioned, we did have a neighborhood meeting before we went to the conceptual Planning Board hearing. The concerns we heard there were visibility of rooftop equipment, the density, construction noise, lighting and noise pollution, delivery

hours, etc., and again, we had promised to do no drive-thrus. We are kind of in the conceptual stages for the actual site design but we will take everybody's comments into consideration during the actual site plan design and do everything we can for the landscaping and lighting, etc. And to add to that, my client is a long-term Bedford resident, he has been here 30+ years and his intent in doing this development is for himself to downsize from his larger Bedford home into this development. It is my understanding there is a need for people in town that are starting to downsize and looking for somewhere in town to go and this would fit that demand.

Attorney McGinley stated I represent the applicant, and I have lived in Bedford for 31 years and I am one of those people who has downsized. I have had two single family houses, traditional 1.5 acre lots, and have downsized to Village Green. There is high demand; those houses turn over very quickly and I know that this development would be a success and would bring taxes to the Town with very few impacts on the cost to the Town. For the first variance, this is a residentially zoned property but the residential portion of it and the commercial portion would be considered a commercial use so that is the first variance. The 2010 Master Plan in Bedford discussed the public need for a wider variety of residential developments in Bedford, and I think this would help satisfy that requirement. The use by Old Bedford Road Realty for the homes and apartments, all of which will be condominiums to be sold to purchasers, would increase the Town's housing supply with those units having very little impact on the schools. The Old Bedford Road Realty lots would further improve the general welfare of the community because it would increase the tax base from the development on this land. Additionally, as stated a moment ago, this would satisfy a condition of the Master Plan.

Attorney McGinley proceeded to review the criteria for the variance to permit a mixed-use development in the Residential and Agriculture Zone where it is not permitted. This property is not zoned for this use, it is zoned R&A and this request is that it be zoned commercial. We will, as a condition of approval if it zoned commercial for this use, put a restriction similar to the restriction that was put on the property owned by Bedford Carnevale, the land next door, because the land behind the Bedford Grand is residential also, and when the zoning was changed, there was a restriction placed on that, so we would do something similar to that as a requirement from the Planning Board. We are proposing to do 10 workforce housing units that will be above the commercial properties.

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: This property sits at a crossroads. It is bordered on two sides by heavily commercial property, nice, but commercial property. To the south are the Bedford Village Inn and the Bedford Grand Hotel, to the east is the Bedford Hills project with the multitude of uses on that project, which has been great for our tax base, to the north are two residential properties, with the one that is closest to the road is also used for a home occupation. There is a single family home at the back of the property, which would abut the residential portion of this development. It is my understanding that that house is over 100 feet from our property line and for both of those in the planning process we will propose additional vegetation screening so that they will not be impacted by this property. **(2) Whether granting the variance would threaten public health, safety and welfare:** The granting

of this variance would not threaten public health, safety or welfare. It is built close to commercial uses, close to a lit intersection so traffic in and out of the property would be governed by that and should not impact the neighborhood. I know that there is a lot of traffic on that road but the elderly portion of the houses generally will not have as much traffic in and out of them and it would be shown at the Planning Board what the trip generation would be and it would be to the satisfaction of the Planning Board. The commercial uses on the front of the property would bring that front lot into conformity with the property to the south and to the east, and would be a good transition between the residences in the back, both the apartment style condominiums and the house condominiums. This property is zoned R&A but I would think that having a house at the front of that lot, which is a good portion of it, would not be a very desirable place for someone to build a single family home given the commercial uses that surround it. We have done a good job in Bedford of getting a mix of uses in areas where it is appropriate and I think this is another area that is appropriate for that. The back of these lots, again, is age restricted so there should be little impact on the schools. It was raised at our conceptual hearing before the Planning Board that there could be 55-year-old people with young children and that is a possibility, so we are not restricting children, it is just not likely that they would move here or if they do have some, there would be fewer of them. Baby boomers are aging; it is a sad fact but we are, and this will allow a good development, increase the tax base and allow for movement within the Town for more of those of us who live in the town and want to stay here. **2. The spirit of the ordinance is observed:** The purpose of the ordinance is to promote the health, safety, and general welfare of the inhabitants of Bedford. The variances requested are consistent with the purposes stated in the Zoning Ordinances because the variances conform both to the commercial nature and the residential nature of the surrounding properties. We have here a set of properties, currently single family properties, that are at a crossroads between our commercial developments to the east and to the south and the residential developments to the west and to the north, so this is a good blend in an appropriate use of this property. Permitting elderly housing for those who wish to downsize but remain in Bedford will provide a much needed location for these apartments and condominiums. **3. Granting the variance would do substantial justice:** Substantial justice would be done by granting this variance. The New Hampshire Supreme Court has stated that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The general public here, the public of Bedford, will benefit by the fact that we will be generating about \$830,000 in taxes and that will be a great benefit to the Town and will put few burdens on the largest expenditure of our tax dollars, which is the schools. By granting the variance substantial justice will be done also because the residential properties to the north can be screened and the properties to the west have little view of the project except for the property in the front. As you can see, the proposed commercial development is colonial in nature and design and will be in keeping with the area. The general public will not gain from the denial of the variance; they will lose the benefit of increased taxes without burdens and would likely have a development that has homes that would be hard to sell because I can't imagine someone wanting to build a house right next to these commercial developments. Again, it would be a fulfillment of the 2010 Master Plan to have an increased commercial use in the Town. **4. The values of the surrounding properties will not be diminished for the following reasons:** No diminution in value of the

surrounding properties would be suffered. The aerials that were done by my client from the hill above showed that there was very little view of most of this development, and the portion that can be seen is a colonial style development, which is really in keeping with the property. If you look at the view to the east beyond this property, what you see is a highly commercially used property with a mix of uses on that, as we all are familiar with the Bedford Hills property. I would like to say again that the applicant in the planning process will be committed to plantings on the properties to the north, which are the closest residential properties to this site and would have the most risk of view of this property. If the variance is granted for commercial uses, we will limit it, as Mr. Rice has described and as the Planning Board will approve, for this particular site. The property will have a deeded restriction that we will agree upon with the Planning Board that would limit it to these types of uses so that there is not a risk of a higher or denser commercial development at the site.

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: For the purposes of this paragraph, unnecessary hardship means that owing to the special conditions of the property that distinguish it from all other properties in the area. There is no fair and substantial relationship between the interest of the general public and the purposes of the ordinance and this specific application. As I have said before, this is a unique piece of property bordered on two sides by commercial development and on two sides by residential. So this is a very good transition property, the commercial is right on the road and the residential is behind that. The 10 workforce housing units will be built above the commercial space and that is not intended to be age restricted, so I can't tell you that there would be no children there but they will be of a size and nature that we believe will appeal to millennials. I have millennial children and I have watched that generation and they aren't buying houses and moving into homes as we did as we were growing into our families, and I think that that would be a good transition for millennial use in that spot. They will be workforce housing so the cost of them will be set by the Manchester region HUD numbers that govern Bedford, which are different than some of the surrounding towns to our west and south, so the rate will be a good rate. The variance will not injure the rights of the public. Except for the traffic that will be on Old Bedford Road, and I can't say that there won't be more traffic on Old Bedford Road, this is an appropriate place for a dense development of this site because of the lights there. So there is a right turn allowed out from Olde Bedford Way, not a left, and then any left turns would be governed by the light on Old Bedford Road.

ii. The proposed use is a reasonable one: Again, the applicant will agree to certain use restrictions as presented to the Planning Board. I believe that the ones that were asked for were limited to no drive-thru fast food restaurants, animal hospital or dog groomer, but in addition to that, there will be a restriction placed on the property if this project goes forward that it be limited to these uses and not all of the uses within the commercial zone. This use of this property, while zoned residential and agricultural, is a natural extension to bridge the properties to the east and south to this property.

Mr. Swiniarski asked how many total residential units are proposed? Mr. Rice replied 72 total in the apartments, 32 cottages, which makes 104, and then the 10 workforce housing units would bring it to 114. Mr. Swiniarski asked four retail units? Mr. Rice replied right now there are five individual buildings shown plus the conversion of the old Therrien house into an office space, so a total of six structures out in the front. Mr. Swiniarski asked and is the fitness facility open only to residents or is that intended to be a public business? Mr. Rice replied my understanding is it is open to the public and really geared more towards the residents, but they are not going to restrict the public. Attorney McGinley stated again, we are not committed to any particular tenants. These are what we are targeting and we will work with the Planning Board on appropriate uses in this site.

Chairman Morin stated with the elderly housing type issue, by ordinance those are supposed to be the reduced cost, so why is there a switch to the workforce housing? Attorney McGinley replied that is the proposal that is being made by our client. They felt that there is a need for more millennial housing in the area. I think that the workforce housing for children who grow up in Bedford and go through school and come out and go to work or go immediately into a job, that finding housing in Bedford that they can afford is difficult. A lot of them may live with their parents. I was fortunate enough to have one of my daughters find a workforce housing unit. She is in a workforce housing unit at the property across the street, and as a brand new worker with a salary that is not too big that worked for her, and we felt that there is a need in Town to have more units like that. Councilor Duschatko stated workforce units are projected to be above the retail side, and I understood that affordable housing under the State had to be distributed amongst the development and not segregated. Is that a misunderstanding on my part? Attorney McGinley replied these are going to be separate condominium units. The way for this proposal to be developed is that the different uses will be separate condominiums, so it will technically be a separate parcel. Councilor Duschatko asked they won't be apartments on top of the retail? Attorney McGinley replied they will be apartments on top of the retail. Councilor Duschatko asked they will be condominiums? Attorney McGinley replied no, the back units will be condominiums and that will be separate from the retail. Councilor Duschatko asked shouldn't the front also be a retail condominium? Attorney McGinley replied it is a retail condominium. Councilor Duschatko asked with apartments? Attorney McGinley replied with apartments above. Councilor Duschatko asked aren't those apartments created in a segregated area because they are concentrated in that place and specified as workforce housing? Attorney McGinley replied that is the desire of the developer for the reason that I explained in that they thought this would be a draw for millennials that we say have moved to downtown. I have a lot of colleagues that I work with, the young lawyers, that are living downtown because they want to be where there are services provided and restaurants and things like that, places they can walk to. So we thought that having the millennials here would be an added benefit for the Town.

Ms. Stirling stated to piggyback on what Chairman Morin was saying, looking at the Bedford code Section 275-21(2)A.1, it specifically says all elderly housing developments shall include a minimum of 25 percent of the units in affordable housing for low income elderly. I don't understand why that is not part of the proposal you are putting forth. Attorney McGinley responded this development actually will require more variances than

the two that we have applied for. We thought that it would be better use of your time and ours if we could have some of the principal ones heard first and then if these variances are granted, we will come back with the balance. Because of the nature of it being an R&A zone and the use that we are going to have, there are other variances that we will need. Ms. Georges stated I am having a little bit of difficulty with that in not seeing the full array of variances that we would have to deal with. It is difficult to sort of see this as a piece and be able to make determinations based on just having that piece of the story. Ms. Stirling stated that is exactly where I was going. Councilor Duschatko stated it is not only a Pandora's Box, it is going to be a magic box that is going to open up the next phase, the next phase, and then we are going to change this again because it doesn't work for the market. I think we have seen this in a couple of developments off from Route 3 over the years. Ms. Georges stated individually I would want to consider the full array of questions and variances, have them set before us and not make any predispositions before seeing them. I don't want to enter into this with a bias one way or the other not having the full information set out for me. That is how I feel about this. Attorney McGinley responded we didn't intend not to give you full information. What we thought would be a better use of our time that if we got these variances, then we would take up more of your time with the balance that we need. The project cannot be built without the balance of the variances, so granting these will not do harm because you will have a full opportunity to look at the other set of variances, but that we thought it was going to be a burden on this board for us to bring them altogether at one time if at the beginning you deny the use variance then all of your review and all of our discussion and taking your time on the balance of the variances would not be a good use of your time. I apologize if you don't agree with that, but we did think of this and thought that this would be a good approach. Mr. Swinarski stated when I hear this; maybe the wording of this is not quite as precise as it could be. Really the #2 variance request is to permit a reduction from 25 percent to zero, that is really what we are trying to do here because the 25 percent requirement is on the over-55 units and we are proposing zero. You have said that in variance request #1. I think maybe we have a wording issue here. Ms. Georges stated I think it might be more than a wording issue. I want others to weigh in on this. In considering the one variance that we are considering before us and not even going to the next one, we are looking at a series of criteria that are based on this broad notion of the mixed-use development, commercial uses, workforce housing units, elderly housing, and within that there is consideration for us around what the components of the elderly housing are with regard to affordable housing and what the components are with regard to the workforce housing knowing that we may want to deal with those variances separately, we are still moving the ball forward. I want to hear what others think. I am trying to talk this through out loud because I want to make sure that if we are considering the criteria around this first variance, that we are not then crossing a Rubicon before we have actually seen the full panoply, if not ruled on them, of variances. I defer to some of you who have been on this board longer. I am trying to use the logic behind sort of how we proceed. Chairman Morin responded we have to proceed with what we have in front of us. That is up to the applicant if they want to change something, but at this point we proceed on what we have in front of us. The issue I have with this one as for the applicant is that we are looking at, as Ms. Georges brought up, a lot of pieces. So the more pieces you throw in there in just this one, it makes it a little tougher to look at some of these criteria and say how do you

meet that criteria for all of these different pieces. Ms. Georges brought it up, again, the elderly housing, the workforce housing, the commercial use, and mixed-use type thing. I am just having some issues with that. Mr. Jean stated I had a question prior to Attorney McGinley's comment about this not standing on its own. If we considered these uses and we were considering this application and they would have been able to proceed with just this application relief, then I would have considered it differently but now it is presented in a different light. It is complex. I think that if it is the use that is being sought, relief for use, maybe that should be segregated from some of the other pieces of what is in here. It is easier to digest. Ms. Stirling stated I agree with that. Mr. Jean stated with Step 1, if the use variance criteria is met, then progress to the next. But I think the way this is worded; it is a little bit challenging to consider all of those in one variance request. Chairman Morin stated and that is what we have in front of us.

Mr. Swiniarski asked the workforce housing requirement is for the over-55 housing? Ms. Elmer replied no. Attorney McGinley stated workforce housing, for instance, applied to the apartment building on the Bedford Hill site, they have workforce housing and that is not age restricted. Mr. Swiniarski asked but what in our ordinance is requiring the 25 percent? Ms. Elmer replied the elderly housing requires the affordability percentage. Attorney McGinley stated technically the apartments that are not age restricted above the commercial also require workforce housing. Mr. Swiniarski asked so mixed-use has a workforce housing requirement as well? Attorney McGinley replied no. Ms. Elmer stated none of these items are allowed in the Residential and Agriculture Zone. They are asking for a variance for the elderly housing; a subsection of that is a variance to reduce the amount of affordable units within that elderly housing. They are asking for a variance for a commercial use, they are asking for a variance for the apartments over the commercial use. Mr. Swiniarski stated that variance for mixed-use has no requirement for workforce housing. Ms. Elmer responded no. Mr. Jean stated I think it would be helpful to understand what relief is being sought and what relief is being considered is how many units of housing are required if the variance for the use is granted. In other words, you have 72 units of condos that are elderly, you have 32 units of cottages that also contribute to that, so 25 percent of that number would be what would be required and they are seeking a reduction to 10 percent of that. Do I understand that correctly? Mr. Swiniarski stated I think that is one way to look at it. I think what I was saying in the beginning makes more sense and I don't think there is an additional variance needed here. I think this is different. What we are really asking for is a variance first for the use, which is elderly, over-55, and that requires the 25 percent and we're asking that to go to zero, not 10 percent, we are bringing that to zero, but then we are proposing for the second variance we are asking for, which allows for mixed-use, that we are going to offer 10 percent of that as workforce housing sort of in exchange for the request for the variance from 25 percent to zero percent. I think by mixing the two in here that has caused the confusion, and I don't think you need three variances here, or perhaps another way to look at it is you are already asking for three here and they have just been broken up between these two and they shouldn't have been grouped this way. Ms. Georges stated but I would just argue that it is not confusion it is a lack of clarity in how these are being stated. There is a distinction here. I respectfully would argue that these need to be stated very clearly and separately because there is an implication in the first one around the reduction from

25 percent to zero, and rather than having an implication, I think it is sort of incumbent on us to ask for that to be explicitly stated so that for the record it is clear. Attorney McGinley stated workforce housing is a requirement not just in elderly but in the non-age restricted also, and the request is a reduction for all of the housing to 10 units. Mr. Swiniarski responded I thought when I just asked that question we said no. There is no workforce housing required except in the age-restricted units. Am I wrong there? Attorney McGinley responded I do know that there is workforce housing in the Bedford Hills development. Mr. Jean stated there is a requirement. Attorney McGinley stated and there is workforce housing in other apartment buildings that have been approved since that requirement was in place. Mr. Swiniarski asked what is that requirement? Attorney McGinley replied it was 30 percent and Bedford Hills had a variance to reduce it to 25 percent. The Planning Board reduced that number; they made a change in the ordinance through Town Meeting to change it to 25 percent because that was more in keeping with the economics of getting financed. That was the basis for that. Ms. Elmer stated right, so workforce housing needs $\frac{1}{4}$ of the units to meet the affordability requirements. Mr. Swiniarski stated so both need 25 percent and we are asking for a reduction from 25 percent to zero on the elderly and 25 percent to 10 units on the mixed-use. Is that right? Mr. Jean stated I am going to try to clarify this as in my original question I may not have framed it properly. There are 104 units being proposed, exclusive of the workforce housing, 25 percent of those because it is required of elderly and it is required are required to be workforce housing. That would represent 26 units. They are asking for a reduction from 26 units to 10 units is basically how I view this. Councilor Duschatko responded no. You have 25 percent of the age-restricted of the 104 units, so they are going to zero for the age restriction. Mr. Swiniarski stated I don't think we have the proper request for a variance here unless what we are trying to do is mix the two, but that is not what the requirement is. Ms. Georges stated I am not even arguing a substantive concern at this point; I am only arguing a clarity concern so that if it is not transparent to the public. I know it wasn't intentional on your part, I know that, but if it wasn't transparent to us, we spent the last half hour trying to unpack it, so my concern is more of a transparency concern at this stage, not even a substantive one. Attorney McGinley responded we didn't intend not to be transparent; it was recommended by staff in the Town that we do a couple of the key variance requests first so that we didn't take up a lot of your time and then we would come back with the remaining variances that we need at your next meeting. We were actually all set to put them all in at one time. Ms. Elmer stated the elderly housing is allowed in this zone; it is the mixed-use portion of it that is not and the workforce housing is not. "Elderly housing are allowed in the Residential and Agriculture Zone and workforce housing is allowed in the Residential and Agriculture Zone" subject to other things.

Ms. Stirling stated I have a procedural question in light of our discussion. Hypothetically, if we approved the variance that they request tonight, does that now mean that we have ruled already on the 25 percent to zero in the elderly? That is how I would interpret that. They wouldn't need to come back for another variance because we already just granted a variance. Mr. Jean added that is the way this is presented. Ms. Stirling stated so by the nature of the fact that if we approve it, I say they don't have to come back for that because we have approved it understanding our own code, we have recognized it is required 25 percent but we have disregarded it if we grant the variance. Chairman Morin

stated that is a good point. Mr. Jean stated that is the way it has been noticed too. Ms. Stirling stated yes, and that is the way it has been noticed, which is what my point is. Mr. Jean stated which is what we have to act on. Chairman Morin responded right. Ms. Elmer stated or tabled to re-notice. Mr. Jean stated the 25 percent would be 8 units of elderly that would need to be workforce and 18 of the other 72 would need to be workforce, and that would be the 25 percent number, so they are asking for relief of 8 units of elderly and essentially 8 units of other. Attorney McGinley stated the non-age restricted units are all going to be affordable. Mr. Jean asked I understand that is going to be 10 units? Attorney McGinley replied right. Ms. Stirling stated but it is 10 percent of 10 units is what they are asking for? Mr. Jean replied no; they are providing 10 units of workforce housing.

Attorney McGinley proceeded to review the criteria for Item 3 on the agenda requesting a variance to permit a reduction of affordable housing units from 25 percent to 10 percent and to permit the units to not be age-restricted. We actually thought this would be a good thing for the Board, we didn't intend to bring only two with the idea that you wouldn't know that there were additional variances needed to build this project, but we didn't want to take up too much of your time if we couldn't get some of the principal ones approved that make this economically feasible. The second variance request that we decided to bring was the reduction in affordable housing units, and this would be the units in the front, not age-restricted units, from 25 percent to 10 percent but that is 10 percent of all of the units. What we're doing is actually going from a total of 26 units to 10 units. The percentages that I presented to you are wrong. **1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality: (2) Whether granting the variance would threaten public health, safety and welfare:** This particular variance is not contrary to the public interest and it will not alter the essential character of the locality, that is assuming that the variance we previously asked for is granted and this is a mixed-use development. Granting this variance will be in keeping with the neighborhood because the reduction in the affordable housing units will not change the character of the locality and will reduce the use of emergency services required from Bedford. The reduction of affordable housing units will not threaten the public health, safety or welfare and will benefit those seeking such units. The smaller number of non-age-restricted units should be less of a burden on the Bedford schools and permit single family residential development that is a good commodity in town now of those wishing to downsize from their larger homes. **2. The spirit of the ordinance is observed:** The variance request is consistent with the purposes stated in the Zoning Ordinance. The affordable housing units will be of a nature that there will be 100 percent of the non-age-restricted units and there will be none of the age-restricted units. **3. Granting the variance would do substantial justice:** By the granting the variance substantial justice would be done. The New Hampshire Supreme Court has stated that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The court looked at also as to whether if the proposed development of the land remained consistent with the area's present use as a factor to determine whether the variance will do substantial justice. I just want to say to the Board that as you well know, and you do this all the time, a lot of the variance criteria directly apply to the variance being requested but some of the variance criteria, when you look at them and

apply it to the actual variance that we're talking about, and in this it is a reduction of affordable housing units, while they don't specifically impact or apply to this particular variance request, they are a condition of approval. So I am going through all of them and they do need to be met but they need to be met within the context of what is being requested, and I think you have run into that before. In this instance granting the variance to reduce the number of affordable housing units will allow the applicant to develop residential housing in a quantity and quality which is in conformity with the surrounding lots. The general public will not gain from the denial for the variance; in fact, it will lose the benefit of the increased taxable value of the properties as a greater number of affordable housing units could result in the reduction of the assessed value of this income-producing property. The increased tax base from this reduction would be a benefit to all citizens of the Town of Bedford. **4. The values of the surrounding properties will not be diminished for the following reasons:** There will be no diminution in the surrounding properties relative workforce housing reduction. This reduction will allow both the apartment style condominiums and the house condominiums to be of a nature that will be in keeping with the quality of houses 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:** There are not very many places in Bedford that will allow for an elderly housing development such as this. I know personally that there is a great demand for this, I would like to keep some residents who have lived here for a long time but are ready to downsize from their larger houses, I would like to keep them in Bedford, and this is one of the few properties where this is available. **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 purpose of the Town's Zoning Ordinance is to promote health, safety and general welfare of the inhabitants of the Town of Bedford and that is what this does. Requiring 25 percent affordable housing units for this project would make it not economically viable and it would not provide this type of development. There would be a reduction in the assessed value of the properties due to the affordable housing. **ii. The proposed use is a reasonable one:** The reduction of affordable housing units is a reasonable one because of the relatively small number of housing units being proposed. This proposal is to make affordable housing units available to tenants who would not be able to qualify for the market rate units and then could affect the quality of the project as a whole. Having the 10 affordable housing units located over the commercial units is, as I believe I stated before, a draw that we thought would be a benefit to the Town of keeping some of our millennials in housing. **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:** Again, this is a mixed-use development and it is a blend of both commercial and residential uses, it is suitable to the area, and that this is a crossroads between the residential and commercial uses and the economics of the project for the elderly housing, for the reduction that would be needed to supply the 25 percent of affordable housing units. Based on the foregoing; we believe that the reduction of total units from 25 percent to zero percent for the elderly housing is warranted because we will be supplying 100 percent of the non-age-restricted units.

Chairman Morin stated in that last section about literal enforcement, you brought up the elderly housing a couple of times and were explaining pieces of that, but that has nothing to do with this. It is the affordable housing that is not age-restricted so why are you bringing up the elderly housing? Attorney McGinley replied just distinguishing where the affordable units are going. I was just making it clear that there were no affordable units being provided in the age-restricted housing, but 100 percent were provided in the non-age-restricted. Chairman Morin stated it was a little confusing when you were bringing both into this. Attorney McGinley responded it is one project, one piece of property. and just so that you know, I know this is a Planning Board issue, but the property will be developed as a condominium so that the commercial property can be built and financed separately from the residential property in the back, and the units themselves would be condominiums both in the sub-condominiums and the condominium that will be on the back piece.

Chairman Morin stated this sentence is written on that same section, Page 3, the bottom paragraph: "Given the commercial uses that would surround most of this land, these properties are situated such that they are not suitable for residential." I drove that area and looking from where that area is you can barely see, especially with all of the leaves down, the commercial units across the street. I think I saw maybe the corner of one of units. Otherwise it is so high up and at night you can barely see the lighting, so I just don't understand how you can write something like that. You are saying it not suitable for residential but looking at what is there right now, there are houses in that area. Attorney McGinley responded no, it is not suitable for single family housing. Chairman Morin stated I'm just questioning what you wrote. Attorney McGinley stated it is the single family housing. Chairman Morin stated on the next page the first two sentences, the last words "no impact on the schools." That is incorrect because depending on who moves into the 10 units, and you said it earlier that there could be impact on the schools. Attorney McGinley responded it is a possibility that there would be impact on the schools from children in those 10 units but not likely. The target is millennials. We don't anticipate that apartments in this style of development are going to draw families; it is just not the market. Chairman Morin stated a young family maybe.

Ms. Stirling stated my question is more like you are making assertions, for example, these are not suitable for residential but you have the burden of proof. Do you have any testimony to present of real estate developers that this is not a feasible project for single family homes? Michael Castagna, Castagna Consulting Group, replied I am the program manager for the project. As far as the feasibility of single family homes, it depends on the price point. This whole design was market driven as far as the need in the community and the type of development that could sell, would sell, the likelihood as far as the price point of the lot and the types of homes that would go there. The likelihood of somebody wanting to spend \$600,000, \$700,000, or \$800,000 for a home right next to a hotel, or the fact that, yes, you might not necessarily be able to see Bedford Hills, but the fact that it is there, it is a lifestyle and it is a price point and it is a market study, and that is what drove the type of housing, the mixed-use piece of this thing, that works from a marketing standpoint, and what will sell, and all of those things together brought us to what we ended

up proposing from a density standpoint from the different types of housing and the price points that we are trying to hit. That all goes to the workforce housing aspect of it as well. I am one of the biggest proponents in this State, I am an officer of the Workforce Housing Coalition of the Greater Seacoast, and I know very well how this thing works and what doesn't work. It is all of those factors that go into seeing what works economically and also trying to build a neighborhood, a community, with a lot of social capital character to it that really goes to the flavor of what we felt Bedford wants with a little bit of counsel from staff and from others that live in this town, so all of those factors went into that. Yes, there are a lot of moving parts to this thing, but the fact that what works and what doesn't, we have painstakingly gone through that and culminated in this. Ms. Stirling stated basically you haven't answered my question in terms of evidence about why this can't support three or whatever. I can understand wanting to maximize your development and profit and that is what you are basically telling me. I am just saying when we take all of the spin out of it you still haven't gone to the facts. We are the Zoning Board, we have those blinders, we don't care really about the tax base because that is for someone else to worry about and rezone for us. We are not about maximizing low impact on the schools, development; you are throwing in a lot of things that really might seem good to you but to me it is just a distraction from the basic issues. And, again, you have the burden of proof, you are the applicant, you have in this application no impact on the schools. Show me the evidence, show me the evidence that it can't be used as a residential property. You have the burden of proof and you have not provided that, in my opinion. Mr. Castagna replied the study that we did does not include the workforce housing component. Based on the statistics from New Hampshire Housing Finance Authority, those 10 2-bedroom units will basically increase the schools by less than one child per unit. So you can figure that 10 kids are going to come out of that based on statistics. Ms. Stirling stated but that is not no impact. I guess that is what my point is. In your application you are supposed to make representations you can back up with fact. So now you have just refuted what the application says, which is no impact, not modest impact.

Chairman Morin stated I have to go back to the other application because I don't think I heard a true answer to it. This is in regard to the 4th criteria. **4. The values of the surrounding properties will not be diminished for the following reasons:** In your documentation talks about the commercial properties; it doesn't talk about the residential properties. What evidence do you have with that issue that it wouldn't diminish those residential properties in the area? I went back to look at it and I didn't see an answer. Mr. Castagna responded Mr. Chairman, this goes to the price point of the market that we are trying to reach. These units are going to sell for anywhere between \$360,000 and \$450,000 per unit, for the most part, and except for maybe the units on Arrowhead Drive, those are probably more expensive than the residential units to the north for the most part. So the issue as far as negatively impacting the property values in and around is non-existent. Chairman Morin stated let me specific. Just looking at the posted map, the one property to the north that borders the road coming in, which is single family, he does have commercial approval for use, but if he goes to sell, does this affect his property value because there is a commercial thing right next door to him that can be seen, that is right next to him. That is the one I am most concerned about, and, again, I am not seeing it in

the application where that is answered. Mr. Swiniarski stated it has to be sort of an analysis on what the effect of what you are proposing is on the surrounding properties but also bearing in mind that people are permitted to develop their property, so sure it is certainly preferable to most people to have undeveloped land next to them, but unfortunately nobody has the right to have undeveloped land next to them until they buy that land, but you have sort of given us some sort of evidence or proof that this, compared to what would be allowed, is not going to detrimentally affect the value of these surrounding properties, and I'm not sure how the price points of what you are selling has anything to do with that. Mr. Castagna responded it is a little subjective because if he goes to sell and says I want a million buck for my property, #1 he is not going to get it and #2 it is probably not worth it. That goes to an appraisal value. Mr. Swiniarski stated that is the best way to do this. This is the way I would always do it. It is not doing an appraisal; it is doing a property valuation report that is typically done by an appraiser. That is probably something that would be very beneficial to convincing us of that because otherwise I think we are sort of dealing with people's opinions right now. I won't put a whole lot of value in any one person's opinion over another, not even my own.

Councilor Duschatko stated I am very concerned with the density of this project. I don't have enough information to evaluate the density. It just seems like it is overkill for a 20-acre site. I presume with decent layouts you probably could put between 16 and 18 single family houses in there. I would like to know what the tradeoffs are economically on those if they made them. I just think this is almost a premature type of request. There is just not enough information here to allow us to make a fair decision. Chairman Morin stated and the thing is our job is to take what we are given and to make a decision off from that. Mr. Swiniarski stated theoretically I think it would be okay if the applicant also supplemented with additional information to answer our questions or concerns. One thing I would think of, now obviously the impact of traffic is certainly within the jurisdiction of the Planning Board and not the Zoning Board, however, the impact of traffic weighs heavily on our findings on these criteria. Have you done a traffic impact analysis yet? Mr. Rice responded should the project be moving forward, we would be doing the required full traffic impact access study. All that we did in preparation was a trip generation for the project and that basically showed that during the peak hour, it would equate to roughly one trip in and one trip out every minute during that peak hour; 100 peak-hour trips. Mr. Swiniarski stated so you haven't gone to the step of concluding how those peak hour trips will affect the intersection when you add them to the intersection. Mr. Rice responded not yet; we would have to do that if there is mitigation that needs to be done to adjust the timing, and we are kind of in this gap where Route 101 is going to be widened soon so that is going to change a couple of pieces of it, what they do with the timing of the lights and such, but whatever is required for us to do, we would be doing it. Mr. Swiniarski responded I understand. It is tricky. I get not doing that ahead of time; it doesn't make sense to do that ahead of time, but it is also helpful information, so I'm not saying that that is something that you have to do, but knowing that would help me at applying it to the criteria because I think based on written concerns we have received from the community, traffic is a concern, and I think that is logical and it bears upon our findings on this criteria even though it is a Planning Board jurisdiction issue. I think it is your call

whether you want to go the extra step or not at this point. Chairman Morin stated we will let you think about that and we will start with some public input.

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

Chairman Morin swore in additional members of the public who were not present at the beginning of the meeting.

Chairman Morin asked the public for those wishing to speak in opposition to these applications.

Jim Lamp, 30 French Drive, stated thank you for having this hearing and letting us speak our minds. I own 22 acres almost directly adjacent to this, with one house, with two sides being commercial, so it is a unique property just like theirs, and if this goes through, I am selling and I'm leaving because it is not worth me staying residential. With that kind of density, it is a once in a lifetime chance. I would like to peel away the onion a little bit on this; the way it was presented there are two variances being requested and I think the Board was heading in the right direction. I count 11. One is office in the R&A zone, one is retail in the R&A zone, fitness in the R&A zone, elderly housing not in cluster, building height possibly at 48 feet, building density of 38 units where only 12 are allowed, reduction of affordable housing, density of the land, low income not elderly, duplex, and also multiple, and I'm sure I'm missing some because what they are asking is so complex. But it just seemed really odd to me in the beginning that the request was for a mixed-use in the R&A zone versus what the actual uses are and what they actual request is. It was very vague to me. Unless they are willing to go through all of Table 2 and restrict every single item that is listed in Table 2, I think it is open to use that if they list mixed-use. I keep on hearing the logic that the needs are there; there is a high probability of success of this development, the tax base will be bigger, marketing says it will be a great project, and it will sell. None of these are a part of proving for the variances. I respectfully request that Board turn this application down.

Beatty Hunter, 15 Arrowhead Drive, stated I am an abutter. I have a variance criteria rebuttal and I will give it to the members. A copy of Dr. Hunter's rebuttal was distributed to the Board and will be made a part of the file. Dr. Hunter stated after reading the application, it became apparent that there were a number of things that were mentioned in the application that merited some more explanation of some of the things that have actually come out here tonight. With that, I decided to do a variance criteria rebuttal and I would like to read those things. These refer to things that were actually mentioned in the application.

1. Granting the variance would not be contrary to the public interest: (1) Whether granting the variance would alter the essential character of the locality: (2) Whether granting the variance would threaten public health, safety and welfare: There are, according to Mr. Morin, 15 direct abutters and many other non-direct abutters who will experience a significant change in the "essential character of the locality." It would be

impossible not to change the quiet, semi-rural character with the dense concentration of buildings and people, at least 228 people residing in 114 living spaces as well as over 200 associated cars. This does not count the people and the cars that would be associated with the fitness sports facility and retail shops. Just for the record in terms of abutters, and there has been questions about abutters throughout the application, to the south where the Bedford Village Inn is there is one abutter, Mr. Lamp, who just spoke. To the east where Bedford Hills is there is one abutter's home in the house affiliated with the Bedford Animal Hospital. To the north in the application there is repeated reference to a single abutter, Mr. LaPointe, who has restricted variances so he can park several cars related to his business and that does have a commercial flavor to it but it is not like it is a major commercial entity. Nowhere that I could see was there mention of the other six abutters on the north, so there actually are seven abutters, one of which has restricted variances. On the west on the ridge there are six private homes. There are abutters on all four of the side of the development.

2. The spirit of the ordinance is observed: The application refers to properties on the east, north and west as "totally commercial or a combination of commercial and residential." On the west there are the six homes on the ridge with nothing commercial going on there, and I mentioned on the north there is the one house that has a partial variance for a very small amount of business that is done there. Mr. LaPointe can go into that in more detail later on. So there are no other business activities on any of these properties or on any of the other abutting properties.

3. Granting the variance would do substantial justice: On the contrary, significant injustice would be done to all of the abutters by significantly changing the ambience, rural nature, quiet environment, and alteration of present views for which additional taxes are paid. There would also be a marked increase in light pollution caused primarily by two 3-story apartment buildings and the commercial area including the fitness facility. Traffic congestion will be caused by over 200 to 250 cars, pure estimate, of the occupants and the cars at the fitness center and commercial shops. These would be a problem not only for the abutters but also for any residents in the surrounding residential areas who use Old Bedford Road and Holbrook Road, something that we have alluded to already. According to the variance application, "granting a variance will allow the applicant to develop residential housing in conformity with the surrounding lots." Development conforming with surrounding lots would not be met when two 36-unit, 3-story apartment complexes are being planned. This certainly would present an injustice to all surrounding neighborhoods, nor would the presence of high-density duplexes and commercial center and sports fitness facility be "in conformity with surrounding lots." If this variance is denied and the development proceeded under the current zoning rules with 11 to 14 houses being built, the general public would benefit from a significant property tax on these homes, thus, substantial development consistent with the current use of the surrounding neighborhoods. Increasing the 2010 Bedford Master Plan's commercial zone development does not have to occur to the detriment of not only the abutters but also to all those persons who travel along Old Bedford Road, to Bedford Hills, Memorial School, or to access New Boston Road via Holbrook Road.

4. The values of the surrounding properties will not be diminished for the following reasons: The property values of all of the surrounding homes would be substantially decreased with a development of this magnitude. High density cluster duplexes, very large apartment complexes, and a significant commercial area will negatively impact the previously quiet residential

neighborhood. To claim that the abutters' properties would benefit from the tax revenues of the development by lowering the abutters' tax rates is not recognizing what this development's true impact will be. The decrease in abutters' home values will be due to marked increase in housing density with associated noise, light, and traffic congestion, in addition to the altered views and loss of rural feeling. **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:** Although this land has been zoned residential for many years residential abutters are still present on all four sides of the development. The neighborhood north of Bedford Hills is all residential, the length of Holbrook Road and the streets of Roblin Road, Timberlane Drive, and Hickory Lane that come off from Holbrook Road are all residential neighborhoods. Although not direct abutters, these property owners will be impacted by the marked increase in traffic volume as they have already experienced related to the Bedford Hills development. This development will further aggravate the current bottleneck on Old Bedford Road and Route 101 intersections. The current home lots on the ridge to the west cannot be subdivided according to covenants on the land and the lots are too steep if it was allowed, and this was hypothesized in the application that the lots on Arrowhead Drive could be subdivided, which they can't. **ii. The proposed use is a reasonable one:** Reasonable, appropriate development is possible without variances. Continued reference to one property, as I mentioned earlier, "with a commercial use" to the north of the planned development implies that it is the only abutting property on that side. As mentioned before, there are six other properties. The commercial property to the east is part of Bedford Hills but is well screened and appears subdued. If you have driven along there, as was mentioned, there is a 40-foot granite block on top of which there is heavy treed forest and you can't even see the development from there. All of the properties on Old Bedford Road included in the planned development are currently or recently occupied as residences and they are certainly suitable for further development. The presence of established commercial development on the east and south in the area does not justify or validate further encroachment into traditional and established residentially zoned areas where numerous abutters and surrounding non-abutters will be significantly impacted. There would be no hardship to future development of the land for 11 to 14 homes. Buildable land in Bedford is at a premium, especially lots that would have rapid access to Route 101 and beyond. This land has been used as residential for many years and could be residentially developed at no hardship. The adjacent commercial properties to the south and east are well screened and this could be a very desirable residential development without significant disruption to those who are currently living in the area.

Mark Reber, 19 Arrowhead Drive, stated I would like have access to the overhead screen if it is possible. Chairman Morin asked what are you planning to display? Mr. Reber replied I am just going to show the overhead, which goes to include the properties that are being described but have not been shown by them.

Mr. Reber stated I went to Goggle Earth and as you can see, my home is the one that you see as shown and Dr. Hunter lives at this location shown. I did attend the Planning Board meeting where I asked them to do a moving view of how the properties will be impacted by these buildings. If they were to move along Arrowhead Drive, they would see that the occasional tree that they elected to put their camera next to does not show the actual development. You will notice that between my house and the Smith residence shown, these are the line of trees that they elected to shoot this way to show that I had coverage of these houses down here, which I certainly do not because my view is completely open down to here, as is Dr. Hunter's and the Smith's as well. These are just narrow columns of trees, which they shot diagonally to give you the wrong impression. The posted photo was overlaid with the proposed development. All of the trees that give me coverage that you see from my property are here as shown. Down here there is very little and you can see how sparse it is. Now I am showing the view from the height of my window and then as I turn towards the development as it actually sits. The part that is illuminated is all going to be felled so there won't be any of these trees here that are shown. My trees that are on my property don't come high enough to stop where the trunk starts at the bottom of these trees where they are claiming I will have no impact. As you can see from the overhead drawing, the place where their battleship-sized apartments sit is right here as shown, and I can see the ground from my window that those trees emerge from. I took the drone to the area I just described to shoot back to the house to demonstrate that at the height of 45 feet what you can see looking up the hill. These are the trees to the north of that little street and you will see you have a direct line of sight to my property. I have nothing here where they are showing you I have complete coverage. Shown now is the road you just saw going back to the house and this will end the visual presentation. You can see that there are very few trees and then what I have is this brushy stuff that grows only in the spring and summer. The last thing that I will say is that the property that you are looking at, and I hate to have to be the guy that says this, this is the highest sale in Bedford in the last five years at least. I personally pay for the three kids that I have in school, often times \$12,000 to \$13,000 per kid, for the school to have my kid in that seat through the taxes. I know they are used for other things as well. That will be the inverse situation in these buildings. I also happen to be approaching 50; I have a girl myself in kindergarten at Memorial School. If I understand the age-restricted housing properly, it is really not age-restricted it is more age-invitational. I am approaching 50 and I am five years away from that and I have a kid who would just be starting Lurgio. There is nothing to say that there will be no impact on the schools from the age-restricted housing. One grandparent qualifies any family of any number of generations to live there and the price that the Town will be collecting out of its \$830,000 to pay for all of that schooling is the inverse proportion of what I am asked to do for our fine school.

Andy Nimmo, 43 Golden Drive, stated I moved from a town in Massachusetts 20 years ago to Bedford because of what Bedford had to offer. We moved from an exact situation that we are talking about now. We lived in a quaint little neighborhood with a school right next door where there were all 3- or 4-bedroom homes. A developer came in and wanted to put in low income housing of only 72 units with some elderly housing and they came in the same way. We want to pass this variance and this variance. They got those passed

and they came back a month later with other variances. That now has more cars and traffic coming up and down that road than you can count. All of our neighbors down there don't like it anymore. They can't sell their homes for what they were worth, and if we rezone to allow this monstrosity in, what happens to Joppa Hill Farm. When will that be rezoned? So for those reasons I would ask that the Board deny this variance.

Steve Lang, 25 Arrowhead Drive, stated I heard you say that you wouldn't believe the testimony of any one person about the impact on property values. I can't say that I am an expert but I can give you a couple of facts. My own house had the dubious distinction of having the highest assessed value per livable square foot in the entire Town of Bedford. There are three houses on Arrowhead Drive that are in the top 10 in that category. The reason why we pay more taxes and we are assessed higher than other people in the town is because of the views and I would just affirm that we see everything down the hill. We all have cuts in the trees; I think that the pictures you were shown were deceiving in the angle that they were taken. I look down on Galloway Lane, I abut off to the corner on this development, I see and hear everything down there, and I know that I hear everything because the last time I was up here it was to argue about dogs on this same property and I got to listen to those Pitbulls for the six months that they were there. Every car, every door slam is magnified because of the topography of the hill.

Tracy Tullis, 10 Holbrook Road, stated obviously I am not an abutter but I wanted to mention the fact that the traffic, especially since the Bedford Grand has been built, that comes down from Route 101 usually going to Market Basket and/or the dump and it is horrendous. Since they built or fixed the roads, not only is the traffic incredible and speed of the cars that go through there now that the road is fixed is really horrendous. It also is from Old Bedford Road to Holbrook Road because it is where the Fire Department goes through, and I'm not sure the 2-lane highway that we have in front of my home with the Fire Department coming down, having more cars coming down one way and the other way, coming back from the Market Basket, back from the dump, I just don't know how it is going to handle all of that traffic. It is also a cut-thru for some people to go to Route 114. Instead of taking Route 101 because it is hard to get onto Route 101, they take Route 114 to get onto the highway. It is also a way to get from Market Basket to Manchester or from Rundlett you can get to Manchester. There is so much traffic and it is very fast. The other thing that I have noticed, and I'm not sure if this has to do with the Zoning Board, but the garbage that lines the street, and I see some ladies here that we kind of meet, the nips and the garbage is just piling up all over the place and there is nothing I can do to keep up with it. It is very discouraging. These cars that go by are also going to the kindergarten, the daycare center, and Memorial School.

Al Rivard, 10 Holbrook Road, stated I would like to also mention the fact that traffic has really increased a lot, and I can't even imagine it increasing any more. I go out to work in the morning trying to back out of my driveway and I am nearly clipped three or four times trying to back out. It is a very impactful thing that is happening to the neighborhood. The other thing I would like to mention is that I am a school teacher in Nashua, I have been a teacher for 35 years, and one new child in a classroom impacts the classroom. We are not dealing with widgets. These kids come in and they might have issues, they may not

have issues, but every new kid coming into a class does affect it. Please keep that in mind.

Todd Markiewicz, 49 Old Bedford Road, stated I have lived here for 13 years and 35 years in Bedford itself, and to kind of go along with the traffic issue because I am not an abutter, I live right next to the daycare, I live right next to the school, and I have a young daughter. Thirteen years ago we dealt with normal issues from the school, school events getting out, and some traffic patterns to the point to what they were stating. My wife and I sometimes have to sit and wait three or four minutes to get out of the driveway to let buses and other traffic go by. We also have the church that is next to us, and I am not sure if anybody has ever gone down there Thursday nights when they have events that are going on, but that road is packed up and down all night coming out of there. They have Saturday night events, Sundays there are two masses, so traffic studies and looking at it I am hearing mixed reviews wouldn't increase traffic pattern or would increase, it is going to increase it one way or the other and it is going to become a real safety issue. I stood here about a year ago kind of arguing when the road was open, I know the bond didn't permit a walkway for us to be able to walk safely, there are a lot of pedestrians that walk on that road and we should be able to walk on that road and feel good about our neighborhood and be able to go to our neighbors' homes, to walk our children to that school without having the fear of being hit. I do urge the Board that if this goes through, obviously to consider the safety element that is there for the residents, not only at that other end, but at the far end of Old Bedford Road.

Scott LaPointe, 28 Old Bedford Road, stated I have the referenced property of a home occupation, of which I came in front of this Board multiple times so I have been through the Zoning Board process and have been to the Planning Board. To refer to my home as a commercial property is a gross overstatement compared to what is across the street from me. We have massive limitations on our restrictions. We are allowed Monday – Friday operations, six Saturday's a year, 7:30 AM to 5:00 PM, and by no means are we an impact to a residential community. When I came to the Board initially, I was very forthright; I had no problems with any restrictions that were set such as that and many others. What I have always tried to do is make it so my business at that home has very little impact on the residential community, because when I came, the Board was adamant that that was a residential community and I was running a business there and I needed to meet certain criteria. We have upheld them, we haven't exceeded them; we have never done anything wrong. The only things that I have done are improvements to make it less noticeable. If anybody drives up and down Old Bedford Road, I beg to differ whether you would ever even notice there was a business run out of 28 Old Bedford Road; you just wouldn't know it. When I came, I had letters backing me from all of my abutting neighbors, with the exception of one, Ms. Elmer helped me through the process; I was very much trying to keep a residential feel. Since then certain things have changed. We have the Bedford Hills develop, albeit has always been a piece of commercial property. When my parents bought that house the better part of 50 years ago, that was a piece of commercial land there and you knew what you were buying. With the Bedford Animal Hospital it was the same thing. If we look down the street, the Bedford Village Inn was a slightly different circumstance. To me that has always been a project where even with the new hotel it is

still very segregated because it is on Olde Bedford Way, it doesn't really sit on Old Bedford Road. As I was thinking about all of this in the past couple of weeks since we had that first meeting, I started looking at it not only from the approach of Route 101, and I think so many people are looking at this from the approach of Route 101 and its impact, and if this stuff is there, all that stuff at Bedford Hills is on the corner of Route 101 and Route 114 and it is very much visible from Route 101 and Route 114, but after you go up Old Bedford Road the first 200 yards past Copper Lane, that ends. Old Bedford Road starts at that point, in my opinion, and it is very much residential moving forward. If you come from the north heading towards Route 101 from Manchester, New Boston Road, it has nothing but a residential feel. All that property that they have purchased is residential land, they can do with it as they please within the zoning but beyond that is a gross use of property. What is presented before us tonight is ridiculous. To say that property values wouldn't be impacted, I would invite every one of you to give me a call and walk from my side of the property and see what I will be looking at. I will be looking at every single piece of what was on that plan tonight. There isn't one portion of it that you wouldn't see from our property. It is wide open up there. The pictures presented that Mr. Reber showed are wildly deceiving. The overhead views are about 14 trees on my property, which have giant canopies, they are all old growth. Their side of the property you keep a 50-foot buffer, there are no trees in the 50-foot buffer. You tell me how they are going to screen a 45-foot building so I can't see it from my house? It isn't going to happen. To say that that would not have a diminishing value on our home, our lifestyle, or the community that we live in is crazy. Beyond that to think that you couldn't develop this in a residential manner and have 11 to 14 houses up there, I don't know many homes in Bedford that aren't desirable. Everybody wants to move here; I have friends that just moved here with a young family from Dover and they moved here for schools and community and stuff like that. A new community such as that would be very similar to that of Galloway Lane that has recently been developed, very desirable homes, none of them are sitting vacant, they had no problem selling those, this is just an absolutely perfect spot for residential development with convenience and there are so many people that want residential developments with convenience. Not everybody wants to live on the far end of Joppa Hill Road or the other side of town. This area is conducive to a beautiful neighborhood that would enhance the community of Old Bedford Road and it is all of those other roads, it is not just Old Bedford Road. It is Holbrook Road, it is Hazen Road, and it is everything else. We don't have to go over the traffic as you already said, that is really not your problem, and beyond that the traffic is horrendous. Right now it backs up every morning, the traffic is backed up to Corporate Drive from the light, and then the Dunkin Donuts has people wrapped out onto Old Bedford Road as their drive-thru line is so long. To say that the impact wouldn't be greater, none of those over-55 people are going to go get a coffee in their car, they are all going to walk? They are going to get hit because there are no sidewalks. But to think that a development like this would even be considered in that area, I really hope that the Board denies it now and again.

Cheryl Zarella, 11 Grand Drive, stated I am a resident and also a realtor in town. I did get up and speak last week at the Planning Board meeting but I also wanted to speak to a couple of different things that were mentioned tonight. First of all, I agree with Mr. LaPointe. People do move here because of the residential feel, the community, the

schools, the location, and there is so much desirability. As far as new construction goes, there is a need for new construction in our town; I have a lot of buyers that are looking for new construction. Galloway Lane just had many lots that just sold recently and all of them sold within days; it did not take a long time to sell those properties. They were listing between \$500,000 and \$700,000; so to say there is not desirability in that community, in that neighborhood, that abuts right to that development. I am just speaking to that information that I have sold homes in that area that are in that price point. Your average new construction home in Bedford right now the lots that they are building on are anywhere between \$800,000 and \$1 million, so we have high-end buyers that want to move into this community, and I think that I do agree with their statement about a need for some smaller housing, not everybody wants a million dollar home, it is nice for parents that want to stay near their families to have smaller homes and to have those options, but the ones that are successful are the MEWS, which is down by South River Road, also Village Green in a similar location, and Riverwalk also in that same type of feeling. They are not amongst these residential neighborhoods, smack dab in the middle of a residential community. I think that that is also going to make people question if I am selling properties and there is open land near them, it is going to be harder to sell those properties that have open land near them because who knows what is going to happen to that property. I just think those are some of the things that we need to consider. I would hate to see this Town not have that feeling and not have that buyer want to come to this community because it is too built up.

Troy Boissoneau, 36 Old Bedford Road, stated I live right next to Mr. LaPointe's house, and on behalf of Mr. LaPointe's comments, yes, everything that is below treetop we see. I can see the log cabin that used to be the dog place as clear as day out of my backyard, never mind what these other houses are going to do. The one thing nobody has brought up is construction. When they built that new building, we had plates fall off the walls. That is a granite slate mound up there. You are going to tell me that they are going to build without blasting within 100 yards of the LaPointe's, 100 yards of Eugene, 200 yards of my house, and 100 yards amongst any of these other homes. You think none of that is going to affect our houses, our wells, or any of our construction. Are they willing to rebuild our homes if something happens? I have kids in the area; there are a lot of kids in the area. This Town was supposed to put a walkway down past the animal hospital and they never did that. They actually pulled out a section of asphalt after they put it down and said it was never meant to be there. Where are people supposed to walk? You could have 400, 500 cars added to the road. I will deny the 250 everybody is talking about. I will put 500 cars because every hour you have someone at yoga, every hour there is going to be somebody jumping in and out of that workout class. Are you going to tell me that these stores are only going to do business at 8:00 AM or 9:00 AM? They are doing business all day long. In my opinion there is going to be a 500 to 600 car increase. It is bad enough we have all of those apartments across the street already. It is great that we can't see them. I don't know how many of you people come down Old Bedford Road, but come down at 8:00 AM or 10:00 AM when everybody across the street comes over for coffee at Dunkin Donuts. I was late for work because I sat through four lights coming off from Old Bedford Road. The traffic impact is going to be crazy. With regard to the view; do you want to be looking at a wall like you are going past a prison on the left-hand

side as I approach LaPointe's or my house? I don't want to be looking at a wall. How tall are these buildings? I guarantee there are not many trees between LaPointe's, Eugene's and my house that is going to be taller than those buildings that are built, along with the units on top of them and the roof on top of the units. There is another 20 feet and you're probably talking 60 feet. How many trees are there over there that are 60 feet tall? I have a big problem with a lot of this especially the construction. That is a lot of places to be doing construction and they are going to be there for years. I can guarantee it is going to be longer than a year with the amount of blasting and everything that has to go on there, and they are not guaranteed sewer, they are not guaranteed water, and they have already done the adjustments to extend that stuff before they even came to you to get the project approved. So they are already anticipating, which is a good thing as a business person, the problem is as a Board, you have to look at the Residential & Agriculture zone. Mr. LaPointe has a bigger farm on his property, his wife has a garden and he actually has more of a garden, agricultural, then he does a business. I am very, very nervous and afraid of what kind of development this is going to cause because where does it stop. If you do it here, where do you stop? They just put that development on the other side of my property but they only put six or seven homes, they had 36 acres, they didn't blast out a development. This place is going to have to go through law suits or they are going to have to repair people's homes because you are talking 80-year-old homes and some of these are going to fall right down.

Kathleen Bemis, Magazine Street, stated I am not anywhere near this. I just would like the Board to realize it is zoned Residential & Agriculture for a reason. Everything that you have talked about tonight has nothing to do with the neighborhood. I am not going to reiterate what everybody else has said, but Ms. Elmer earlier stated that variances are based upon the land, not the people that are going to use the land. Mr. Swinarski also stated that the magnitude of the proposal is not reasonable for the property, so when you are discussing whether to approve it or not, don't look at the volume, the elderly housing, just deny it based upon it is not an appropriate use of the Residential & Agriculture zone.

Bill Sofield stated I own the Bedford Animal Hospital and have owned it for 33 years, before there was a Bedford Village Inn, when Old Bedford Road was what is now Olde Bedford Way, and before there was Bedford Hills. I am extremely concerned that opening this type of a project is going to turn into another Bedford Hills, which is not anything like what was originally proposed. When they first came before the Planning Board and the Zoning Board, everything north of Corporate Drive was going to be senior housing. It is commercial development and four big apartment buildings and a Dunkin Donuts. What happened to the medical arts building to go along with the assisted living facility? The only thing that was planned there was the restaurant and the assisted living. Everything else changed once they got in the door. So I am extremely concerned with what everybody is talking about traffic. My clients have to wait through lights to get down to my office. I maintain a small animal practice in an almost 200-year-old home, it is a Bedford historical building and barn, and you don't even know the hospital is there until you see my sign. I have people driving past me looking for me because we are so well camouflaged behind the building, but it is a residential area and we have tried to maintain it that way. I think this would open this up to overdevelopment.

Amy LaPointe, 28 Old Bedford Road, stated I live in the house that is arguably the house that is most impacted by this development. I have lots and lots of concerns. In terms of scope and scale of the commercial, I think the application keeps referencing Scott's home occupation landscaping business where he has about eight employees who drive in between the hours of 7:30 AM and 5:00 PM, they park their car, get in a truck, and leave. There is no business going on there during the day. This commercial that is outlined in the application calls for 156 parking spaces around the commercial, and that is not around the apartments and everything else. That doesn't sound Mom-and-Pop to me; that sounds big. In terms of hardship; I don't know how they can claim hardship when we are all a pre-existing condition. It is not as if they owned this property and then commercial things happened and then they decided now we can't develop houses. They bought all of this recently so our home occupation was in place, the Grand was in place, and Bedford Hills across the street was in place. If you didn't think you could develop it according to the ordinance, why did you buy it? I don't see that there is hardship there. Also, I have concerns about the use. I looked at some minutes from this Board from May 17, 2016 and you guys got into a little bit of an impromptu discussion about the role of the Zoning Board, and it was really helpful. It said something about, when the ordinance contains a restriction against a particular use of the land; the Zoning Board of Adjustment would violate the spirit and intent of the ordinance by allowing its use. If an ordinance prohibits industrial and commercial uses in a residential neighborhood, granting permission for such activities would be a doubtful legality. With strong emphasis the Board cannot change the ordinance and that is what we are being asked to do. Then you go on and you talk a lot about tweaking, not rewriting, and to me this development is not tweaking.

John VanHouten, 49 Seaton Drive, stated when I first saw the newspaper, I was happy. It said Bedford senior project eyed. Boy do we need something like that in Bedford. I read down the article and it said conceptual proposal to construct dozens of apartments, cottages, a retail complex and that kind of got me upset, with a fitness facility on Old Bedford Road. None of you guys know what Old Bedford Road is all about. It is the gateway to Bedford. You think Route 101 is the gateway? Do you think Boynton Street was there? That whole Bedford Hills development up there has been changed by variances to the detriment of the people of Bedford. Bedford is a town of desire from out of state people. I know people who have contacted me from New Jersey and New York and California about Bedford. We have a great school but the Town of Bedford and you are stewards of the Town. You must be very careful on what you hear from developers. I heard tonight some reference about going to court for denial. The voice of the people is a denial. You can have 25,000 people coming up here and denying this but the idea that this lot consists of 20 acres. Galloway Lane was just built, they put on six houses, the houses sold for a half million dollars. Is there no desire for new homes? A senior citizen area would be great; it would be a comfortable place for someone to go to. All I have heard since this project has come is the scope, is we want a variance for this and a variance for that. You are changing the variance from R&A; that is not the stewards of the Town. Protect what you have. I know what Mr. LaPointe went through because I came to some of those meetings when he was trying to get his business and he got clobbered by some people. You go by his property and you don't even know that the

business is there. When you look from his property to the east, it is a high wall of granite and there were deer that try to traverse the road. It is a natural wildlife way. Can homes be built there? You bet they can, and will they sell, you bet they will. It is an ideal spot for homes. It is not an ideal spot for stores. If the homes were put in here by a responsible a future-looking homebuilder, it is nothing but a goldmine. The road was just paved and reconstructed and water lines were brought up Old Bedford Road. I think the idea of this project that initially read Bedford senior housing project, I thought was commendable, but I find it to not be commendable.

Laurie Reber, 19 Arrowhead Drive, stated he was speaking of people coming from New Jersey or Connecticut or even California to come here. We moved here three years ago from Switzerland. We had literally a view of a lake, a farm with cows and cowbells and the Alps. It was the most picturesque place you could imagine. Before that we were in southern California, which is beautiful. Bedford and where we live competes with both of those; it holds its own; it does not pale in comparison. This will change that. There is a statement by the gentleman saying the fact that the commercial development that is there makes it not suitable for residential, so what he is saying is that they need to build up this land for commercial, mixed purposes because it is not suitable for residential because of the very limited, relatively speaking, commercial sites there. How can he say that and at the same time say that our property value will not go down? How does that not impact it? We have lost trust; I have lost trust hearing the statements, seeing the pictures, they are not trustworthy, so I do believe the people sitting in this room who have experience in this town, who have experience in other towns, and seeing that the door is opened a little bit and it is blown open and abuse is taken and I don't want to see that happen.

Mr. Boissoneau stated I just want the Board to remember that you just denied a gentleman a garage on his own private property because of 20 feet. This is astronomical compared to the R&A zone. I just want you to remember 20 feet for a private garage or this massive production. Chairman Morin stated just to answer that comment; every application we get here is taken separately. Nothing ties into another project that happened in the past or will happen in the future. We don't set precedent, we look at the individual application, and by law we have to make our decision on that application and the information given.

Mr. Reber stated I just wanted to point out that we don't know New England at all, and from Switzerland just doing a little research online it was clear to us that we should move to either Windham or Bedford, and when we came and looked at the situation for both towns, we could tell from Switzerland, with no relations here, no friends, that this was the place to bring our four kids and it has been terrific. I just want to thank you for having such a great town and such a historic town, and I do hope it can stay that way.

Kathy Shartzter, 7 Roblin Road, stated I am not an abutter, although I am in the neighborhood. I would just like to point out that in the earlier presentation you talked about whether the land was unique and that was a requirement for the variance. These were residential lots, they are still residential lots, the fact that a residential area borders commercial should not make it unique or that opens up that kind of variance for any residential area that has a border on a commercial. I was there when they built Bedford

Hills and we were assured that the residential areas that bordered would be well shielded and their properties wouldn't really be affected, and now they are coming and saying because of that development, we can't do residential housing anymore. You can't have developers come in and say we can build this commercial development and we will take care of the abutters if they are residential and then later come in and say you can't have residential there, that nobody wants to live there because there is commercial. It is just not logical. This is not a unique property. There are all kinds of property in Bedford, especially in this part of town, where you have residential areas that border commercial.

Attorney McGinley stated because I heard the Board what I would like to do is to table these two variance applications to the next Zoning Board of Adjustment meeting and come back before you with the full package of variances that would be needed. I think that is what I heard from this Board. I think that would be the most appropriate action. Chairman Morin stated the next Zoning Board of Adjustment meeting is scheduled for Tuesday, December 20, 2016. If this is tabled, that would serve as public notice so there would not be new letters going out to abutters.

Attorney McGinley stated Mr. Chairman, when we file for the additional variances, there will be notices for those. Chairman Morin stated on any new applications, you will get noticed. On the two that we have tonight, they will not be noticed. If they are filing additional applications for variances, there will notices sent to the abutters.

MOTION by Mr. Swiniarski that the Zoning Board of Adjustment table the two variance applications discussed tonight for Old Bedford Road Realty, LLC to the December 20, 2016 Zoning Board of Adjustment meeting, and this motion shall serve as public notice. Councilor Duschatko duly seconded the motion. Vote taken - all in favor. Motion carried.

New Business:

- 4. Request for Rehearing for the variance denial for 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.**

Mr. Jean stated I was not present for the variance application hearing for Victor and Madeline Paul, so I will recuse myself. Mr. Jean left the meeting at 10:07 PM.

Chairman Morin handed out a memo to the Board members from the Town Attorney. We will now go over the letter that was submitted for the rehearing and we will hit the criteria that they brought to us.

Chairman Morin stated they are saying that we erred in finding that the variance would be contrary to public interest and not observe the spirit of the ordinance. I didn't really see anything in there how we erred. Ms. Stirling stated I agree.

Chairman Morin stated #1 is unlawful as it contains no written reason for this approval as required by the RSA. Mr. Swiniarski stated I think we actually gave the substantial record, although it was in the form of minutes, it is a written record. I will note that there is no case law cited in this argument. I wouldn't be comfortable standing on our record. Chairman Morin stated I agree with that. Councilor Duschatko and Ms. Stirling agreed. #2 The Paul's provided the Zoning Board of Adjustment with evidence that satisfied the variance criteria. Mr. Swiniarski stated I think in this particular case this is the heading and we have to go through the argument on each criterion.

Chairman Morin stated we erred in finding that the variance would be contrary to the public interest and the variance would not observe the spirit of the ordinance. Talking about contrary to the public interest when dealing with the character of the neighborhood and things like that, nonconforming lots don't establish the character of the district. They are trying to utilize what was there from prior that was approved during that time they were smaller, but that is what the law was back then. It isn't now but that is what they wanted to try to back up to, which doesn't meet that criteria. Ms. Stirling stated and as I recall, they used the property as it exists currently for like 20 or 30 years. If they were going to try to subdivide it, then you do it prior to the law changing and then you have a grandfathered, legitimate, already approved lot, but they didn't do that. You can't ask that to happen at some point in the future. It is just not in the spirit of the ordinance.

Chairman Morin stated then dealing with the spirit of the ordinance it deals with making sure that things aren't too tight together and that type of thing, making sure there is buffering, not overbuilding and then trying to apply for two smaller lots. Mr. Swiniarski stated I think specifically here one of the contentions that they raised, which is enough for us to stand on, is they are of the assertion that the subdivision of the property, if allowed, would take place in a manner that is consistent with the use of the other lots in the surrounding locality. We found exactly to the contrary; we found most of the lots in the neighborhood in the locality were not that small. It is quite the opposite. Our finding of fact is going to be given total deference unless it is clearly unreasonable. There is no way it was clearly unreasonable; it is grounded in fact.

Chairman Morin stated the Zoning Board of Adjustment erred in finding that granting the variance would not result in substantial justice. Mr. Swiniarski stated we weigh the balance here as required by the case law. We have to sort of weigh justice versus the injustice that may be perpetrated on the applicant if we deny the variance but that is the legal test. I think we concluded that there was no significant injustice here. In fact, these applicants, if I recall correctly, lived at this property for quite some time, utilized it without issue and really there was no injustice, there was simply a situation where they would not be allowed to realize the same profits that they would if they were granted the variance and that is not an injustice. Chairman Morin stated and justice isn't created by taking a conforming lot and creating two substandard lots.

Chairman Morin stated the Zoning Board of Adjustment erred in not accepting the Paul's evidence concerning the variance impact on the values of the surrounding properties.

They are trying to say that we did not utilize their expert that they brought, but they never brought their expert to the microphone to give testimony. It is their burden of proof to get their expert to come forward and gave that information, and going through the notes, they tried to say I never asked specifically for that. It is not my job to ask for that but I did ask many times, and it can be seen in the minutes about who wanted to come to the microphone and give input. At any point during that timeframe that person could have gotten up and given that input. Ms. Stirling stated I was baffled when I read that because I was here. Chairman Morin stated I thought they had a realtor. Ms. Stirling stated but I don't think we were aware of that because I think I asked about what is your understanding of meeting the burden of proof of that criteria. I don't remember them saying I have a realtor here. Mr. Swiniarski stated the contention here is that they had someone willing to say something but didn't. Is that what they are saying? Chairman Morin replied yes. Ms. Stirling stated and I clearly remember that I said where is your evidence on that. I don't understand that. Chairman Morin stated in looking at the minutes, they just made the general statement that it would not diminish. They submitted no evidence. Councilor Duschatko stated I think I raised the question on that very thing before Chairman Morin did. Mr. Swiniarski stated I think the Board completely considered the evidence presented.

Chairman Morin stated the Zoning Board of Adjustment erred in finding the property was not special or unique and denied the application would result in an unnecessary hardship. One of the big things that got brought up that made their property unique was that it was a corner lot. Ms. Georges stated and they list some other pieces of that and say it goes beyond being a corner lot but some of the other pieces include it being a larger lot and there are a lot of larger lots, there are a lot of other lots with large frontage. Not even only specifying the fact that it is a corner lot, but even adding some of those other components, it still doesn't reach the threshold of uniqueness. Councilor Duschatko stated I think there are some corner lots in the neighborhood that are actually larger than theirs. Ms. Stirling stated I agree, and just in summation in reading it, there is no new evidence here that would have us question where we didn't look at this. I think we did a pretty thorough review and they have not submitted, in my mind, new evidence that would warrant a rehearing. I would recommend that we deny their request for a rehearing.

MOTION by Councilor Duschatko that the Zoning Board of Adjustment deny the request for rehearing submitted by Victor and Madeline Paul pursuant to RSA 677:2 and support our decision and make these following points:

- 1. The Board understands that by its very nature, a variance is a contravention of the Zoning Ordinance, and the mere fact that an application conflicts with the terms of the Ordinance is not grounds for denial.**
- 2. RSA 674:33, I (b) (5) (A) requires that an unnecessary hardship must be owing to special conditions of the property that distinguish it from other properties in the area. If it were otherwise, every property would be entitled to a variance. A burden commonly shared by all properties is not grounds for a variance; it is a basis for a zoning amendment.**

3. **There is nothing unique about a corner lot with large frontage, or a 2.24 acre lot. There are numerous such lots. Mr. Morin's 3.04 acre parcel is an example.**
4. **Nonconforming lots do not establish the character of the district, but rather demonstrate what is not intended by a Zoning Ordinance adopted after such lots were created. Creating substandard lots would alter the character of the district.**
5. **The Residential and Agriculture District is the most restrictive in the Town, and is intended to be a refuge for families. The prescribed lot size is intended to provide privacy and sufficient area for the uses that are normally associated with a single family home in Bedford, such as gardens, swimming pools, garages, barns, tennis courts and the like. An applicant does not satisfy his or her burden by simply arguing the policy decisions of the citizens are wrong, and lots could be smaller.**
6. **If the general welfare were served simply by obtaining a permit from the New Hampshire Department of Environmental Services to construct a septic system, there would be no need for a zoning ordinance. Nor is the public welfare determined by the minimum, as judged by an applicant.**
7. **Substantial justice is not done by taking a conforming lot and creating 2 non-conforming lots.**
8. **The proposed use is not a reasonable one. The applicant is not seeking a variance to construct a single family home; the applicant is seeking a variance to subdivide a property to create two non-conforming properties.**
9. **This lot should not be viewed in a vacuum. Rather, it is the remainder of previous subdivisions which already have maximized the use of the land and provided the landowners with a satisfactory return on their investment.**

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

Adjournment:

Motion by Ms. Stirling to adjourn the meeting at 10:20 PM. Councilor Duschatko duly seconded the motion. Vote taken – all in favor. Motion carried.