

Town of Bedford
Zoning Board of Adjustment Minutes
January 18, 2022

A regular meeting of the Bedford Zoning Board was held on Tuesday, January 18, 2022, at the Town Meeting Room at BCTV, at 10 Meetinghouse Road.

Present: Sue Thomas (alternate member), Len Green (regular member), Dave Gilbert (regular member), Neal Casale (Vice Chair), John Morin (Chair), Elizabeth Jude (regular member), Kathleen Ports (Associate Planner), Becky Hebert (Planning Director).

Absent: Bob MacPherson (alternate member).

Call to Order and Roll Call

Chairman Morin called the meeting to order at 7pm and introduced members of the Board.

Old Business & Continued Hearings None

New Business

Rules of Procedure

Chair Morin said what we will do is have each applicant make their presentation. There will be public input for those in favor and those against the application. We will ask that there be no debate between the parties. Everything that is said from somebody out there should be addressed to the Board. We will give the applicant a chance for a summation prior to us going into deliberations. All applications will be heard in order of notice. We will go into non-public input to deliberate and vote on the applications this evening. You can wait for the vote tonight, or you can call the Planning Office after 8:30 tomorrow morning. Will anybody with a cell phone, please silence those phones so we don't have to stop the meeting to get them quieted. Notice of rehearing: any party has 30 days to request a rehearing from a decision of the ZBA. The Board has 30 days in which to respond to such requests per RSA 677:3, tomorrow being day one. All requests must be in writing and must contain new evidence. Please point out any errors you believe the Board has made in its decision. For the criteria for a variance: I am not going through those criteria right now. We're going to ask the applicant to go through the five criteria during their presentation. For a motion to pass this evening, you must have three affirmative votes. For those who are going to speak this evening from the public, I'm going to ask you to stand and be sworn in. Even if you're not sure, please stand and get sworn in and that way we're all set to go further.

Raise your right hand. Do you swear that the testimony you're going to give in this hearing tonight is the truth, the whole truth and nothing but the truth? [Applicants affirm] Chair Morin says thank you. Our first item this evening will be the minutes from last month, December 21, 2021. Do we have any changes, amendments, deletions? Seeing none, I'll take a motion on those.

Approval of Minutes December 21, 2021

MOTION by was made by Mr. Gilbert to approve the minutes of the prior meeting on December 21, 2021. Mr. Green duly seconded the motion. Roll call vote was taken - ALL IN FAVOR – unanimous. MOTION carries.

New Business

Allan and Judith MacLellan. Request for a variance from Article III, Section 275-22.A and Table 1, Table of Dimensional Regulations, Section 275-21.K (1)(c) to permit the construction of a ground-mounted solar array within 18.76 feet from the side setback where 25 feet is required at 41 North Amherst Road, Lot 20-64-4, Zoned R&A.

Susan Russell and Maan Alawa testify: Good evening. My name is Susan Russell and I'm here on behalf of my parents, Judith and Allan MacLellan, who could not be here this evening. Good evening. My name is Maan Alawa. I am a representative of the solar installation company, NuWatt Energy. I will be here primarily as support and also to answer any questions directly related to this report. Chair Morin said thank you. Go ahead. Ms. Russell said I have something to read. Allan and Judith MacLellan are the owners of the property at 41 North Amherst Road in Bedford. The property consists of Lot 4 as shown on the plan of land of Paul Wormwood of Bedford, NH, dated April 1948, by George C. Benjamin, and recorded in the Hillsborough County Registry of Deeds as Plan Number 758 – the Wormwood Plan. Together, with a 40-foot passageway, immediately adjacent to Lot 4, and a 30-foot passageway to the North of a portion of Lot 4, the property is identified in the assessing records of the Town as Tax Map and Lot 20-65-4. The property is located within the Residential Agricultural District. The property has a single family residence, including a 10-year-old addition, which extends into the setback by 6.87 feet. The owners want to install a solar panel array in back of the house at the best possible position to catch the sun but remain behind the house, so it is not observed from North Amherst Road. The addition's roof is not as high as the main house. And having a large portion of the array behind that section of the house will afford the best possible efficiency, while meeting the Historical District Guidelines. There are some facts supporting the request.

Variance is not Contrary to Public Interest.

It would not be contrary to any public interest since the property abuts a 40-foot right-of-way, which is lightly used. There would be no threat to the health and welfare of any neighbors. The solar array will not change the essential character of the area. The array is to be located directly behind a previously-approved addition, which extends a similar distance into the setback.

The Spirit of the Ordinance.

The spirit of the ordinance is preserved since the remainder of the 25-foot setback, 18 feet 3 inches, abuts the 40-foot right-of-way, which abuts Lot 3's 25-foot setback—for a total of over 83 feet between the array and the next lot. The ordinance establishes a separation between properties.

Granting the Variance Would Do Substantial Justice.

The encroachment on the setback is justified, since it will not be apparent because of the 40-foot wide right-of-way. The remaining 18 to 19 feet of Lot 4's setback and Lot 3's 25-foot setback. Lot 3 also has a line of trees and bushes between the right-of-way and their house, which will further reduce the visible impact of the solar array.

Values of Surrounding Properties Would Not be Diminished.

Property values will not be impacted since the entire solar array will be behind the house and not be seen by people passing by. The uphill neighbors are behind a line of evergreen trees, which shield them somewhat. When the house addition was approved in 2011, a local realtor filed a statement that there would be no impact due to the incursion into the setback. This is a similar circumstance. The house blocks the sun at different angles for different times of the year. The lower roof of the addition allows more sun to reach the panels during winter. The farther west on the property the solar array is, the more likely to get more sun due to the lower roof.

Denial of the Variance Would Result in an Unnecessary Hardship.

Denial of this variance would likely result in destroying trees that the homeowners planted many years ago in order to benefit the public and themselves. The only other option would result in cancelling the whole project to preserve the trees. This would destroy the electricity savings anticipated from the solar addition by the homeowners and the public benefit of removing a small quantity of demand from the electric grid. The intent of the ordinance is achieved with this project since the 83-foot separation distance provides more than many properties have between them. There is no conflict between the ordinance and our proposed solar array because of the wide separation between properties. From the proposed addition to the far edge of the neighbor’s setback, is over 83 feet, with a line of trees and bushes in between.

The Proposed Use is Reasonable.

The proposed addition is reasonable because it adequately establishes a sizeable separation between properties and is not an apparent violation of the ordinance. Thank you.

Chair Morin said questions from the Board? Mr. Casale said just a couple. Sir, are you the engineer for the project or are you sales? Mr. Alawa replied I am the Director of Sales and Operations. Mr. Casale questioned did you generate this report? Mr. Alawa affirmed – I did. Mr. Casale said it wasn’t identified. Who owns the, I assume it’s common land, for a PUD—a planned subdivision? Is your parent’s property part of that PUD? Ms. Russell responded are you referring to the right-of-way? Mr. Casale said correct. Ms. Russell continued it is their property, but others are granted use of that. Mr. Casale said right. So, it’s common property probably for the subdivision? Ms. Hebert said no, this is an older corner of Bedford. It’s not part of a Planned Unit Development. It is a right-of-way that was established, likely when the lots were created, to provide a common access. But if you go back to the plan, you’ll see this is property in the Historic District, so it’s not part of a larger Planned Unit Development. Mr. Casale said okay. So, technically do they pay taxes on that property, but they have to grant access to the public? Ms. Hebert said yes. Mr. Casale said I have no further questions. Chair Morin said just a quick question on the array itself. It looks to be stationary. Is it stationary or is there some movement to the array itself? Mr. Alawa replied it’s fixed. So, it will be stationary. Chair Morin said it’s stationary. Okay. No other questions from the Board? [no questions] Is there anyone in the public who would like to speak to this? Please step up to the microphone and give us your name and address.

Karen Cormier testifies: Hi I’m Karen Cormier and I live at 42 Church Road, which is behind their property. So, I guess my question is how big is this going to be? Chair Morin responded I think it shows it is 10 by 24 is the array itself. Ms. Cormier continued so 10 feet long? 24 feet high? Or 24 feet long by 10 feet? Chair Morin said no, it’s 24 feet long and 10 feet wide, per se. Ms. Cormier asked this is going to be facing the back of our properties, because it’s going to be in the back of your house? Mr. Alawa said facing toward the street. Ms. Cormier continued so; we’re going to be looking at what? We’re not going to be looking at the panels, but we’re going to be looking at the back of the panels? Mr. Alawa

said yes. Ms. Cormier asked what were you saying about the trees? So, the trees are still going to remain there that are there now? Or are they going to be taken down? Mr. Alawa said those trees, from my understanding, they are infant trees. They will continue to grow up. So, after a certain point, you will no longer see the back of the array because the trees will have grown past that point. Ms. Cormier said okay. So, these panels are going to be behind the addition? Or behind the house itself? Ms. Russell answered the addition. Ms. Cormier continued which is... so if I'm looking at the back of the house, the addition is on the right-hand side next to that right-of-way coming up toward our house? Ms. Russell replied yes.

Ms. Hebert said you can turn back to the plot plan by toggling on the screen. For the Board members, there is an aerial image of the neighborhood in your packet. You can also find that on the folder. That helps to describe. Ms. Cormier asked so behind where those panels are going to be, is that where the trees are now? Because I thought the trees are a little bit over to the left like directly behind the house. Mr. Alawa responded so, if I may refer to this satellite image, then the arrays will be directly in front of these infant trees right here. So, from your perspective, you will see the trees, the solar system, and then the extension and the house itself and then the road. In that order. Ms. Cormier said you mean the right-of-way. What do you mean the road? Mr. Alawa said North Amherst Road. So, from this perspective standing from your property—I'm assuming you're north of the property. Ms. Cormier said we're 42 Church. Mr. Alawa continued you will see the trees before you see the solar array. Ms. Cormier said okay. Mr. Alawa said there have been more trees that have been planted that will continue to grow as well. Ms. Cormier asked so are there going to be any more trees that are going to be planted in the future? Sherry Bowie who lives right next door to me did not make it tonight, but she's on the left side of us. She's totally directly behind your house. So, I'm just wondering if she asks me any questions. Are there going to be any more trees that are going to be put in behind those panels? Ms. Russell responded as of right now, I don't know if my parents have any plans to put more trees in, but they really do like trees. So, we buy them trees all the time, and they plant them everywhere they're allowed to. My guess is at some point they would plant more trees. But I'm not sure where. Ms. Cormier said okay. No further questions. Chair Morin said thank you. Any other statements before we deliberate?

Mr. Casale said I have some more questions. Sir, in regard to Ms. Cormier's question about being able to see the array, there's mention in the report of it being at a maximum 36 degree tilt, but that's the maximum. Do you have any idea where it's going to be, and can you explain what she's facing? I assume it's just like a metal frame that holds the glass panels. Can you give any further description how it may look from her backyard? Mr. Alawa said yes. So, the back of the panels are typically a white back sheet, followed by the black frame of the panels themselves. You can see a bit of the concrete foundation coming up from the ground. So, you will sort-of see that during the initial stage until the trees have grown to a certain point. With that said, we used the maximum height of 36 degrees. Realistically, we probably would want to install this at 25 degrees. So, I did not actually add this to the report because I didn't want to add extra information, but at 25 degrees, the height at its peak would be closer to 6 feet compared to 7 and a half feet. Mr. Casale said that's going up a slope, correct, towards the back of her home. So, she would probably see very little of the back of the panels at the height that you're recommending. Mr. Alawa said yes. And if it does go uphill towards her home, then most likely she will just see very minimal of the back, depending really on the tilt of that slope. Mr. Casale said okay. One other question. Just clarifying a measurement. On Page 1 on this sheet here, on the diagram to the right, which is what's being proposed, it shows it looks like 18.7 feet, but yet on the Plot Plan itself it shows a greater distance of like 64. Which one is? Mr. Alawa said yes. This may have been an outdated illustration because after this report we had a modification where we slightly adjusted the system

location. But we did run those calculations below based on 25 feet from the north property line and then about 18.76 to the west. So, this illustration that you're referring to specifically is a little outdated and not to be used for specific reference. Ms. Casale continued so it's just a lot different though. So, does the back, as opposed to this on the Plot Plan. The Plot Plan is showing 63 feet from the edge of their property line. And again, this is showing 18.7. So, what's the difference? Mr. Alawa replied yes. So, the difference is that the 63 feet also includes the 25-foot setback from that property line, etc. Mr. Casale said oh, got it. Yes. Mr. Alawa continued like I said, that was based on the outdated, original illustration where we had it a little bit closer to both property lines both west and north. But since we came back with revisions, and we created some modifications, I did fail to update that illustration to show the specific measurements. During installation, we are sure to have 18.76 feet at the maximum from the west property line to the edge of the solar array. Mr. Casale said okay. Thank you. Chair Morin asked any other questions from the Board? [no questions] With that said, I'll ask for a motion to go into non-public input to deliberate.

MOTION by was made by Mr. Green to go into non-public input for deliberation. Mr. Casale duly seconded the motion. Roll call vote was taken - all in favor. Motion carries.

Chair Morin continued alright, let's go through the criteria.

1. Granting the variance would not be contrary to the public interest because:

(1) Whether granting the variance would alter the essential character of the locality:

Board agrees there's no concern there. It will be well-hidden from the street.

(2) Whether granting the variance would threaten public health, safety or welfare:

Consensus of the Board is no.

2. The spirit of the ordinance is observed because:

Chair Morin said basically they're trying their best to keep a distance from the property line, but also not take down natural cover, as in the trees, to where it needs to go. From the front, it's blocked off by the house. The back – there's just a lot of space back there. The side – with that common area, it really keeps it well away from the neighbor's lot. We don't have that neighbor here to speak negatively towards that. I see it meets that.

3. Granting the variance would do substantial justice because:

Mr. Casale said they don't have anywhere else to put it where it's most efficient and the most hidden. Even though the backyard neighbor can see it more, it seems like they have done the best that they could to balance the efficiency as well as keep it hidden as much as possible.

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

Board agrees there's no evidence of this.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area because:

Chair Morin said they've utilized the best placement for the array for usage and pretty much to hide it the best that they can also.

(A) Denial of the variance would result in unnecessary hardship because

- (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 because:**

Mr. Casale said it's to avoid overcrowding, and we don't have that here. Board agrees.

- (ii) The proposed use is a reasonable one because:**

The Board agrees in this application, the proposed use is reasonable.

(B) If the criteria in subparagraph (A) above are not established, explain why the property cannot be used in strict conformance with the ordinance and why a variance is therefore necessary to enable a reasonable use of it:

MOTION: Mr. Casale moves that the Zoning Board grant the request for a variance from Article III, Section 275-22.A and Table 1, Table of Dimensional Regulations, Section 275-21.K (1)(c) to permit the construction of a ground-mounted solar array within 18.76 feet of the side setback where 25 feet is required at 41 North Amherst Road, Lot 20-64-4, Zoned R&A, per our deliberations. Mr. Green duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.

Chair Morin requested a motion to go back into public input.

MOTION by Mr. Gilbert to move back to public input. Mr. Casale duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.

Chair Morin said you are all set folks.

Chair Morin asked Becky, Kathleen, anything else for this evening? Ms. Hebert said I just wanted to make an announcement that on January 24th, the Planning Board will hold their second and final hearing on proposed zoning amendments for this year's Town Ballot. And on the agenda, we have 2 amendments proposed by the Planning Board. One for solar energy systems to add clarity to the ordinance and clarify standards and dimensional standards for the siting and use of solar energy systems. And the application you just heard needed to comply with those proposed zoning amendments. The second one is to allow detached accessory apartments in the residential agricultural district, subject to certain design criteria and the granting of a conditional use permit by the Planning Board. So, the full text of those amendments are available online. Kathleen or I would be happy to answer any questions. If you have a chance to read through them, and if you're interested in participating in the meeting, it will be here at BCTV on January 24th. We have one amendment submitted by citizens' petition this year. And that is for an amendment to limit the size of medical clinics in the performance zone to not more than 20,000 square feet, and to not have more than 2 stories. So, that is an amendment submitted by citizens' petition. The intent is to limit development of larger medical facilities in the performance zone. Chair Morin said question on the second item—the detached. So, basically, we don't have to worry about that one, basically. Because that will be a full Planning Board thing? Ms. Hebert said correct, yes. I think the Board—it stemmed from discussions with our building

code officials and some of the applications that you all have seen over the years where you're in a position of having to review a variance request for something that's not permitted by right. The conditional use permit would provide a permitting pathway for someone that wanted to pursue that use, and there isn't currently that in our ordinance. So, our zoning officials sometimes get very fancy applications for pool houses and detached exercise rooms or detached garages, and they scratch their head and think this looks an awful lot like an apartment. So, this would provide permitting pathway to legally create a detached accessory apartment. Chair Morin said very good. Any questions? Alright. That's it.

MOTION: Mr. Gilbert moves to adjourn the meeting. Ms. Thomas duly seconded the motion. Roll call vote was taken – ALL IN FAVOR. Motion carried 5-0.

Meeting adjourned at 7:28 pm.

The next meeting will take place on February 15, 2022.

Respectfully submitted,

Sue Forcier