

Town of Bedford
February 16, 2021
Zoning Board of Adjustment
Minutes

A regular meeting of the Bedford Zoning Board was held on Tuesday, February 16, 2021 via the Zoom meeting platform.

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

Absent: Sharon Stirling, Len Green (regular member)

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. He appointed Mr. Casale and Mr. Gilbert as voting members this evening. In accordance with the right to know laws all members present indicated they were alone in the room while on this Zoom call and Ms. Elmer indicated she was alone, but her husband may pop in the room.

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 # 94685357279 and the meeting Password 967602. 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 for a to pass a motion.

1. **Approval of Minutes:** January 19, 2021

MOTION by Mr. Gilbert to approve the minutes of the January 19, 2021 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 6-0.

2. **Applications:**

1. **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 Road. Lot 22-43-3, Zoned R&A (Continued from December 15, 2020 and January 19, 2021).

Mr. Boyle's understanding is that the purpose of this meeting to regroup and discuss options. Since the last time he met with the Zoning Board he renewed his building permit and has every intention of moving forward with it and create an addition to connect the two buildings on his property. He renewed the building permit today. He will no longer need a variance but wants to address the continuance and find out what next steps are and if there is any further discussion needed.

Mr. Boyle also got the wetlands survey done, as requested at the last meeting. His property has been delineated and flagged by a wetland scientist and no excavation has been done to wetlands.

Chairman Morin was not aware there was a wetlands issues with this item, and asked Ms. Elmer or Ms. Hebert for clarification. Mr. Boyle stated there wasn't an issue, he was just doing due diligence and going through every step of the process to make sure he is not encroaching on anything. Ms. Hebert explained the wetlands delineation was an action associated with another zoning complaint associated with the property and is not tied to this variance application.

Chairman Morin opened the floor for questions from the board.

Q: Mr. Casale asked if we could alleviate this whole thing by removing the oven that's there causing this to be considered an accessory apartment.

A: Mr. Boyle indicated he would absolutely remove the oven if that were what's needed to not have it categorized in that way. He would rather have the oven and not have to do any changes, but he said it would be an option for him.

Q: Mr. Casale asked him to comment on previous testimony by Ms. Gannon basically stating that Mr. Boyle was aware, prior to purchase, that using the second floor above the garage as an apartment would be illegal.

A: Mr. Boyle said it was zoned as "office" and that is why he was going through the steps to create the plans for one structure. It was his understanding at the time he drew up the plans and got it permitted that he could proceed with the building as planned and occupy the space. It turns out that was not correct and that is why we are here today going through this and resolving it in the intermediate time to when he can finish the addition to make it all one structure.

Chairman Morin opened the floor to the public for testimony or questions.

Neighbor, Bridget Gannon of 33 Back River Road, Bedford NH said Mr. Boyle moved in 3-years ago after the previous owners had the addition built. She said the previous owner and Mr. Boyle are friends and that Mr. Boyle was well-aware that it was not legal to rent. She said that he lived there for awhile and ended up buying the place. She said it is probably hearsay, but said his intention was to rent out "either or" for a little extra income, so he wasn't blindsided with that.

Chairman Morin indicated the board is looking for any new information from the testimony Ms. Gannon made already during the Zoning Board meeting held on December 15, 2020.

Ms. Gannon said that prior to Mr. Boyle moving in the barn burned down and the addition was then built with an apartment. She stated that she contacted the town numerous times before the construction. Chairman Morin stopped her and said, again, the building was built; it is up already, and the board is only looking for new information concerning the application right now. He said the addition was already built and permitted legally so there is really nothing we can do about the building. "We are just dealing with the apartment as of right now", he explained.

Mr. Boyle stated that he had some information that would be relevant to this and shared that he has one electrical service/one panel going into the home and he doesn't plan on putting another meter pan in. As far as the apartment is concerned, he said there is no intention to rent out the additional space, he is going to renovate the home as soon as this all goes through and he does not plan to put in an additional meter pan in for having an additional address – it will all be one address.

Chairman Morin said it didn't matter for the board as much. They are just concerned with the apartment and just dealing with the apartment for the variance and what Mr. Boyle is talking about could come along somewhere down the road with the Building Department.

Ms. Gannon asked for 60 seconds to speak, even if it isn't relevant, because it is relevant to her. Chairman Morin said that he had to keep discussion specific to the application. Ms. Gannon says she was cut off last time and that people don't understand what they've been going through the past 4 years. She said the addition was being built, there wasn't supposed to be an apartment, and there ended up being an apartment, she contacted "Ed Sawyer" 3 times and was assured it wasn't going to happen, and then it happened. She said the people who had this built before Mr. Boyle moved in both worked for the Town of Bedford. One was a fireman and the other a police sergeant in Bedford and because of this it was swept under the rug. She doesn't feel that was fair, and now she feels she is stuck with her property which she will get less money for when they sell and retire in the next 10-years and they need the money to live off of in retirement.

Chairman Morin had a question on something Ms. Gannon had said noting that she mentioned she was going to get less money for her property. He asked if she was able to get in touch with an appraiser to get an appraisal done to see if that would be a factual statement.

Ms. Gannon said if you had two windows 60-feet away from your living room that weren't there before – then her property would not be as attractive. She said that she had not contacted anyone for an appraisal.

James Blaisdell of 33 Back River Road in Bedford, NH said that at the last meeting it was said that if the board approves this variance it is forever, and that really stuck with him. He said the town is just not zoned for it, but it seems to him that the Zoning Board is looking for every reason to give him a variance and he and Ms. Gannon have nothing to say about it. He said that it sounds like they are leaning toward approving the variance today and what if it turns out Mr. Boyle doesn't do all of the work he is saying he will do, then what can they do about it? He doesn't even feel we should be having this conversation because it is not even zoned for it... period – yet we've had two meetings on it, and it seems as though the board is looking for every reason to give Mr. Boyle a variance. He said there are other things going on that he is not going to get into but said he and Ms. Gannon have put up with a lot in the past 3 years.

Chairman Morin opened the floor for any last questions from the board. There were none. He asked Mr. Boyle for any further comments before the board goes into deliberation. Mr. Boyle had none.

Chairman Morin 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: Chairman Morin doesn't think it will alter the essential character of the locality because the building itself is there, so he doesn't think there is an issue there.

(2) Whether granting the variance would threaten public health, safety or welfare: Chairman Morin doesn't think we've seen any evidence to show that piece.

2. The spirit of the ordinance is observed because:

Chairman Morin said he had a problem with this item. The ordinance is pretty clear that there are certain criteria that need to be met for this item. He does not like the issue of this being detached and if we grant the variance there is no guarantee that he has to put on the addition – he could leave it as it is and then the variance is there with the property forever; so, he does not think that this meets the spirit.

Mr. Casale agrees and said he has a problem with this. He said there are some alternatives the Planning Staff can mention and if the variance were denied there would be some options that Mr. Boyle has to continue with this. Mr. Casale said the second thing is that Mr. Boyle acknowledged he can easily remove the oven in which case there is no need for the variance. He doesn't want to.... it's not as convenient; but it would alleviate any reason to have this variance and we wouldn't have to worry about this going in perpetuity if he doesn't do it.

Ms. Stevens echoed Mr. Casale's comments.

3. Granting the variance would do substantial justice because:

Chairman Morin doesn't think it does any justice for the Town, especially in the area we just talked about. He said, "Yes, it would give the homeowner a second living area, but going back to the spirit, it does not meet it."

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

Chairman Morin indicated we hadn't heard any expert testimony on 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 because:

Chairman Morin said he does not think we've heard any hardship issues. He said, as Mr. Casale brought up, the option of just removing an oven or something wasn't really an option and Mr. Boyle didn't want to, but would it have to.

(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 this one is that teeter-totter type of thing where you've got the applicants "want" and the Town's "need". He thinks the general public ordinance is pretty clear. The State is pretty clear on the definition also and Chairman Morin just doesn't think it meets this area.

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

Chairman Morin said it could be if it was attached.

(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 deny the variance to maintain an existing accessory dwelling unit within a detached garage where it is not allowed at 35 Back River Road. Lot 22-43-3, Zoned R&A as per our deliberations. Mr. Gilbert duly seconded the motion. Mr. Casale amended his motion in order to cite the specific variance and added that it is the denial for the request for a variance from Article III, Section 275-21.C (2). Mr. Gilbert accepted that on his second. Roll call vote taken - all in favor. Motion to deny the variance carries 5-0.

MOTION by Mr. Gilbert to move out of deliberations on this variance application. Mr. Casale duly seconded the motion. Roll call vote taken – all in favor. Motion carried 6-0.

Chairman Morin indicated Mr. Boyle can contact the Planning Department with any questions he might have.

3. New Business

- None

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

4. Adjournment

Motion by Mr. Gilbert to adjourn the meeting at 7:27 p.m. Mr. Casale duly seconded the motion. Roll call vote taken – all in favor. Motion carried 6-0.

Respectfully submitted,
Tiffany Lewis