

Town of Bedford
January 19, 2021
Zoning Board of Adjustment
Minutes

A regular meeting of the Bedford Zoning Board was held on Tuesday, January 19, 2021 via the Zoom meeting platform.

Present: John Morin (Chair), Kevin Duhaime (Vice Chair), Melissa Stevens, Len Green (regular member), David Gilbert (alternate member), Neal Casale (alternate member), Elizabeth Jude (alternate member), Karin Elmer (Planner 1), Rebecca Hebert (Planning Director).

Absent: Sharon Stirling

I. Call to Order and Roll Call

Chairman Morin called the meeting to order at 7:00 p.m. and introduced members of the Board. In accordance with the right to know laws all members present indicated they were alone in the room while on this Zoom call.

Ms. Elmer read the following statement:

- *Due to the Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Zoning Board is authorized to meet electronically.*
- *This meeting is being conducted using the Zoom platform. All members of the Board have the ability to communicate with each other during the meeting, and the public has access to listen and participate by dialing 929-205-6099 and entering the Meeting ID # 959-2791-0035 and the meeting Password 254864. Instructions regarding remote access to the meeting have been published in advance and are available on the ZBA agenda, which is posted on the Town website.*
- *There is no physical location for the meeting, which is permissible pursuant to the Governor's Emergency Order. Town of Bedford is providing public access to the Zoom meeting by telephone, and the meeting will also be broadcast live on BCTV's Channel 22.*
- *Members of the public may email staff at planning@bedfordnh.org to ask questions during the meeting or notify us of technological issues. If you have joined the meeting using Zoom, you may also ask questions when the Chair opens the hearing for public comment through your phone connection.*
- *All votes will be taken as a roll call vote.*

- *If there are technological issues during the meeting, the Chair will recess the meeting and we will try to correct the problem. If the issue continues, the application will be postponed, and the meeting will be adjourned.*

Ms. Elmer reviewed the agenda.

Chairman Morin stated the following: This will serve as notice to those participating and may wish to speak that you are required to tell the truth, the whole truth and nothing but the truth.

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 said request(s). (Per RSA 677:3) Tomorrow being day 1. All requests must be in writing and must contain new evidence. Please point out any errors you believe the Board made in its decision. Per State law it takes 3 votes in the affirmative to pass a motion.

2. **Approval of Minutes:** December 15, 2020

MOTION by Mr. Gilbert to approve the minutes of the December 15, 2020 meeting of the Bedford Zoning Board of Adjustment as written. Mr. Casale duly seconded the motion. Roll call vote taken - all in favor. Motion carried 7-0.

Chairman Morin appointed Mr. Casale as a voting member this evening.

3. **Old Business & Continued Hearings**

Peter Boyle – Request for a variance from Article III, Section 275-21.C (2) in order to keep an existing detached apartment where it is not an allowed use at 35 Back River Rd. Lot 22-43-3, Zoned R&A (**Continued from December 15, 2020**). (**Tabled at the request of the applicant**).

Ms. Elmer indicated this application has been tabled this evening at the applicant's request. Anybody who was online to speak on this application was instructed to call the Planning office tomorrow.

Ms. Elmer said the meeting on this application will take place on February 16, 2021 and her announcement this evening would serve as notice. Another green card will not be mailed.

4. **New Business:**

- 1) **BFB Real Estate Holdings, LLC** – Request for a variance from Article IV, Section 275-28 to fill approximately 3,814 square feet of wetland to permit the construction of a 125,000 square-foot manufacturing facility at 308 S. River Rd., Lot 24-98-19, Zoned PZ.

Jason Lopez introduced himself as well as David Greer, CEO of Wire Belt Company of America and member of the applicant team, BFB Real Estate Holdings, LLC, and Tom Sullivan of Sullivan Construction.

The plans were reviewed. Mr. Lopez noted that the driveway will be located at Moore's Crossing. The building located to the South is The Residential Mortgage Company which

has a pond out front where they sometimes have a water feature turned on spraying water. The entire area is located just south of The Consignment Gallery.

Mr. Lopez indicated that 308 South River Road is located in the Performance Zone. The lot is about 27-acres and has a fair amount of wetlands on it and quite a bit of upland area. Tonight they are seeking a variance to fill a little over 3,814 square-feet of wetlands.

Mr. Lopez provided some background and history: Wire Belt Company of America is currently located in Londonderry, New Hampshire in the Airport area. After expanding a few times, they have outgrown the building in Londonderry and cannot bump the walls out any further at that location. They are looking to construct a new facility. The plan is for a 125,000 square-foot facility. The first phase will be 100,000 square-feet. Wire Belt will fill 75,000 square-feet and have 25,000 square-feet for a tenant, and a remaining 25,000 square-feet on which to build in the future. They looked at numerous properties, and were initially thinking of staying in Londonderry but became partial to the property at 308 South River Road because it has future building potential, and the proximity to their existing location for their existing staff. They completed due diligence and decided to relocate to this property.

Unique to this project is that they are seeking to get LEED accreditation and are striving to hit the platinum level and also net-zero energy. They hope their facility will serve as a model to other manufacturing plants in the State. The current plans show about 70,000 square-feet of solar array on the roof, about 50 geothermal wells for energy efficiency, a substantial landscape plan to help with solar heat gain and shading the pavement. They will provide some walking trails around the property and a concrete sidewalk going out to South River Road to allow employee access to South River Road to Moore's Crossing in order to access the Bedford Heritage Trail. This will be a unique and substantial project for this part of town.

Mr. Lopez explained the variance request is for Article IV, Section 275-28 to permit filling of approximately 3,814 square feet of hydric B soil for the placement of the building and he reviewed the criteria for the variance:

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

Mr. Lopez said the general purpose of Town of Bedford zoning ordinance is to promote the health, safety and general welfare of the inhabitants of Bedford.

The subject proposal seeks to construct a 100,000 square-foot manufacturing facility with 25,000 square-foot future addition. The project is seeking LEED accreditation with the goal of reaching platinum level along with achieving net-zero energy status. This project is in the Performance Zone surrounded by commercial uses and two residential lots. The character of the locality along South River Road, to the south of the turnpike overpass is primarily commercial properties with a lean toward professional service-based uses and limited retail services. The proposed use is compatible with the area.

Given the project's basis of design and incorporating responsible design such as: A 70,000 foot solar array, landscape design minimizing solar heat gain, and the use of geothermal wells for energy efficiency, specialized wall and roof systems for energy efficiency, connection to municipal water, extension of municipal sewer, parking and charging stations for electric

vehicles, addition of walking and biking trails, use of a storm water infiltration system for groundwater recharge and a created vegetated wetland. We suggest that not only will the project not threaten public health, safety or welfare, but the proposed project will provide a benefit to the public through the use of “green” design. The project Applicant seeks to construct a project that will act as a model for other businesses to follow and see that successful businesses can operate using responsible design.

2. The spirit of the ordinance is observed because:

Mr. Lopez said due to specific design methods and characteristics of the property, the spirit of the wetland ordinance as outlined in Article IV, Section 275-24 is observed for the following reasons:

- a. Although the proposed building will be placed over an existing 3,814 square-foot isolated wetland pocket the remainder of the wetlands on the property are protected from development. All impervious surfaces have been designed to pass through a storm water treatment system prior to release to the on-site wetland complex.
- b. The design proposes a conservation easement to be placed on the majority of the on-site wetlands to provide for the future protection. The drainage facilities for the proposed development have been designed to: Recharge the groundwater to offset the proposed impervious cover, protect the natural flood storage of the wetlands, and minimize pollutant loads in runoff.
- c. A Wildlife Biologist has walked the property to assess the upland wildlife habitat, wetland wildlife habitat and threatened, endangered and special concern wildlife species. Although no specific critical habitats or species were found on-site the Wildlife Biologist’s recommendations for potential impacts to species in the locality have been incorporated in the design.
- d. There are no waterbodies on-site to support fish, but the wildlife habitat is being protected by the proposed conservation easement.
- e. The storm water management design incorporates treatment systems prior to release of runoff from developed areas. The design also incorporates groundwater recharge to offset the impacts from impervious cover. These specific design methods will protect the local quality and quantity of groundwater.
- f. The wetland area to be filled is on private property and does not serve as flood storage, so it is assumed there should be no reason for expense to the Town.
- g. Although the proposal seeks to fill 3,814 square-feet of wetlands the remaining wetland complex on-site will be protected by a conservation easement.
- h. No septic system will be placed on the property. The site will connect to municipal sewer.
- i. The existing isolated wetland pocket is located on the property in an area that limits full development potential of the property, therefore the filling is required.

3. Granting the variance would do substantial justice because:

Mr. Lopez said the strict enforcement of the ordinance and denial of the variance would not promote substantial justice to the applicant or to the public. The development of a 125,000 square-foot manufacturing facility on this site would not be possible without the elimination of the isolated wetland pocket and its 50-foot structure setback. Denial of the variance preventing the construction of the facility would have an adverse impact on taxes and local jobs as the business continues to grow.

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

Mr. Lopez said the property lays in the Performance Zone in an area of commercial development. With the basis of design seeking LEED accreditation with the goal of reaching the platinum level, along with achieving net-zero energy status, the project will not diminish the values of surrounding properties. One could suggest the project will be a model and encourage other properties to seek enhancements to their properties in future additions and renovations, bringing an overall enhancement to the locality.

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:

Mr. Lopez said the strict enforcement of the ordinance and denial of the variance would prevent the development of a 125,000 square-foot manufacturing facility on this site without the elimination for isolated wetland pocket and its 50-foot structure setback. There are only a few remaining properties in Bedford's Performance Zone capable of the placement of a 125,000 square-foot manufacturing facility and all the associated site amenities. The subject property has the ability to properly layout the full infrastructure with the removal of the isolated wetland pocket.

(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. Lopez said as outlined in Item 2 above, the design of the site addresses the public purposes of this specific ordinance and it could be suggested that the public benefits are enhanced due to the environmentally responsible design. Denial of the variance due to strict conformance with the ordinance would result in the applicant's need to seek a new property for development after substantial investment in site selection, investigation, and design.

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

Mr. Lopez said the property contains 362,106 square feet of hydric A and B soils. The proposal seeks to fill 3,814 square-feet which is only 1.0% of the on-site wetlands. Most of the remaining wetlands will be preserved and protected by a conservation easement. The Wetland Scientist and Wildlife Biologist both report the isolated wetland pocket is not a vernal pool and is a forested wetland similar to the other on-site wetlands, therefore there will not be a loss of a significant resource.

(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:

This section is not applicable as Item A has been addressed.

Chairman Morin opened the floor for questions from the board.

Mr. Duhaime and Ms. Stevens had no questions.

Q: Mr. Green asked for a brief explanation of LEED accreditation and what platinum status is and why it is a good thing.

A: Mr. Lopez explained the LEED program is an agency that oversees the responsible design of buildings and sites. The platinum level is a certain amount of points. There are different levels with platinum being the best. The current goal is to reach that platinum level. The building design needs to have a certain energy efficiency on its envelope and design. They are looking at the placement of skylights to have natural light in the building versus the amount of glazing on the side of the building. They are looking at a substantial investment in the geothermal wells to help in the heating and cooling of the building. They are looking at placing electric charging stations for 6 electric vehicles on-site, and providing some amenities to the employees with walking trails. With all of these green designs there is a point structure and every time you meet a threshold on site and inside the building (the quality of the air, the lighting levels, the noise and sound that takes place within the building and the effects on the employees). There is a whole gamut of criteria they look at to assign points and to create an energy efficient, healthy and safe building design. An agency reviews the process, and they go through the design conducted by the mechanical contractor, the architect, the civil component, and the landscape component and review all of them to see if they meet very strict standards, and if so, that project is awarded LEED certification at the level of points they've applied for and comply with. It has a lot to do with energy efficiency and the footprint it has on the environment and surrounding community.

Q: Mr. Green asked if the geothermal heating and cooling would eliminate the need for gas or oil for heating and cooling.

A: Mr. Lopez said that South River Road has a gas line available, so they are looking at bringing the gas in. The idea is to run off of geothermal and solar for their energy use, but again, it is a manufacturing plant, and we are in New England where we have long periods of limited sun which could affect creation of the energy. Weather could also affect demand on the heating system, so there will be a generator on-site and supplemental for the gas in case environment or cold weather puts too much of a strain on the system, so that they can make up the difference.

Mr. Gilbert and Ms. Jude had no questions.

Q: Mr. Casale asked if Mr. Lopez is a Wetlands or Wildlife Specialist.

A: Mr. Lopez indicated he is not.

Q: Mr. Casale said in the project narrative it states at the bottom that "a complete application including the functions and values of all the onsite wetlands and a wildlife impact assessment has been provided" and it talks about documentation. Unless it was given to Planning and the Zoning Board (ZBA) didn't get it, other than Mr. Lopez's "say so" Mr. Casale feels that right now he doesn't have any documentation which states anything relative to wildlife or wetlands that backs up what Mr. Lopez is saying.

A: Mr. Lopez said the report was included with the wetland application. They have made the formal submittal to the Town. They have also met with the Conservation Commission and it was presented to them, but was not in the ZBA package.

Q: Even with the Conservation Commission, Mr. Casale noticed there was no reference to paperwork nor was there an expert in either of those categories present during the meeting.

A: Ms. Elmer indicated all of that documentation was submitted to the Conservation Commission for their review with their dredge and fill permit, so all of the paperwork that was submitted was stamped by a Wetland Scientist and a surveyor. The environmental company that did the work submitted their report to the Conservation Commission, so we have all of that data and everything lines up. They are not missing anything. Because what the Conservation Commission and the ZBA looks at is kind of overlapping, sometimes ZBA does not get all of the documentation the Conservation Commission does.

As long as we have that information, Mr. Casale felt satisfied, he just didn't see it referenced by the Conservation Commission. Ms. Elmer said that Conservation Commission receives it in their packets and each individual page and who stamped it is not referenced, it is just part of their packet.

For the record, Mr. Lopez indicated the Wetland Scientist for the project was Josh Brien, an employee at Keach- Nordstrom Associates, and GZA Environmental were the Wildlife Biologists on the project.

Chairman Morin had no further questions, but indicated he watched the Conservation Commission meeting which delved deep into the wetlands stuff and was interesting to listen to.

Chairman Morin opened the floor for questions or comments from the public.

Q: James Prieto of 318 South River Road, Bedford, NH, and abutter next door asked if they would be bringing sewer to the property. Right now he believes sewer stops right in front of The Consignment Gallery.

A: Mr. Lopez said that is correct. There is some sewer over there, but we can't get gravity from our site to that property. The Town of Bedford currently has plans to go from the intersection of Moore's Crossing and South River Road and head down Moore's Crossing to the sewer intercept down near the river. He explained this project will take a while to construct, so by the time that sewer is being constructed they will be able to tie into that. The applicant will be responsible to extend the sewer across South River Road; put a manhole on the west side of South River Road; and then tie into that.

As the abutters, Mr. Prieto would love to be part of that because getting off of the current septic system they are on (due to problems it has created for them) is one of their long term goals. He stated this was his only concern.

Q: Vivian MacEwen of 300 South River Road, Bedford, NH (which is located right next door to the property being discussed this evening) said she has had her property for sale for some time. She asked what impact the landfill and changing soils might have on her

property. She asked if any consideration had been given to her property and whether it might impact her property.

A: Mr. Lopez said that they currently have an application before the Planning Board and Ms. McEwan's questions and concerns will be addressed during the planning process. There is a full set of design plans before the Planning Board and they are available to view at Town Hall. The Public Hearing will take place on February 8, 2021. Mr. Lopez said the general slope of the land, for the most part, heads toward the south and they are able to deal with drainage on the southerly side of the property. He said there is a little piece of land along Ms. McEwan's property and it looks as though there is an old trench that somebody dug along the property line. Mr. Lopez says they will need to address drainage in that area and have picked it up and created a retention pond out along the frontage of South River Road. He believes they have most of the items addressed, but if Ms. McEwan has any additional questions after viewing the plans he would be happy to address them at the Planning Board meeting.

Q: Chairman Morin asked if the piece of wetland to be filled is an independent spot compared to the larger area in the back of the property along Everett Turnpike and south.

A: Mr. Lopez indicated it is the west and south. The group viewed the plans and Mr. Lopez pointed out the isolated wetland pocket on the north side of where the building will be. Everything to the west and south of the blue line that meanders through the plan is the larger wetland complex. The crosshatched area in the red line shows the limits of the proposed easement they are looking to put over all the wetlands. There are two other smaller isolated wetland pockets to the southeast corner of the parking as it comes along the front but they are protecting those.

Q: Chairman Morin asked if the one we are dealing with tonight is an isolated area by itself.

A: Mr. Lopez said that is correct.

Q: Emily Doyle lives on the other side of the Everett Turnpike on Mulberry Lane in Bedford NH. She asked if this would affect anything on the other side of the Everett Turnpike.

A: Chairman Morin said no, and Mr. Lopez shook his head "no".

Q: Bob Lamey of 16 Mulberry Lane, Bedford, NH said on all of the planning documents for the airport access road going back to 1997 that area is considered a wetland and some of the area along the highway was impacted. He would like to understand if the wetland impacted by the airport access road will be affected by this project. In addition the Corps of Engineers indicated that the land to be built on was 10-15% wetlands and he thinks that is a big discrepancy. Chairman Morin and Mr. Lopez thought the airport access road is farther down the road from the project. Mr. Lamey said the lanes start there and he lives directly across from the project. Mr. Lamey said wetlands were impacted all along the eastern section of the Everett Turnpike along the project property boundary. He thinks when the lanes were built about 10-years ago for the Everett Turnpike it impacted maybe 50-feet into the wetlands. Ms. Hebert said that took place south of the project site. Mr. Lamey said it is not south, but directly at the project site. He asked if someone could research the Manchester Airport access road and the wetlands impacted at that time and how that might affect this project because the wetlands on the access road plans ran about 800-feet east of the Everett Turnpike all along the area being discussed for the project. The Corps of Engineers at that time considered all of that area to be wetlands.

A: Mr. Lopez looked on Google Maps and found that the airport access road is about 1.4 miles to the south of the project site.

Mr. Lamey said the lanes for the road construction started where Cedarwood Drive goes up to Sunset Lane. He said south of Sunset Lane was impacted by the airport access road.

Mr. Lopez opined that they probably did a lane extension, side slope extension and so forth. Mr. Lamey said that is correct. Mr. Lopez said he not aware of it, but if they did in fact do a lot of side slope work there that would be on the west side of the project lot and they are keeping away from the wetlands internal to the property on the east side. Their wetland consultant has walked the property and flagged the wetlands on the east side which is their controlling side of the wetlands.

Q: Mr. Lamey asked if someone in the Planning Department or Engineering Division could reference back to the Manchester Airport access road and the information developed by the Corps of Engineers because they are indicating all of that area to be wetlands and water bodies.

A: Ms. Hebert said that the Planning Staff can reach out to the Department of Transportation (DOT) and get copies of the airport access road and get information regarding the wetland impacts for that construction. She believes, however, that this project is placing a conservation easement on wetlands that may have been impacted as part of any work to the turnpike. Mr. Lopez said that is correct – they are putting a conservation easement over the wetlands. He thinks the wetlands extend out into the DOT/Everett Turnpike right-of-way. Mr. Lamey said they do. Mr. Lopez said that, “We can only protect up to what we own” and that it is up to the State what they do with the remaining wetland between our property and the Everett Turnpike and how they protect or impact it.

Mr. Lamey said what is shown on the maps at that time was an area roughly 800-feet from the east of the Everett Turnpike which is the area that Mr. Lopez would be building in.

Ms. Elmer thinks when they did the work for the Everett Turnpike they did not enter every single property because it was all private property and did not delineate all of the wetlands. They delineated on DOT land and perhaps made an assumption as to how far into the property the wetlands went; but they did not delineate all of the wetlands on private properties on South River Road; however, they will still look at the plans and double-check. Ms. Hebert said past surveys have shown similar wetland boundaries as to what you see on this proposed project plan. She also said a wetland scientist went in and mapped the wetland locations and then a surveyor went in and picked up that boundary. That is what you see on the project plan, and it is more detailed than anything the Corps would have done as part of the impacts to the interstate. Chairman Morin said we have these plans that have been dealt with by experts in the field that have been submitted to the Town, but the Planning Department will look into it. If Mr. Lamey would like to get a copy he could contact Planning and they would send him a copy of the project plan that way Mr. Lamey could see how it has been done by the scientists. Mr. Lamey said he feels that the Corp of Engineers are also scientists and well-regarded and that they documented this information for some reason and he would like someone to just look at that information and coordinate and make sure there is no impact between the two studies.

Q: Mr. Lamey asked how tall the new building would be.

A: Chairman Morin indicated that the Zoning Board is only dealing with the wetland. The actual building itself – height, width, color etc. – are dealt with at the Planning Board meeting. Mr. Lopez did pull out the architectural plans that are on file with the Planning Board and the building will be 26-28-feet tall.

Q: Due to the fact that the building is going to be that tall, Mr. Lamey asked how much sound from traffic on the Everett Turnpike will reverberate from the side wall of the building and be bouncing back against the highway.

A: Again, Ms. Elmer said that is a Planning Board question, not a Zoning Board question. Ms. Hebert said she is happy to go over any site design questions with Mr. Lamey one-on-one and share the full site design package with him ahead of the Planning Board meeting.

Q: Mr. Lamey asked if any of the groundwater wells to be dug will be in wetland areas and will they change the groundwater temperature? His house works off an artesian well so he is unclear if any project wells (which would be within 1,000 feet of his well) would affect the water coming in his well in any fashion. Lastly he asked if anyone thought about the glare coming off the solar array on top of the building and how it will affect the airport runways and aircraft coming in and out of the airport.

A: Chairman Morin indicated all of his questions above are Planning Board issues.

Chairman Morin opened the floor for further questions or comments from the Board. There were none.

Mr. Lopez had nothing to add. David Greer, CEO of Wire Belt Company introduced himself and said they are a 4th Generation manufacturing company and they have been in Londonderry since 1990 when they moved up from Massachusetts. They have 100 employees here, and companies in England and Germany. As you can tell from the design plans – alternative energy and taking care of the earth is very to him and he hopes the Town appreciates what they are trying to do.

MOTION by Mr. Duhaime to move into deliberations on this variance application. Mr. Casale duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.

In regard to filling that one wetland:

**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:**

Mr. Duhaime said that although they are filling in a wetland, they are making a larger proposed wetland plus marking a rather large area for a conservation easement, so in his mind they have met the intents.

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

Chairman Morin doesn't see any issues. Ms. Stevens said we have not seen anything to that effect.

2. The spirit of the ordinance is observed because:

Mr. Casale said it is observed. They've ameliorated any of the potential issues with filling the wetland in their engineering of it. They are protecting the greater wetlands that are on the property; so he thinks they are meeting the spirit.

3. Granting the variance would do substantial justice because:

Chairman Morin said when you look at the land as a whole we are looking at 1% and one isolated area outside the main area of wetlands and he thinks it's pretty reasonable to make an exception to that piece.

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

Mr. Green said, "No, I don't see that." Chairman Morin added that we had not heard anything from any experts either.

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:

Chairman Morin indicated there aren't many pieces left in the area. He thinks it is a pretty substantial piece of property size-wise and with the amount of wetlands on the property they are working pretty diligently to keep everything undisturbed except for this one small wetland which happens to be out on its own. Chairman Morin thinks it is reasonable given the size of the property.

(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:

Chairman Morin thinks these areas have been discussed already

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

Chairman Morin said it is very reasonable in this area of town to have a commercial development. He thinks it's a very good use for what they are looking to do.

(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 by Mr. Casale that the Zoning Board of Adjustment approve a variance from Article IV, Section 275-28 to fill approximately 3,814 square feet of wetland to permit the construction of a 125,000 square-foot manufacturing facility at 308 S. River Rd., Lot 24-98-19, Zoned PZ as per the Board's deliberations. Mr. Duhaime duly seconded the motion. Roll call vote taken - all in favor. Motion carried 5-0.

MOTION by Mr. Casale to move out of deliberations on this variance application. Mr. Green duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.

- 2) **Harvey Road Commercial Property, LLC** – Request for a variance from Article IV, Section 275-28 in order to permit the construction of a 16,000 square-foot warehouse 9.7-feet from the edge of a wetland where 50-feet is required on Harvey Rd., Lot 35-98-30, Zoned PZ.

Jeremy Belanger introduced himself. He is a licensed Engineer with TF Moran. He indicated that Bill Stevens, President of Harvey Construction and Tony Nazaka from Stone River Architects who will be designing the proposed warehouse are also on the call tonight.

Mr. Belanger said the location is a corner lot on Harvey Road, Lot 35-98-30, within the Route 3 Corridor / PZ Zone. It is currently a vacant lot. The project is proposing to construct a 16,000-square foot warehouse. This lot is located adjacent to the existing Harvey corporate offices. The group viewed the site plan. Mr. Belanger said they are requesting a variance from Article IV, Section 275-28A which would be to reduce a wetland setback from 50-feet to 9.7-feet in the corner of the building.

Mr. Belanger said what is being proposed tonight is least impactful to the wetlands that are located to the east and north sides of the site. On the left side of the plan he noted a larger wetland complex which goes down into the pond seen in the upper left which then eventually discharges into Sebbins Brook. The wetlands located on the bottom of the plans consist of a roadside drainage ditch and an existing culvert that runs underneath Harvey Road and feeds toward the pond on the left. Associated with this is 500-square feet of impact which requires a Department of Environmental Services (DES) dredge and fill permit which is currently pending their review. This is for the access to the northern driveway. There are two driveways located on the site. The northern driveway is for oversized vehicles bringing materials to the warehouse as well as access for emergency vehicles. The driveway on the right side of the page would be for employees and visitors.

Because this is a corner lot, Mr. Belanger indicated site distance was a concern as well as the turning movement for the larger vehicles to the back which is why we see a larger area of pavement behind the building which enables the turning radiuses for the larger vehicles. These driveways are specifically located where they are to provide site distance in both directions as well as trying to avoid the existing wetlands. In allowing two driveways there is 500-feet of impact. The wetlands on either side of the driveways will be hydraulically connected with a culvert so no natural flow is interrupted in that direction.

In terms of mitigation, Mr. Belanger said that they initially looked at a larger 20,000 square-foot building. Given the constraint of existing wetlands on-site the layout didn't work, so they reduced the size of the building to not have any wetland impact from the building itself. On the left side of the page, you will note there is a 4-½-foot tall retaining wall which enables them to not impact a small finger of wetlands that extends into the site.

Some other important site components: Storm water management – the wetlands on the site show indicate that there is high groundwater. In order to collect, treat, and provide groundwater recharge from the impervious surfaces (the roof, paved surfaces and parking areas) they have provided a series of rain gardens which are small impressions where water running off the impervious areas is directed to with sediment 4 base which allow for larger particles to fall out before entering the main body of the retention area. Once the runoff gets into the retention area there is 18-inches of filter media below the grass that is planted within them and they also have plantings providing biological uptake while also providing groundwater recharge for the wetlands that are on site.

Mr. Belanger said the layout presented tonight does not have impacts to the wetlands themselves, but there would have to be a reduction to the 50-foot wetland buffer in order to construct the site as such. This parcel in particular has received several variances in the past. The one outlined in the staff memo was from 2005 to fill 1,500-square feet of wetlands to develop the site. He said when they were looking at a proposed layout and what they could fit in there they took into consideration what had previously been improved and scaled back the proposal so they didn't have the wetland impacts. Mr. Belanger said this went before the Conservation Commission which provided their input on the dredge and fill for the State permit and they reviewed the variance and recommended granting of the variance.

Mr. Belanger presented the criteria for the variance:

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:

Mr. Belanger said Section 275-24, items A through I establish the purpose of the ordinance as it applies to wetlands, which the requested relief will not adversely effect. The proposed site layout is the alternative with the least amount of impact to wetlands, limited to approximately 500-square feet of a roadside ditch for site access and installation of a driveway culvert. Due to the location of wetlands on the north, east and west sides of the site, the contiguous buildable area is limited with overlapping wetland and building setbacks which would not accommodate the proposed building, which is an allowable use, and of typical dimensions for its purpose. The size and use of the building is consistent with other buildings in the immediate vicinity and although the proposed building encroaches on the wetland setback, concerns with impact to this area are mitigated by the storm water best management practices to provide treatment and attenuation of runoff from proposed impervious surfaces and promote groundwater recharge consistent with the purpose of the ordinance. As such, the variance would not alter the essential character of the locality.

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

Mr. Belanger said as stated above, impacts have been limited to provide a site layout with the least impact to wetlands. Appropriate storm water best management practices have been incorporated to mitigate impacts to the site hydrology to sustain the wetlands. As such, authorization of the variance would not threaten public health, safety or welfare.

2. The spirit of the ordinance is observed because:

Mr. Belanger said the request is consistent with the spirit of the ordinance, as the ordinance recognizes "the unequal and unique burden of wetland property owners and (to) minimize restrictions which may be placed upon such properties", see section 275-24 I. The building and associated site elements have been sited to avoid wetland impacts but does subsequently impact a wetland setback. There would be no negative cumulative impact on granting similar requests to others in the neighborhood who also share the same conditions as the subject property, and as such the spirit of the ordinance is observed.

3. Granting the variance would do substantial justice because:

Mr. Belanger said the guiding factor for substantial justice is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Authorization of the request will allow the suitable development of the site for an allowable use, and the site has been designed to incorporate appropriate storm water best management practices to provide treatment of proposed impervious surfaces and promote groundwater recharge consistent with the purpose of the ordinance. Under the specific design of the site as proposed, the gain to the public to deny the encroachment on the wetland setback will not outweigh the harm to the applicant as the public is protected equally in either case. The request is not inconsistent with the neighborhood, and as such substantial justice would be done in authorizing the variance.

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

Mr. Belanger said the reduction to the wetland setback is not in close proximity to an abutting property and will have no adverse effect on properties located downstream as appropriate storm water best management practices have been provided consistent with the intent of the ordinance. No diminution in value of surrounding properties would be expected from the authorization of the requested variance as there will be no substantial change to the character of the area or impact on surrounding properties.

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

Mr. Belanger said special conditions pertaining to the property that distinguish it from other properties include the location of wetlands on the north, east and west sides of the site, whose setbacks when combined with the front yard setbacks for this corner lot limit the available contiguous buildable area. These limitations would not otherwise accommodate the proposed building, which is an allowable use, and of typical dimensions for its purpose. The size and use of the building is consistent with other buildings in the immediate vicinity and although the proposed building encroaches on the wetland setback, concerns with impact to this area are mitigated by the storm water best management practices to provide treatment and attenuation of runoff from proposed impervious surfaces and promote groundwater recharge consistent with the purpose of the ordinance.

(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. Belanger said as stated in the above responses, authorization of the variance to allow a reduction to the wetland setback does not contradict the purposes established by section 275-24 of the ordinance as the site design is the least impactful to wetlands and provides appropriate storm water best management

practices to preserve the functionality of on-site wetlands. As such, we would deem no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the proposed wetland setback encroachment, and that relief may be granted without frustrating the purpose of the ordinance. Denial of the variance would result in an unnecessary hardship to the applicant.

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

Mr. Belanger said authorization of the request will allow the suitable development of the site for an allowable use, and the site has been designed to incorporate appropriate storm water best management practices to provide treatment of proposed impervious surfaces and promote groundwater recharge consistent with the purpose of the ordinance. Requiring full enforcement of the 50' wetland setback would create a hardship for the applicant, and the reduction of the setback is reasonable with the appropriate safeguards proposed to protect environmental resources while also promoting the tangible benefits of the site.

(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:

Chairman Morin opened the floor for questions from the board.

Mr. Duhaime, Ms. Stevens, Mr. Gilbert and Ms. Jude had no questions.

Q: Mr. Casale said the Conservation Commission noted a garbage dumpster and he asked for it to be pointed out on the site plan, and also asked if anything had changed in their thoughts between that meeting and now.

A: Mr. Belanger said originally the dumpster was shown on the left side of the paved parking area and the exact location hadn't been determined until they could get all of their turning radiuses determined. Once they knew exactly what size vehicles they were going to have coming in and where the loading bays and doors were located they were able to relocate the dumpster enclosure to where it is now - shown at the top of the page. In relocating it, they were able to take out about a 20x20 section of pavement, so there is actually less impervious surface. The area between where the proposed dumpster is now shown on the plans and the building was previously all pavement, so they've left a 5-foot wide sidewalk for access around the building, but they've taken out about 400-square feet of pavement. The dumpster is now located outside of the 50-foot wetland setback which the Conservation Commission had requested.

Mr. Green and Chairman Morin had no further questions.

Chairman Morin opened the floor for questions or comments from the public. There were none and Ms. Hebert and Ms. Elmer indicated there were no emails received.

MOTION by Mr. Duhaime to move into deliberations on this variance application. Mr. Casale duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.

Chairman Morin reviewed 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:

Chairman Morin does not see that at all looking at the design.

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

Chairman Morin does not see anything concerning those two areas.

2. The spirit of the ordinance is observed because:

Chairman Morin watched the Conservation Commission meeting and felt they went through the wetland issues very well. In looking at the plans and how they will mitigate a lot of the water just in this one area with rain gardens, and because roof runoff is not coming off in their area either –just the natural runoff that has always been there and because the raingardens will deal with most of it Chairman Morin thinks they are meeting the spirit of the ordinance.

3. Granting the variance would do substantial justice because:

Mr. Duhaime thinks it allows the property to be developed. He said it sounded like they were planning on a larger warehouse but decided to go smaller in order to not impact the wetland.

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

Mr. Green said there was 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:

Chairman Morin noted the applicant did speak to one of them especially being a corner property with large setbacks from the roads and the amount of wetlands in the back and the wetland by itself in the corner, and he thinks they've mitigated everything to make it work.

(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:

Chairman Morin said he thought we've gone through all those areas that we talked about with how they are mitigating this area and working very well, and the Conservation Commission seemed very happy about how this was set up.

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

Chairman Morin said it seems reasonable for this commercial lot.

(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:

- 1. MOTION by Mr. Duhaime that the Zoning Board of Adjustment approve the application from Harvey Road Commercial Property, LLC on the request for a variance from Article IV, Section 275-28 in order to permit the construction of a 16,000 square-foot warehouse 9.7 feet from the edge of a wetland where 50-feet is required at 308 S. River Rd., Lot 24-98-19, Zoned PZ per our deliberations. Mr. Green duly seconded the motion. Roll call vote taken - all in favor. Motion carried 5-0.**

MOTION by Mr. Casale to move out of deliberations on this variance application. Mr. Duhaime duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.

5. New Business

The next meeting will take place on February 16, 2021.

6. Adjournment

Motion by Mr. Gilbert to adjourn the meeting at 8:27 p.m. Ms. Stevens duly seconded the motion. Roll call vote taken – all in favor. Motion carried 7-0.

Respectfully submitted,
Tiffany Lewis