

Town of Bedford  
Zoning Board of Adjustment Minutes  
May 17, 2022

A regular meeting of the Bedford Zoning Board was held on Tuesday, May 17, 2022, at the Town Meeting Room at BCTV, at 10 Meetinghouse Road.

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

Absent: Alex Kellermann, (regular member), Sue Thomas (alternate member).

**Call to Order and Roll Call**

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

**Approval of Minutes: April 19, 2022**

**MOTION by was made by Mr. Gilbert to approve the minutes of the prior meeting on April 19<sup>th</sup>. Mr. MacPherson duly seconded the motion. Mr. Green abstained from the vote. Roll call vote was taken - ALL IN FAVOR – unanimous. MOTION carries. The minutes are approved.**

**Rules of Procedure** Chair Morin said what we'll do first is we'll have presentations by the applicants. There will be public input for those in favor and against the applications. I'll remind all parties there is no debate between the parties. All testimony is made to the Board. If you have questions, ask the Board and then we will push them forward to the applicant. After we're done our questions, your questions and any comments there are, we will give the applicant a chance for a summation and then we will go into our piece. Our schedule: all applicants will be heard in order of notice. If we need a recess to take a break, we will. We will go into non-public input to deliberate and vote after each item. You can wait for the vote tonight, or you can call the Planning Office after 8:30 tomorrow morning. I'll ask that all cell phones please be silenced. We don't need the interruptions during the meeting. We want to try to keep this as smooth as possible. Also, hopefully this won't happen, but we don't take any new applications after 10 p.m. We're hoping that's not going to happen tonight. In case of rehearings, any party has 30 days to request a rehearing from a decision of the Zoning Board of Adjustment. 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 those decisions. For the criteria of granting a variance: I will not go through the five criteria. We ask each applicant to go through the application and address the five criteria as part of their presentation. Also, when we do vote, for a motion to pass we must have three affirmative votes. I'll ask anyone who's going to participate this evening—either an applicant or someone in the public who wants to speak—to please stand and be sworn in. I'll ask even if you're pondering on speaking tonight, get right up and let's get everybody sworn in now so we don't have to stop the meeting later to do so.

Please raise your right hand. Do you swear that the testimony you give at the hearings tonight is the truth, the whole truth and nothing but the truth? Audience affirms. Chair Morin said thank you very much.

### **Old Business & Continued Hearings** None

### **New Business**

#### **Item 1: Frank Silva - Request for an after-the-fact variance from Article IV, Section 275-28(A) to build a shed within 32.2 feet of the edge of a wetland where 50 feet is required, at 110 New Boston Road, Lot 2-10-1, Zoned Residential & Agricultural.**

**Mr. Frank Silva testifies:** My name is Frank Silva. I'm the owner of 110 New Boston Road.

**Mr. Roger Duhaime testifies:** I'm Roger Duhaime. I'm basically a contractor that works with him, and I'm trying to help him with this. I've been on the ZBA in Hooksett about 13 years. I'm quite familiar with it. I figured I'd try to help him in this situation. Would you like me to go through the 5 criteria first? Or do you want just a summation? Chair Morin asked do you want to give a little introduction first? I don't know if you've read the application. Basically, he was overzealous and put a shed up during COVID because he was looking for something to do, and the extra storage. He needs his storage. There's not really room for a third garage on this property. So, basically, he started building a shed, and he didn't realize that he was in the wetland buffer. That's why we're here tonight. Do you want me to just go through with the criteria? Chair Morin said sure.

#### **Variance is not Contrary to Public Interest.**

The shed is hardly visible from the road. The neighbor is not going to see it. It's lower in elevation. I actually have some pictures. I don't know if you've looked at the pictures, but if you look from the front yard into the backyard, it's almost a good 6-7 feet below the backyard. Basically, this property has wetlands in the back. That's what he found out. He had a scientist come in and evaluate this. It's like a perennial stream I would say. It's something that you don't want to cross or disturb, but it is on the back part of the property, and I don't think he was aware of it. Now he is. You won't be accessing the shed through this wetlands. It's in the backyard so I don't think that would be contrary to the public interest or safety.

#### **The Spirit of the Ordinance.**

Because the wetlands will not be disturbed, and only a small portion of the wetland buffer is affected. Again, same as the previous things. This is something now that you're aware of. You're not going to be there.

#### **Granting the Variance Would Do Substantial Justice.**

The large back half of his property has an elevation and wetlands issues and is not suitable for building or accessibility. There really wasn't a better spot really for the shed, which is probably why he put it there.

#### **Values of Surrounding Properties Would Not be Diminished.**

The shed adds value to the property and storage. The wetland buffer impact is very small—not visible to any neighbor. I don't think it's going to impact the wetlands at all. Conservation asked to put in some

stone around the property to slow it down, some plantings, and we've done that. So that it will mitigate the water from the shed.

**Denial of the Variance Would Result in an Unnecessary Hardship.**

If the shed was built in another location, accessibility would be hard. The condition of the property is a long, narrow lot design, slopes, wetlands, distinguish it from the other property in the area. If you look where the shed is, if you look at the elevations of the property and the wetlands and the other properties next to it, you'll see that this property is very long and narrow. You couldn't put a third stall garage in. You can't really go anywhere else with any other kind of building. This shed adds the storage to the property. No wetlands will be impacted or diminished.

**The Proposed Use is Reasonable.**

It allows the applicant to use the most reasonable space on the property for a shed without crossing or impacting the wetlands. That's the bulk of it.

Chair Morin asked any questions from the Board? Mr. MacPherson said we did get some information from the Conservation Commission, and I thought that was apropos.

Mr. Casale asked Mr. Silva, I see your shirt says construction. I assume that's your business. Mr. Silva replied yes. Mr. Casale asked how long have you been in construction? Mr. Silva said about 16 years. Mr. Casale said okay. I ask because the normal homeowner will come in here and say geez, I didn't realize there were wetlands. So, how does a contractor such as yourself not investigate this where on the one hand you found out about this supposedly because you went before the Town for proper permitting for the addition you want on the home? But yet you started building a shed as a contractor knowing that there are usually issues that you have to work around. So, how did this not ring a bell in your head? Mr. Silva replied so, actually I'm a contractor. I'm not a general contractor. I didn't have experience with the wetlands and stuff. But this has happened the middle toward the end of 2020, where the COVID was hit hard. I thought, you know, I was going crazy at my house, and I said I have a shed to build. I'm going to build a shed. I don't want to go to the Town because back then it was like I know I have to pull the permit. As I have other stuff to do I say I will pull the permit together when I'm going to do it. I can go ahead and start doing the shed. That's what happened. When I went to get the permit, that's where we end up realizing that the shed was not on the right spot or too close to the wetlands. It's my fault that I should have looked to get a permit back then because I discovered that the Town did not close any day because of COVID. I didn't look or try and call them or anything. That's my fault. I take that. Mr. Casale said so basically, you're not used to the wetlands part of it? Mr. Silva replied no, I'm not. Mr. Casale said alright, thank you.

Mr. Gilbert said I was just curious about the retaining wall. Was that part of the improvements you were making and then you decided to put the shed up and found out that you were needing a different permit? Mr. Silva said no, actually, no. Mr. Gilbert continued so that retaining wall has been there for a while. Mr. Silva said no, the retaining wall has been done a year or two years ago. Mr. Gilbert said okay, thank you. Mr. Casale asked I guess for Mr. Duhaime, or either, I guess: Have the adjustments been made as the Conservation Commission wished? So, just to clarify, you have added a crushed rock border around the shed. Have you stabilized the flow path to the wetlands with plantings? Mr. Silva said yes, we have the pictures here. We can hand them in. Mr. Casale continued that way, if it's approved, we don't have to add that as part of the approval. Thank you. Chair Morin asked is there anyone from the public that would like to speak on this? Seeing none, any other questions from the Board? Just a quick question for staff: We've seen the drawings, the pictures, I should say, of what they did around it and

the plantings and stuff. Is it still something that we need to make sure that a plan is turned in with those items? Ms. Hebert replied I would suggest referencing that in a motion to formalize the recommendation and carry the Conservation Commission's recommendation all the way through to approval process. Because it would be documented in the approval letter. Chair Morin said thank you. Anything else from the Board? Anything else from the applicant? [no] At this point, I will ask for a motion to go into non-public input for deliberation.

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

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

**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 no. Mr. Casale said in fact there was a neighbor that was in support, I believe. The direct abutter was in support.

**(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:**

Mr. Casale said it is—now. Chair Morin said it's gone to Conservation. They've looked at it. They've given their suggestions. They've actually followed through with the suggestions. We always look for a reasonable amount of space, and they've worked it out, seems to be. Mr. Green said my only concern is that if this was somebody that had no background in construction, I would be very sympathetic. I don't buy, "I never dealt with wetlands." If you're in construction, you know the process. While I think it may be a minor issue, I just have a problem with no consequences from flouting the rules and regulations. Maybe that's just my background.

**3. Granting the variance would do substantial justice because:**

Chair Morin said it gives him the opportunity to have a shed, more storage, utilize his property—now that we've gone through the processes.

**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:**

Mr. Casale said there wasn't a ton of evidence on that other than well this was the best place. I usually like to see more of it. Of course, he already put the thing up. So, that's why I asked the question, and I agree with Len. I was being extra pleasant, I think, then I probably ordinarily would be. I probably should not have been so gracious, but nonetheless it's up, and it's expensive. At this

point, it would be an issue. Chair Morin added looking at the picture of the property—the way the property is laid out—it’s all basically 1/3 of the property is in the front where they can do something, and the rest is, I’m guessing, wetland and trees. To look at it, it either would be smack dab in the middle of the front yard or in a reasonable place in the back. Mr. Casale said had he done it properly and been before us, I would have had it turned 45 degrees. Then there probably wouldn’t have been interference at all, or hardly any.

**(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:**

Chair Morin said they’ve gone forward, at least now, through Conservation. They had them look at it and got their input and are now here. Even though it’s after-the-fact, they’ve made the improvements.

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

The Board agrees a shed 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:**

Criteria not applicable, addressed in subparagraph (A).

**MOTION: Mr. Casale moves that the Zoning Board grant the request for an after-the-fact variance from Article IV, Section 275-28(A) to build a shed within 32.2 feet of the edge of a wetland where 50 feet is required, at 110 New Boston Road, Lot 2-10-1, Zoned R&A as per our deliberations and as long as the applicant continues to observe the Conservation Commission recommendation with regard to the crushed rock border around the shed and to stabilize the flow path to the wetland with the plantings. Although the improvements have been done, those are continued in perpetuity as per the Conservation Commission. Mr. Green duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.**

**MOTION: Mr. Gilbert moves the ZBA go back into public input. Mr. Casale duly seconds the motion. Roll call vote taken – all in favor. Motion Carried 5-0.**

Chair Morin said you guys are all set. Thank you. Mr. Silva said thank you very much.

**Item 2: Haya Khurshid Alam Revocable Trust - Request for a variance from Article III, Section 275-21B(2)(d) to allow a 28-unit market-rate elderly housing development to be served by private onsite septic where municipal sewer is required at Route 101, Map 31, Lot 44-29, Zoned Commercial.**

**Item 3: Haya Khurshid Alam Revocable Trust - Request for a variance from Article III, Section 275-21B(2)(a)[1] to allow a 28-unit market-rate elderly housing development where affordable housing is required for at least 25 percent of the housing units at Route 101, Map 31, Lot 44-29, Zoned Commercial.**

**Attorney Elizabeth Hartigan testifies:** Good evening. My name is Elizabeth Hartigan. I'm an attorney at Gottesman & Hollis in Nashua. I'm here on behalf of my client, Haya Khurshid Alam Revocable Trust. With me is Trevor Yandow from Meridian Land Services. I guess I'll start with an overview of the project. We are requesting a 28-unit single-family elderly housing project, which is a permitted use in the zone. Really, we're only here for sort-of 2 pretty specific questions. The first being allowing the development on private septic as opposed to public sewer. The second is, because it's such a small use, to allow 100 percent market rate units as opposed to requiring 25 percent being affordable. I guess I'll just jump right in and start with the sewer, considering if we don't get sewer, we'll probably withdraw the affordable because we won't go that far.

**Variance is not Contrary to Public Interest.**

Sewer – because elderly housing is a permitted use. The only issue here is that we must connect to sewer. The closest sewer is 1.7 miles away the way the crow flies, but really 2.5 miles away on Route 101. The lot supports a private septic on site, has applicable soils, which we provided you with a soil analysis. The private septic will not alter the essential character of the neighborhood. Having no municipal sewer will have no visible effect on the permitted elderly housing. There's really no difference once you're looking at the project. The only difference is not having municipal sewer significantly limits the number of units that would be permitted. We'd need to have more space with the private septic. The septic will be designed to DES standards and will not threaten public safety or welfare.

**The Spirit of the Ordinance.**

Because the ordinance allows this use. Sewer is required due to greater density being allowed. Public sewer is required to avoid the potential subsurface contamination at higher density. The density that would be allowed if we had sewer on this property, would be 28 units per acre. This is an 11.66-acre lot, which would ultimately allow I think like 326 units if we had sewer. Chair Morin said can I ask a question on that? Ms. Hartigan said yes. Chair Morin asked isn't that a little bit of a ... because isn't this lot two different... is it all commercial? Or is it partial residential too? Ms. Hartigan replied it's all commercial, one lot that is bifurcated by wetlands. I think that's probably why it looks like it's two lots. Anyway, that's sort-of why we're only asking for 28 units. That brings us down to 2 and a half units per acre where 28 per acre is permitted in the zone. The private septic will not alter the character of the neighborhood and will not be visible or create offsite impacts. There will be no threat to public health, safety, or welfare.

**Granting the Variance Would Do Substantial Justice.**

Again, it's a permitted use. However, connecting to a public sewer is economically cost-prohibitive and physically difficult. There'll be no harm to the public, which would outweigh the harm to the applicant by requiring us to bring the sewer down. If we were to construct the sewer, and the Town didn't take it over, it would be a private utility, which must be on private land. We would have to acquire easements on every single parcel for the 2 and a half miles down Route 101 to connect to where it exists. However, if the Town did take it over, that would be 2 and a half miles of Route 101 that would have to be torn up. Part of your packet was a map of the master plan of the sewer that was submitted actually by the Town. We hadn't seen it before it was submitted. It does show that sewer is not anticipated to be in this area. Even if it were, it's still a mile away. That would still require a mile of digging—about a mile anyway. It's page 15 of your packet. I don't know if that is helpful at all. There's like a little pink dot where our site is. Either way, it's not close to us at all. Just a side note also, there's no dates on when these sewers will happen and there's no current funding for it. It's kind of just a potential, hopeful plan of the Town. But we have no idea when that would actually be extended. Denial will significantly inhibit the applicant's

ability to use the parcel. Granting the right to have private septic will not cause harm to the public or any private property owner.

**Values of Surrounding Properties Would Not be Diminished.**

Again, this is a permitted use. The density is much less. We're proposing a density that is much less than is permitted. The private septic vs. public sewer will not have any impact on values of the surrounding homes. There's very little visible difference and will not create any offsite impacts.

**Denial of the Variance Would Result in an Unnecessary Hardship.**

The general purpose of the ordinance is to ensure adequate treatment of sewage from increased density. Again, this was supposed to be or is allowed to have 28 units per acre. In this case, because of the wetlands, the topography of the land, the density will be limited. The wetlands basically bifurcate the property and cuts a lot of—all of that green is the wetlands so we can't build there obviously. There is adequate area as shown on this plan for the private septic and leach fields for the full proposed community. The property can support the private septic. Requiring septic creates unnecessary hardship due to the cost of running public sewer to the distance to the site. And then the difficulty of connecting, potentially, through easements or if the Town were to accept it. But, again, it's not part of the Town's plan to have sewer in this area. Denial of the variance would result in unnecessary hardship because the sewer would be private. It can't be in a public way as I previously said. We'd have to get easements from all landowners. There would be destructive construction. The expense would be exorbitant.

**The Proposed Use is Reasonable.**

As I said, not to keep reiterating it, but elderly is a permitted use. Allowing the private septic with a lesser density is reasonable. Ultimately, if this is granted, it will provide more elderly housing in the community. That's about it. Does anybody have any questions?

Chair Morin asked any question so far? Mr. Green asked you keep on saying it would be prohibitive, but you haven't given us one figure. What would be the cost of the sewer as opposed to the cost of the septic? Also, where are you planning to put the septic? Is it 2 septic? One septic? And how does that impact or come close to the wetlands area? Ms. Hartigan replied there's nothing in the —actually you want to talk about the septic, there's nothing in the wetlands. Everything is... Mr. Green asked yes, but how close is it? Mr. Yandow replied as shown on this plan, on sheet 1, there are 5 locations that are labeled EDA. Mr. Green said could you deal with the first question? The difference in cost. Mr. Yandow said so, preliminary cost estimate for—looked at 2 different lengths of run—but \$1.6 million dollars as a very preliminary number that we looked at to connect the sewer. Mr. Green said \$1.6 million. And how much to put in the septic? Mr. Yandow said it would be a fraction of that. I don't have a figure. Mr. Green said if you don't have the figure, how can you tell us it's prohibitive? We don't know the cost. If you're going to say one is more expensive than the other, I would expect you to have this is what A costs, and this is what B costs. Without that, you're asking us to do something without the facts. Mr. Yandow said the infrastructure and mobilization and equipment to install 2 and a half miles of sewer line is vastly more than what you'd need to excavate... Mr. Green said not unless you're giving me the dollar figures. Mr. Yandow said okay, we can provide that. I don't have those right now.

Chair Morin said why don't you just go over the septic that you're proposing. Mr. Yandow said so, the septic that are shown here are, again, they're preliminary in nature, but they've been designed to DES standards. The pod on the right side has 4 systems that are divided up equally among the units on that side. Then there's a larger community system on the left side—the left pod if you will. They're designed fairly conservatively. We did test pits out on this site. These systems were designed with a perk rate of

10 minutes per inch. The test pits indicated 6 minutes per inch. So, these fields are oversized for the use that is proposed on this. We don't have any issue with getting these to work spatially—setback wise from the buildings, from the wetlands, so on and so forth. So, it's very doable. It's not going to materially change as we go forward into a more detailed design process. Chair Morin said the way you started this was that these are an idea. These aren't fact the way you have them here so they could change. Mr. Yandow said they could. If anything, they would be smaller. If the number of units stays the same, we've designed them conservatively. The overall footprint of each of these affluent disposal areas would be smaller.

Chair Morin said question on 2, 3, and 4. They are set up on a, it looks to be, a lot of slope. Mr. Yandow said yes. So, the parcel, as I'm sure—I drive by it every day going to work—that fill site I believe was fill from the Hannaford's that was developed down at the corner of Harvey—the flat area is fill material, and then there are some steeper slopes that go down toward the wetland. But it is all fill there. It's not going to prohibit the development. It's all feasible. It's all 3 to 1 slopes, which are very stable slopes. It meets the state requirement for the slope adjacent to a septic system. Chair Morin said my other question would be with the developing of the way—because I'm guessing the slopes aren't like that now to a point—they'll be a lot different after these go in. Mr. Yandow said I mean, it's still going to slope—the topography, the general topography is going to slope the same way to the rear of the lot. But it would be altered. There'd be—the septic areas are going to be more or less flat behind the units. Chair Morin said okay, so how does that affect that wetland area in the back? Mr. Yandow asked as far as from a drainage standpoint? Chair Morin clarified drainage standpoint, changing possibly some of the drainage of just... let me ask so for these houses, how is drainage off the houses being dealt with? I'm just looking for water—change of water, change of where the water is going, that type of thing. Mr. Yandow said so, again, we're very, this is very conceptual, but the design aspect of the drains would be most likely catch basins in the paved areas. Then it would be piped to a storm water pond at the rear of the lot that we show behind those septic systems. Chair Morin said you said a word I don't like. It bothers the heck out of me—especially at the Zoning Board— “conceptual.” This Board likes facts, not conceptions. If someone brings a plan in front of us, we want the plan. We don't want conception because what happens is we look at what's there and we try to make a decision on what's on that piece of paper. When you're saying it's conceptual and it could change, well if we approve something, it's approved by what we see. Ms. Hartigan said right, with all due respect, this has to go to the Planning Board. We understand this is not done whatsoever. We're really only here right now, if you will allow us, to build up to 28 units on private sewer—or private septic—without sewer. Chair Morin said but I have to look at this plan and see how the sewer is set up and see how some of this is. Ms. Hartigan said right, and we understand. It's not going to be built if it can't be built. But as of right now, we have gone through and done a whole septic study and the engineers are pretty certain that this is the way it will be built but for changes from the Planning Board. Chair Morin said okay. Any other questions from the Board?

Mr. Gilbert asked so you've got 4 leach fields for 16 units, and you've got 1 leach field for 12. How does that work? Mr. Yandow said so, the design flows for elderly housing, I believe, are it's 125 gallons per day for each 2-bedroom unit. Which, I believe each of these are 2 bedrooms. So, as you go up in size, the area that they need for septic feasibility is not necessarily linear. And I believe the 5<sup>th</sup> system on the left pod there is designed as a chamber system. A chamber system—so a traditional leach field is pipe in stone. A concrete chamber system is designed at 60 percent of the surface area of a pipe and stone system. They have more void space, and they can handle more effluent. So, that's the reason for that. Mr. Gilbert said okay, thank you. Chair Morin asked any other questions? Mr. MacPherson asked what is the usage of and how many people will live in these apartments? Ms. Hartigan said well they're single-

family, 2-bedroom units. So, I don't know that there's necessarily a limit on the number of people but it's going to be 55 and older. Mr. MacPherson said so it could be 6 people in a unit? It could be 7 people, right? Ms. Hartigan replied it's only 2 bedrooms. I don't know, but I'm assuming you guys take... Mr. Yandow replied septic is based on the number of bedrooms. That's a state .... that's how the systems are sized. Mr. MacPherson asked how many people could use these facilities? Ms. Hartigan replied that's... there's no way of knowing that in any development on how many people will live in said home. Mr. MacPherson said so we have 28 units, but we don't know if it's going to be 56 or 100, or 110. Ms. Hartigan said right. You can't discriminate and tell someone that they can't buy a piece of property and can't live with the people in there. But we can discriminate on age. Mr. MacPherson said well I just want to make sure. Ms. Hartigan said right, I understand that, and I believe when—I'm not an engineer—but the way I've understood this is that when a septic is designed, it's designed for based on bedrooms but with also a flexibility of the amount of people that are using it. It's not like alright there's 2 bedrooms—there's only ever going to be 2 people in this house. That's how the septic can work. But that's not how it's designed. Mr. MacPherson continued so, if I understood you, you'd have to be at least 55. Ms. Hartigan said correct. Mr. MacPherson continued so if you're 50 years, you don't.... Ms. Hartigan said you cannot live there. One person—every town is slightly different—but one person must be 55, yes. Mr. Green said you can have a spouse that's 25 and you're 55. Ms. Hartigan said correct. [laughter]

Mr. Gilbert said Len I think you had a question I don't think they answered. Maybe I missed it, but you asked about the distance from the leach field or some of these homes to the wetlands. Mr. Green said yes, and it looks like it abuts the wetlands. Mr. Gilbert asked what is the distance between say unit 5 on the right, and then you've got storm water management on the left and it's close to a wetland. Do you know what those distances are? Mr. Yandow said so, you're asking the distance from Unit 5 to the wetland? Mr. Gilbert said yes. Mr. Yandow said so, the setback is, I believe it's 50 feet. And it's over that setback. Mr. Gilbert said okay. I think you also asked about the storm water area to the wetland on the other side. I don't know if there's a limit on that. Ms. Hartigan said it can be in the buffer. Mr. Gilbert said okay, just curious. Ms. Hartigan said as of right now, it's meeting all the regulations. Mr. Gilbert said okay, I guess I should have said it that way. If you meet the 50-foot... Ms. Hartigan said yes. We're meeting all buffers and setbacks right now. Mr. Gilbert said gotcha. Thank you.

Mr. Casale asked attorney, changing it up a little bit, regards to unnecessary hardship, is there any reason why the applicant can't do a different commercial use for this property? Ms. Hartigan said I believe as a—the applicant is not here tonight, but as far as I understand it—he's actually entertained a lot of other uses for this property. But, based on the topography and the wetlands and the lack of sewer quite honestly, no other uses have wanted to use this site. So, this is the most feasible use right now. Mr. Casale said you'll agree this would not be the only business on Route 101 and that other businesses have ... Ms. Hartigan said I understand that, but that's also not the standard that you can't use it for something else. Mr. Casale asked what's not the standard? Ms. Hartigan replied for unnecessary hardship. Mr. Casale asked are you sure about that? Ms. Hartigan said yes. Mr. Casale said okay. Chair Morin said question for the engineer. So, I'm looking at the report that was put out, feasibility report. So, you're saying these EDAs are all up to par. They can meet everything. But, reading the first one, it says they were dug in general locations. It goes into that it was determined materials was coopted by various soil debris and soils. This fill debris was unable to determine a soil profile. So, if you can't get a soil profile, how are you able to do the septic to say it's going to work? Mr. Yandow said so I believe that one in particular was done in the section of the fill material, and it was to such a depth that we couldn't find natural ground. But there was also no water table encountered. So, the construction of the system would be to remove those unsuitables and provide for well-draining material, either septic sand or what

have you, to however deep the unsuitables go. I'm assuming most of it is from—I don't know how much hill they put on that site from the Hannaford there, but—they weren't able to get to native soil digging the test pit. Chair Morin asked and the other ones, they could? Mr. Yandow said correct, yes. Because the fill material—it's hard to see on—we don't have an existing conditions plan, but the top of the filled slope basically runs along the middle of Units 7 through 10 on the right side. And then it drops down again. That's where those other ones were dug. Chair Morin asked any other questions from the Board before I open it up? [none]

Chair Morin said alright. I'm going to open it up to the public. What I'll ask you to do is please step to the microphone. State your name and address and then state your testimony. Whoever would like to go first, please step right up. Mr. Green said there were some people that came in after you swore people in. So, some of them may be unsworn. If they're going to testify, I don't know. Chair Morin said we'll find out when we get there. I think I only see maybe one or two, but I haven't seen them get up yet. So, we'll go from there. If someone would like to get up and testify. Were you sworn in earlier, sir? No sir, Chair Morin said if you folks that weren't here for the swearing in, if you could stand up. Raise your right hand. Do you swear the testimony you'll give at these hearings is the truth, the whole truth and nothing but the truth? Public affirms. Chair Morin said thank you.

**Mr. Steve MacDougall testifies:** Steve MacDougall, Brick Mill Road here in town. You didn't mention anything about what the source of water is going to be. There's no public water in that area, correct? Chair Morin said that I know of, it's right down the street. They're not asking for a variance for that. Mr. MacDougall said I understand that, is there going to be sewers? Chair Morin said I'm guessing it's going to be public water. Mr. MacDougall asked is that the case? Ms. Hartigan said that's correct. Mr. MacDougall said okay.

**Mr. John Cleary testifies:** Hi. My name is John Cleary. 60 Grey Rock Road. I'm an abutter up there on the right—upper right. That one. That green part—the vernal pond—abuts my property. I'm not an engineer. I'm not a lawyer. But I can tell you from walking that area, there's a reason they named it Grey Rock Road. It's all rock. It's all grey rock, like much of New Hampshire. I live downhill from this, and I have concerns with the construction, but I know that's not what this variance is for. I have concerns with the plan because I, too, heard—very conceptual and pretty certain throughout the testimony I heard earlier. So, it makes me concerned that we're going to maybe approve this and not have a good plan. And my house and my neighbor's houses will be affected. I know there's the five things—I haven't read them all. I just learned them tonight. I'm learning fast. But I'm not in favor of this because I think that septic is not something to mess with or play with or be conceptual about. I have no other testimony at this time. Thank you.

**Mr. Brian Driscoll testifies:** Hi. My name is Brian Driscoll. I live at 45 Grey Rock. I abut the furthest parcel on the left, which is parcel 28-44-27. Unfortunately, my wife is sick and can't be here tonight, but we submitted a letter to Mr. Chairman and the rest of the Board. I just want to reiterate some of my major concerns and maybe add something additional. The Town developed a master plan a while back, and it encouraged developing and growth in certain areas, while limiting it in other areas. I believe at the Town would have had the foresight to, if they had wanted this type of a development in this area, they would have provided sewage in this area. So, to me this proposed use blatantly disregards the spirit and intent of the master plan. In addition, especially where single family homes are involved and it's not just single-family homes, but in very very close proximity to this proposed use. The topography at the back of this parcel slopes dramatically down toward the wetlands. So, we have already—the Town of Bedford spent quite a bit of time, effort and energy developing the restoration of the culverts and drainage on the

entire length of Grey Rock Road and it directly drains into the wetlands known as Ash Bog in addition to this other area. We've always had drainage problems, and I'm sure some of the neighbors will mention that. In addition, I've had groundwater contamination from failed septic systems at the Weathervane. So, although septic systems can be engineered, there's no guarantee that the leach field wouldn't eventually fail. You can't see from there, but that parcel of development on the left—my well sits directly below that. So, the neighborhoods right now and our well system is already compromised with PFOA contamination, and we certainly don't need groundwater runoff, salt, weedkillers, fertilizers, potentially affecting our wells even more. So, for that reason, I am strongly opposed, as well as my wife, to this type of a use of this land. In addition, although we're dealing with the variance as far as the sewage system, I also want to oppose the use of this land for not in compliance with the Work Force Housing as constructed by Town Bylaw. Thank you for your time.

**Mr. Robert Carey testifies:** Hi. Good afternoon or no, it's good evening now. My name is Robert Carey. I live at 57 Grey Rock Road in Bedford, obviously. The first thing I want to do is thank Rebecca and Kathleen. I need to get that out of the way. I visited the Town Office. They helped me immensely. So, thank you publicly. End of that. I am here to talk about 2 things. One: the septic tank and the leaching field, or as I see it from a very, very amateur position, I am not an attorney. I'm not an engineer. I am trying to understand everything as we go along. First of all, I think my lot is 44-25, which is directly behind where this development is proposed. If a leaching field or anything came down there, I can only surmise that it goes into the wetlands because in the back of my property, there's a little brook that runs there. It runs into the wetlands, which goes under the culvert at the road and over into the big wetlands. That could be... there must be a lot of lines regarding the wetlands on that. So, the other thing I had: if sewage was to be removed, how would you do it? Would you have tank trucks come in or something to remove it? Or is it going to go into the wetlands? This is from a very neophyte position, I understand. But I do know that water tends to run downhill. I live on a very steep, steep end of that hill. The other thing that I wanted to address is the buffer zone that's been referred to. There are lots of trees behind my house right now that protect me from a lot of noise on 101. That's a pretty heavily travelled road right now. But what efforts are going to be made to preserve these trees—there's lots of trees there. I didn't hear anything specific on whether these trees would be cut down or they'd be preserved or whatever. That, basically, is what I'm looking at is how far it comes down the hill—this water. A leaching field and water is going to run downhill. We can talk all night long and nothing is going to change there. With that, you can understand that I am opposed to this project as the other speakers were before me. I thank you very much for your time. Chair Morin said thank you.

**Mr. Brian Driscoll adds:** I guess I forgot to mention one thing that was not in the letter is that because of the smaller buffer zone, and the fact that the topography is very densely wooded, any extension of this would dramatically change the character of the neighborhood forever. I just don't think that this proposed use with the visual impact, we believe would be enormous to my wife and I, to this area, and the neighborhood. Thank you.

**Ms. Tammy Williams testifies:** Hi. My name is Tammy Williams. I live at 33 Grey Rock. I live beside the Driscoll's to the left right behind Murphy's. A couple things I wanted to talk about. First of all, I think the project is a little misleading because I would qualify to live there. I don't feel like I'm elderly so, I could potentially have younger kids that are still even in school. From my experience as far as the water basin, when Murphy's built and my residential buffer zone was made smaller, and basically taken away, the infiltration basin was put there with 25 feet of trees left between my house and the project. There is standing water that sits in there. I have no privacy. They were supposed to put big trees up to give me a year-round protection, but that never happened. There were some shrubs that got put up there, but it

never, like I see the parking lot. I see the building. I see lights and traffic that would pull into the shared driveway to this project. I'm very opposed to something else like this going in affecting my other neighbors like I've been affected. It's not really elderly I don't think. It's really 28 single-family homes, like others have mentioned. I don't think it's appropriate for this space. I thank you very much.

**Ms. Russan Chester testifies:** Russan Chester, 34 John Goffe Drive, Bedford, NH. I want to talk a little bit differently. As you know, my property does not abut this. But I am opposed to this type of utilization of this property for a couple reasons. For the single-family homeowner, 55 plus is a higher-risk and we're putting them in a wetland area with potential risk to health? Just because of the mosquito population and that type of thing. We're talking at least potentially 28 cars going into that space. I don't know if you've tried to take a left out of Murphy's, but I have. And a lot of people—that's 28 more people that could potentially be leaving during rush hour to try and take lefts out of that property. With regard to septic systems, I think it is a very premature plan, and I think that a lot more research needs to go into it with regards to that. Because I personally have a septic system, and I know an elderly population is putting a lot more wear and tear on a septic system than your typical family of four. That's a reality. Those are the few things I wanted to say. I'm concerned about the folks that are currently living in Bedford that currently abut that property. It may not seem as though it's going to drastically impact their land, but certainly the house that went in across the street from me, we have now had to put in individual drainage because of that property. So, I think that's another thing that's not really addressed in this plan. Thank you.

Chair Morin said thank you. I just want to bring up a few things before we get any further. There's a couple parts to this so you know. We're dealing with as a variance issue Zoning Board; we deal with the specific items that they're looking for a variance for. So, tonight, for these guys, it's the septic system and the affordable housing. If this project moves forward, then they go to the Planning Board. The Planning Board gets a lot more in depth about a good amount of items you talked about this evening, as in sight, lights, buffers, those types of things. We don't get into that per se unless there's something specific, but in these two specific things we're looking at tonight, that's not part of it. I just want to make sure everybody understands the piece we're dealing with and specifically what we're dealing with. But we take your information in and just so that you know, there were quite a few emails and letters sent. I'll go through a few.

We did receive one from Keith Murphy, who is the, I'm guessing the owner of Murphy's. He stated he looked at the plan. He understands the plan, and he's in favor of the plan. We had the Driscoll's who put in their letter as he spoke to already. We had Anne Grossi from Churchill Court who's also put in their letter to us. Ellen Mohnkern from Clifton Road also supplied us written testimony. Then there was also a packet that was given to us, and it shows that 120 people signed a petition that were not in favor of this. My only problem with the petition that we received is it says apartments, and these aren't apartments. These are houses. So, I'm a little leery of this whole packet only because it doesn't reference exactly what we're dealing with.

Mr. Casale said the filing kind of addresses that, so if you look at the actual petition it states please sign the following petition to demand the Zoning Board not approve changes to allow residential construction including apartment units. So, while she may have stated apartments on that email, it looks like if these 120 people read this, it just is referring to residential construction including apartments units. So, I think that explains a little bit better than what she put in the email. Chair Morin said and the other piece, just so everyone understands, and if you didn't get a chance to read it, there is a whole section in our ordinances in Bedford on elderly housing. There's all kinds of pieces to this and where it's

allowed and where it's not allowed. So, if they weren't coming for a variance, they'd be at the Planning Board and there wouldn't even be a question on where it could go. Because it's allowed in a Commercial Zone, and that property is a Commercial Zone so you just have to understand there's all kinds of things that can go into those areas. I just wanted to explain that, so people understood everything that we have to think of too. We're—I'll tell you what—we're like you. We're residents of the Town who volunteer to do this. So, we're using our best judgment and all the information given to us to make these decisions. Any additional questions from the Board on this piece? [none] Anything from you guys on this piece?

Ms. Hartigan said I just want to thank you for that clarification. I think I was going to have to make all of those caveats. Chair Morin said I saw your face a little and I wanted to make sure I got it out there. Ms. Hartigan said I have a black hat, but it's not that black today. Chair Morin said we're not going to deliberate. Let's get the input on the second one. Or do you want us to deliberate first? Ms. Hartigan said I'll leave that to you however, if we're not going to grant the sewer, we will withdraw our affordable application. So, I would say you should probably deliberate. Chair Morin said okay. We can do that. Is there any other input?

May I ask one final question? Tammy Williams, 33 Grey Rock. I just wondered if you know what the reason is why, for this large a community, it would require public sewer. Because that might be good to understand. Chair Morin said Becky could probably maybe speak to the ordinance better than I can. Ms. Hebert said sure. I think the public water and sewer is required because the permitted density in the ordinance is high. Chair Morin added this could be anything from single houses to an apartment building type, right? Ms. Hebert said correct. The zoning does not get into different types of housing. It defines elderly housing based on the age of the occupants. It does not say it has to be a single family versus townhouse versus garden-style apartments but permits a density of 28 units per acre. Ms. Williams asked is it to protect land? Or is it to protect the surrounding... like why... like I mean somebody decided that for a reason. I just wondered what that was, and I wanted whatever that reason is for you to think about that when you're deliberating as well. That's it. Chair Morin said thank you.

Ms. Hartigan said I would just like to reiterate the similar sentiment. The whole premise of requiring sewer is, as Becky just said, it's because of density. So, the Town decided they were going to allow elderly housing with a very high density, but because of that, they wanted to have sewer and water and the high density would be 28 units per acre. On this site, but for if it was just a flat site not this site with wetlands, etc., we could fit 326 units on it based on just the ordinance itself. But, because we can only fit 28 units, that's why we're here saying it's not feasible for us to bring down the sewer 2 and a half miles. That's sort of the whole gist of everything. Ms. Hebert added not to get into a debate, but while we're talking about zoning, our Commercial Zone has a restriction on building footprint and number of stories. So, buildings in the Commercial Zone anywhere along the Route 101 corridor can't have more than 2 stories or a building footprint greater than 25,000 square feet. Mr. Casale said, and you state that because it would severely limit the maximum number that she's giving. Ms. Hebert said correct. It would further limit allowable densities, although the Elderly Housing Zoning does not have that restriction embedded in it. Ms. Hartigan said sort-of goes to the reason why there's 28 units as opposed to a giant whatever, you know. Chair Morin asked anything else? Seeing none, I'll take a motion to go into non-public input for deliberation.

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

Chair Morin continued alright. So, again, we are dealing with the septic piece right now only.

**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. Casale said no. Mr. Green said public interest, too. Public interest said there's a sewer. So, if you don't have a sewer, that can be affecting the public interest. Because now we're talking about septic systems, which is a different issue. Mr. Casale said that would be under number 2. I think 1 is satisfied that it would not alter the character of the locality. Chair Morin agrees.

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

Mr. Gilbert said there's your problem. Chair Morin said that's the piece that is problematic. Mr. Gilbert said and what bothered me even more is that they're coming in saying hooking up is prohibitively expensive to the septic and can't even give us a cost comparison. That just raises so many red flags that just on that alone means that they haven't done all their homework when they come before us. Because if it's prohibitively expensive, I would have expected them to at least of had ballpark figures as to what is the cost of bringing up the sewer and what is the cost of putting in the septic. Just saying it's more expensive doesn't cut it for me.

**2. The spirit of the ordinance is observed because:**

Mr. Casale said I'm a no on that. Chair Morin agrees saying I'm having a hard time with that too. Mr. MacPherson agrees. Mr. Casale added I'm a no, and as usual I'm concerned about the cumulative effect of approving this. The ordinance states that they shall have public sewer for elderly housing. I get it's a little bit broad. I wish that they had narrowed it, because it does seem like it's all encompassing. For a development like this, perhaps they had a different intent, and they got a little lazy, but it is what it is. It says shall. I don't see any good reason not to follow that, and, again, I worry about the cumulative effect down the road if it's approved as it is. Mr. Green said traditionally in law school shall means you don't vary, period. So, we're a Zoning Board of Adjustment. The question would be do we have the legal authority to vary from that which is in the statute that says shall. Now, there have been some cases where the Supreme Courts either in the State or the US have said shall doesn't really mean what we think it means. But that's not how I was trained. I've got some real problems when a statute says shall. Because that makes it far less likely that you're allowed to vary from the exact wording. Chair Morin said my piece on this, too, is that the Town thought about it. People thought about it. That's why it's got its own section in here. When it comes to the sections, you've got specific criteria that need to be met for this type of development. That's where I'm having that same issue. The Town says follow this criteria and you can do it. If you don't, well, you have to come to us, but then we have to weigh the options and make that decision.

**3. Granting the variance would do substantial justice because:**

Chair Morin said going back to Len's point about cost factors without specifics, there are ways to do it. Again, we're trying to utilize this the best we can with what we have. It says municipal sewer. So, that's how I look at it. Mr. Green said the facts are the facts.

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

Board agrees there's no expert 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 for that piece, I don't really see it as different from others in the area because you've got commercial on one side and probably commercial on another. Everyone's going to pretty much have to follow whatever rules there are for those areas.

**(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:**

Chair Morin said again, we've got to have that balance between the public with the ordinance and what the person is looking to do. I'm not seeing the balance of it. I have a hard time with that piece.

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

The Board agrees in this application, the proposed use is allowed. The use of the property is reasonable for what they're looking to do with it. But I don't know about without the public sewer.

**(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:**

Criteria not applicable, addressed in subparagraph (A).

**MOTION: Mr. Green moves that the request by Haya Khurshid Alam Revocable Trust for a variance from Article III, Section 275-21B(2)(d) to allow a 28-unit market-rate elderly housing development to be served by private onsite septic where municipal sewer is required at Route 101, Map 31, Lot 44-29, Zoned Commercial be DENIED as per our deliberations. Mr. Casale duly seconded the motion. Roll call vote taken – all in favor. Motion carries 5-0. The Variance is denied.**

**MOTION: Mr. Casale moves the Zoning Board of Adjustment go back into public input. Mr. Green duly seconds the motion. Roll call vote was taken - all in favor. Motion carries.**

Chair Morin said that has been denied. Ms. Hartigan said thank you. Chair Morin asked do you want to officially withdraw the next one? Ms. Hartigan said yes. Chair Morin said the next item has been withdrawn by the applicant. Ms. Hartigan said thank you for your time.

**Item 4: 209 Route 101, LLC and Millennium Running - Request for a Special Exception in accordance with Article III, Section 275-21 and Article XII Section 275-91C, to allow for the construction of a 4,000 square foot garage at 137 Bedford Center Road, Map 20, Lot 41, Zoned Commercial.**

**Mr. John Mortimer testifies:** Yes, sir, Chairman, thank you. Members of the Board, thank you. Staff, appreciate the opportunity to be here. My name is John Mortimer. I live at 70 Brick Mill Road in

Bedford. I own the company Millennium Running and Millennium Retail at our business at 138 Bedford Center Road, which is directly in front of the property which we are talking about. Ironically, in 2015 we were here to get a special condition to renovate the Culligan Building, which is now the Millennium Building, and ironically the Murphy's Taproom people, and I think all the same Grey Rocks Road people were on and I thought people didn't want a running store. Then they all left. So, I hope it's kind of like that too, ironically. Nonetheless, here to—I guess what I would say is my father once said, we always wanted oceanfront property and never had it. He said God only made so much ocean property, and I take that and say God only made so much property that became available directly behind our small family business. So, with 137 Bedford Center Road directly behind 138 Bedford Center Road, it's an opportunity we have to purchase the land and expand our family business to create a better environment for what was the formerly Historic District Commercial District, betterment to the community. A safer environment for customers and motoring public.

**Ms. Katie Weiss testifies:** Good evening. My name is Katie Weiss. I'm with Bedford Design Consultants. We're the engineers and surveyors for the project. If I could just start a little bit about where the lot is located. As he mentioned, Millennium Running is across the street at 138. The property we're looking at is at 137 Bedford Center Road. We have a bank over here. Over here is a residential house that's been turned into a business. This large parcel over here is the Ace Hardware Shopping Center. Then Route 101 is—this is Bedford Center and Route 101 is over here. You can actually come into the site over here, and it's all kind of connected. The Millennium Running right currently on the property they have a lot of vehicles that they store as well as trailers and equipment because they do races on the weekends during the summer months. They have a lot of equipment. Mr. Mortimer said all year. Ms. Weiss said is it really all year?! Oh, my goodness! The trucks and trailers—they have barricades and signs and cones and water dispensers and all those sorts of things that they use for the races. They need a place to put those. So, on the lot over here, there are wetlands in the back of the property. Let me pull out the plans so you can see them better. There are some wetlands here along the back and over here on the larger property next door. A brook runs through here. As I mentioned before, Bedford Center Road is here, and Route 101 is down farther. The Commercial District and the Rural Agricultural District zone line runs right here right in the middle of the site. So, we're dealing with two separate districts on this site. The special exception we're requesting tonight is for a 4,000 square foot garage to house those vehicles and those trailers. There's also—we're requesting overflow parking from Millennium Running and the other uses across the street. There are certain times when there are too many vehicles. Currently I believe right now they park along here. So, this would get them off of that and into an actual place where it's safe. There's an existing crosswalk that runs across the street. They would be utilizing that. There's a sidewalk that runs here and then up here there's an existing light for safety. So, again, the existing crosswalk and the Millennium building is actually right here. The use itself is basically the same use that's across the street. When they set up to do the races, it's the same timeframes. They're going to be doing everything the same time that they did before. The overflow parking will be used during business hours. So, it's not a different that's already in the vicinity. The garage will have no water and sewer. There will be no facilities on this site, so if anyone needs to use them, they have to go across the street to Millennium Running. I believe that's also one of the conditions of approval for a special exception. Something I do want to mention this concept shows a 35-foot landscape buffer in the front. But we learned after we had submitted that we can do 20 feet. So, we're going to be moving this whole thing forward a little bit. We also learned during the process; the zone line moved slightly from where we originally thought it was. So, this is the correct location but what we learned is there's a 50-foot residential buffer from here to here. So, we will be coming back if we get approved tonight for a variance for that 50-foot residential buffer. So, I just wanted to mention that before we move forward so that you know. Let me go through the Special Exception questions with you.

**(a) No detriment to property values in the vicinity of the proposed development will result on account of the location or scale of buildings, structures, parking areas, or other accessways; the emission of odors, smoke, gas, dust, noise, glare, heat, vibration, or other pollutants; or the unsightly outdoor storage of equipment, vehicles, or other materials.** The garage and parking use will be a supplemental use to 138 Bedford Center Road. The proposed uses are already happening across the street. The site would be an extension of those uses. We are proposing a garage with all bays facing away from the street. Parking is located on the front and side because users will want closer access to 138 Bedford Center Road.

**(b) No hazard will be caused to the public or adjacent property on account of potential fire, explosion, or release of toxic materials.** There are no explosives or toxic materials to be stored onsite. Uses will produce a low traffic volume, which should not generate additional fire or police calls.

**(c) No creation of a traffic safety hazard or substantial traffic congestion in the vicinity of the proposed development.** The garage will have limited operating hours. It will be used primarily on weekends, with trucks leaving the site early in the morning and returning in the afternoon. This is the current practice at 138 Bedford Center Road. The overflow parking will relieve congestion across the street. We will be utilizing either the existing crosswalk or proposing a new location. There will be a walkway from the parking spaces to 138 Bedford Center Road.

**(d) No excessive demand on municipal services and facilities, including but not limited to waste disposal, police and fire protection, and schools.** The proposed uses will not have any waste disposal areas. Police and fire protection needs will be minimal due to the sparse use of the site.

**(e) The proposed use will not result in the degradation of existing surface and groundwater quality standards, nor will it have adverse effects on the natural functions of wetlands on the site which would result in the loss of significant habitat or flood control protection.** The parcel will go through the Town approval process and will require drainage analysis and storm water plans. We will not be impacting any wetlands for this project.

**(f) Adequate and appropriate facilities will be provided for the intended use.** The garage and parking lot use will have all facilities located across the street at 138 Bedford Center Road. There will be no sanitary facilities onsite. Customers and employees will use facilities across the street. After looking at this, I believe the facilities might be drainage. We have room for drainage on the site all back in this area. I think that's the only other facility I can think of.

Chair Morin asked any questions from the Board? Mr. Green asked I go to Members First Bank quite frequently. They've been telling me that your people have been hogging all the parking lots. For somebody—it's not a laughing matter when your mobility issues and you can't find a parking space. Will this alleviate so that your people instead of taking the Members First parking lot, will go across the street? Mr. Mortimer said absolutely. From a business use case perspective, Members First is a good partner of Millennium Running. So, we have a great working relationship. They sponsor some of our races that happen in Bedford. It is a very good partnership. From that perspective, temporarily we've put up Members First Parking Only. I think what you're talking about is crunch time when we have a yoga studio that we've leased space to within our building called Humble Warrior. When yoga classes are in session first thing in the morning and there's an overlap of time opening, that's when it gets

crowded. When people are showing up early and people are staying late, but to answer your question directly, the overflow parking eliminates all of that which is for the better. Mr. Green said thank you.

Mr. MacPherson said I would just ask will you have good landscaping? Will it be looking better than what you have today, I hope? Mr. Mortimer said yes. What it looks like today is not very pleasant. It used to be a resident. The resident that lived there was a nice old woman. We used to take her dog out when it had to go to the bathroom. They demolished it, and now it's just two old garages sitting there. The intent is to make, as we did with the Millennium Building, we recreated that to look a lot like Members First and have that aesthetic—to not just be an ugly building. To be more in line with what we have at Millennium Running. Mr. MacPherson asked, and you have some money on your budget to landscape and have shrubberies and things of that? Mr. Mortimer said absolutely. We take great pride in it like everything we do. We'd want it to look first class. Mr. MacPherson said yes, okay. Ms. Weiss said, and we do have some elevations of what the building would look like. This is a rendering from the view that you would see from the road. Mr. Mortimer said I would add our Tech is the neighbor—our neighbor that designed it. So, I think if our abutter designed it, I think it's probably up to his standards. Chair Morin said going off what you just said, so the elevation of the building compared to street level. So, basically, it's going to be? Ms. Weiss said it's not drawn to elevation. It's probably going to be ... do you mean like elevation in height? Chair Morin said yes, like street level is here. Is it going to be lower than street level? Is it going to slight...? Ms. Weiss answered it's slightly below. It's a couple feet below but only a few. Chair Morin said okay. How tall is the building? Ms. Weiss said let's see. It is 35 feet and 10 inches and a bit. Mr. Mortimer added, and it's got a decorative cupola on top. Ms. Weiss said yes, it's 28 something, almost 29 to the regular roof. So, this is the side that will be facing away from the main road. These are the five bays for the trucks and the trailers and the man door right here. Then side views, we have a fake garage door. It doesn't really work. It's just there for aesthetics, and some windows and some transom windows up here—so decorative elements. Then this is the side you'll see from the street. So, another door and then some windows along the side.

Mr. Casale asked why are you moving it up closer to the street? I'm assuming it's to help with the issue in back. Ms. Weiss said it was originally, I took this project over from someone else and I was a little behind. Originally, I believe it was set up for the Performance Zone standards with a 15-foot tree strip and all those things, and it ended up being like 35 feet. When I met with Becky afterwards, she said I only needed 20. So, that's why it's going to move forward because we only need 20 feet. That will also move it out of the residential buffer as well. Mr. Casale asked and more cost-effective, I assume? Ms. Weiss said yes. It was also easier for the people who are going to be having to walk across the street. Mr. Casale said which leads to my second question, so, I think I have a handle on it. The majority of your parking is—most of your events are on the weekends. The majority of the parking during the week is—you probably have one or two people for your retail location—and this is the first I heard about yoga being in there. So, you have yoga classes during the week and on weekends as well. Mr. Mortimer said yes, typically the yoga classes are in the morning and in the evening. Our retail store is open during the day. So, their hours are ... their last class ends before our day opens. But the intent is to have employee parking—our Millennium Running employees and our retail employees across the street such that customers and Members First and yoga customers and running customers have the parking lot not taken up by if we have 7 employees in running and 2 instructors for yoga and 3 people on the retail floor—we're not taking up parking for the customers. Mr. Casale asked the majority of your employees are on the weekends, though, because your events? Mr. Mortimer said oh, no. Our office time is during the week, Monday through Friday. I think it was referred to as our trucks coming and going for the events on the weekends. Ms. Weiss said there are two separate things happening at Millennium Running. One is the races, and one is the retail. Mr. Casale said right. I assumed that your weekends

were busier. Because you're moving stuff in and out. Mr. Mortimer said yes and no—my wife would say. I would think, to answer your question, it would put all of our traffic that is employee traffic, work traffic, across the street such that customers have first dibs. Mr. Casale asked there's no intent in moving yoga across the street? Not that you can do that, but I just want to clarify that. Mr. Mortimer said no. They have a 5-year lease. They're staying there for a while. Chair Morin asked is the goal with the new garage to take basically all the vehicles that are still sitting outside behind the building when I drove by before tonight, to get them inside—get everything inside so there's nothing outside? Mr. Mortimer said yes. From what we do—we have a non-traditional business of putting on running events. A lot of people don't understand what that really looks like and feels like, but those trucks—there's like 6 or 7 of them—we're bring cones in and out. We're bringing tables in and out. They're staged outside this time of year because we can. Then when snow flies, you typically don't see any. We pack them all back in because it's just a hazard. You don't want snow on the top of the vehicles. Chair Morin said my biggest concern, and I just want to make sure it's not a concern, is that once you have this new building, you're not utilizing the parking lot to have all your equipment out when you have this building to put it in. Mr. Mortimer said oh, one hundred percent yes. Chair Morin said okay. That's one of my major things and I wanted to ask that piece. I do want to talk about some screening, though. But I'll get other—go ahead.

Mr. Casale asked did you view the summary by the Zoning Office or the Planning Office regarding the conditions that they would like the ZBA to possibly consider? And are you agreeable to them? Mr. Mortimer said I didn't have a chance to do that. Chair Morin said actually, I think she brought them up during her presentation. Mr. Casale said okay. Ms. Weiss said yes, I did.

**Mr. Robert Bass testifies:** Robert Bass, Bedford Design Consultants. That was one of the things I was I was going to do. I was going to ask John to sit back. When it comes to the conditions and the staff, starting from the bottom:

**The plan shall be revised to include the 50-foot buffer along the R&A zone line in accordance with Section 275-21 (2)(a) of the Zoning Ordinance.** I'd like to add OR we seek the additional variance to correct the issue. Do you know what I mean? We're going to come back in a month for a variance. Mr. Casale said well, but if we add that, we're voting on that. Ms. Hebert said you could strike it if they're not going to modify the plan to provide the buffer. Just strike it. If the plan that is further developed and designed by Bedford Design reveals any other non-conformities with the Town's Zoning Ordinance, there going to be back before this Board with a variance request or they're going to be redesigning the plan. Mr. Casale said okay, so we would be covered if we struck that. Ms. Hebert said yes. Mr. Bass said I just wanted to somehow make—same thing—that wording is kind of...

**The garage shall not be connected to water or sewer utilities;** Mr. Bass said fine.

**The garage shall be used to store vehicles and equipment;** Mr. Bass said fine. Mr. Casale said that's it.

Mr. Bass said **and shall not include interior finished space for office** but then there's **or any other accessory use**. To me, if you look in Zoning in the Table of Uses, once a use is on a lot, if they want to put a little shed to store new tires, old tires, oil for the vehicles—any type of accessory use, they can go do an accessory use. Chair Morin said we're talking about this building, though. Ms. Hebert added within the building, yes. Mr. Bass said I kind of saw that as being ... Mr. Casale said in other words, no yoga. Chair Morin said right. Ms. Hebert clarified no yoga, no retail. Chair Morin said it's just a garage for ... Mr. Bass said I just saw those last five words a little bit past what—this runs with the land, not with the

owner. So, I take it he could put a desk behind there for somebody to manage back there. And he could put cubicles around it, but he can't put a wall up. It gets into a lot of gray space. This is a garage, you know, but somebody else may do something else with the garage. Not something else, but I understand no yoga. This is for his equipment. That last five words just seemed—or any other. Ms. Weiss said you just want to make sure that he can store some of the equipment in there? Like the barricades and things if he needs to? Is that what you're trying to say? Mr. Bass said for future owners, I just don't want to take away the rights that everybody else would have and any other use. Chair Morin said yes, but we also have to look at we're here to approve something specific. That's what we're looking at. So, if down the road, if we have specific things on this and a new owner takes it over and wants to change it, then they have to come back here for a change. Mr. Bass said correct, I was just looking for small accessory uses, whatever, I don't know. Mr. Casale said right, but we have to worry about the yoga shop coming in 20 years from now, because this runs with the next owner. Mr. Bass said but to me, that's a change of use. Everybody knows that's a change of use. I was looking for things that are small enough that it would be normal for a garage. That they could do it without coming back. But I just want to make my two cents on that. It just seemed a little overly restrictive. I don't have any example, other than I read it and I kind of scratched my head and went... those last five words—or any other accessory use—it just seemed to be, to me, a step too far. Ms. Hebert said staff was trying to limit the finished space within the building because we've been told it's a garage, no hookup to utilities, no sewer, no water. It's really storage, which is what you think of when you think of a garage. Warehousing uses and light industrial uses are not permitted in this district. So, we didn't want to be approving a building that could be later reconfigured for a use without going through the proper approvals. Mr. Bass asked could we change it to exactly what you just said? Is that—no warehousing or light industrial is allowed? Chair Morin said but that's not allowed in the district anyway. Mr. Bass said but accessory use is—is an allowed use per the Zoning Table. So, it's kind of taking allowed use per the Zoning Table and just kind of... Ms. Hebert said yes, I see where you're coming with that, yes. Mr. Bass asked you know what I'm saying? I know where you were going with it. But I didn't like the final wording of it. While she's thinking about that, one other thing on the daytime use; the day I visited every one of these races is different. How long is the race? Where is it at? How many runners? So, during the week the guys are in there unloading the trucks and figuring out how much they need for this week's race. Unloading the truck, loading what they need—just enough for that week's race. There's one truck full of electronics, everybody comes in and gets their badge. Everybody gets their official time. My understanding is that electronics truck will stay in this building. He still has just expanded quickly—I think 7 trucks and 3 trailers? Mr. Mortimer said yes. Mr. Bass said so he's got 10 vehicles, and there's not room for 10 vehicles. Mr. Casale said okay, thank you. Chair Morin said yes, it's easy to see if you drive by right now. They're in the back, parked in the back, which is understandable. Mr. Bass said he's successful, and that's a good thing. Chair Morin said yes, I've seen some of the areas that he sets up. Either I know people participating or—I'm a triathlon official so I've worked different areas. I'm going to open this up to the public. Is there anyone that would like to speak on this item?

**Mr. Eric Erickson testifies:** My name is Eric Erickson, 36 North Amherst Road. I'm an abutter to the property. In general, it needs to be cleaned up, and I commend you for that. I have some concerns, even though you said this isn't the place to talk about buffers and whatnot. I still would like to bring it up because the residents behind this property currently do not have any light trash coming through the woods toward their houses at night. So, I was wondering what the plan is or if there is a plan or could there be a plan to include some sort of buffer that would grow to the height of your building either on the line or the R&A portion of the property so that the light filtration through there would not be coming into the backyards of the residential properties behind it. Also, there are a number of wildlife things going on there that people may or may not know. I do because I live there. There are nesting

great herons. There are the beavers that come back after Primary Paint was built and chased them off. There's about 7 or 8 deer that live in there permanently. So, this is my concern. Other than that, I commend you. Chair Morin said thank you.

Mr. Mortimer said I appreciate that as a neighbor. But from the perspective of being back there and walked that property, I think this plot doesn't go any deeper than the existing things do. Ms. Weiss said well, let me just say we will be disturbing this back area during the site plan process. There's a whole thing going on that really isn't part of this. I will talk about it now. When we go to site plan, we're also going to be probably building a pad over here. The reason for that is we are in the flood plain. We need to pull out some material from here in order to be out of the flood plain. So, there will be trees cutting here, part of what will probably be proposing when we come back in. He is proposing a buffer in the back here since there's wetlands anyway. But that we will be disturbing a portion in here to be able to be out of the flood plain to grab material from that. Chair Morin said all that stuff is going to be part of the Planning Board's purview, right? Ms. Weiss said yes. Ms. Hebert said and some of that may need Zoning relief if it's stormwater or accessory uses associated with a Commercial use in the Residential Agricultural. Ms. Weiss said okay. Mr. Bass added what I was going to say is when we go in to clean up the Residential area, it's all on a flood plain now. But some of this fill out front is in the flood plain too. We're going to lower some of the area out back by a foot or two, making it more in the flood plain, and then we'll fill in the small areas on both sides. Becky recommended we come in for a dual site plan so they can see the whole effect of the flood zone and the drainage all at once. So, we'll come in with two site plans side by side. That will make the back completely unbuildable. There will be no buildable land. It's either going to be wetlands or flood plain. We'll leave the buffers, and we can certainly add screening back there. I'll go back and drive that road and see whether a small fence or—Katie is a licensed landscape architect. Ms. Weiss said I have to look at the elevations and see how much lower they are. Mr. Bass said if their houses are higher or lower, and... we'll take care of that. Chair Morin said some of the purview we get to play with which we never get to play with so, with Special Exceptions, we get a little something. I feel there needs to be some type of buffering or—not buffering—but, let me pull out the right verbiage so I don't mess it up here—screening. And the folks I want to protect who are probably the closest aren't in the back, but are two buildings over, to the right. The Richmond house? Because I'm seeing, when I drove by tonight, I'm guessing a lot of that on your property and the one next door to the other commercial property, most of that buffering is going to be gone. There is some decent buffering between that other place next door to you and the house, but I just want to make sure you're going to be far enough back that they might be able to see some of that. Ms. Weiss said the zone line runs about here, so we'll be in ... Chair Morin said I know you're moving it up a little bit, so that's good, but it would be nice if there was some buffering at least in there to block some of that. There's nobody on the other side. It doesn't matter. That's commercial on that side. The back, I think, again, the back will be up to the Planning Board, but if we get to have a say, I'd like to see some type of buffering on that right side. Mr. Bass said if we get by tonight, we'll be back next month, and we can actually show you what we propose. Chair Morin said okay. Well, what we can do, too, is can't we make it some type of buffering with you guys approving it per se? Ms. Hebert said yes. Mr. Bass said it's okay with us, too. Chair Morin said I know the Planning Board does something like that as long as the staff are happy with it. Ms. Hebert said yes. You can say with buffering to the adjacent residential properties. Mr. Mortimer said I guess I would note that the woman that lives there is thrilled about this as well. I think most people are wanting that property cleaned up significantly. So, I think—she's seen these as well. Ms. Hebert said we often talk about providing an effective year-round screen when we're dealing with site plan buffers, to give the landscape architect some flexibility in the design. Chair Morin asked so what is that again? Ms. Hebert repeated an effective, year-round screen. Chair Morin said okay. Ms. Hebert added which could be many things. It could be fencing, landscaping, typically the engineers and

landscape architects will work with the abutting property owner to develop the design. Mr. Casale said we could put as approved by the Planning Department. Ms. Hebert agreed. Chair Morin asked anybody else? Any last comments before we dive in? Mr. MacPherson said no yoga. [laughter] Chair Morin said he wouldn't be able to get up anyway. [laughter] Let's go into non-public input. So, do I have a motion to go into non-public input for deliberation?

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

- (a) No detriment to property values in the vicinity of the proposed development will result on account of the location or scale of buildings, structures, parking areas, or other accessways; the emission of odors, smoke, gas, dust, noise, glare, heat, vibration, or other pollutants; or the unsightly outdoor storage of equipment, vehicles, or other materials.**

Mr. Casale said no and in fact it will improve some of those areas like outdoor storage. Chair agrees.

- (b) No hazard will be caused to the public or adjacent property on account of potential fire, explosion, or release of toxic materials.**

Board agrees, no.

- (c) No creation of a traffic safety hazard or substantial traffic congestion in the vicinity of the proposed development.**

Chair Morin said really, it's probably going to be on-off times that they're moving through instead of busy times, and more weekend per se for that business part, moving those trucks and getting them in and out and stuff. That will be good.

- (d) No excessive demand on municipal services and facilities, including but not limited to waste disposal, police and fire protection, and schools.**

Board agrees no.

- (e) The proposed use will not result in the degradation of existing surface and groundwater quality standards, nor will it have adverse effects on the natural functions of wetlands on the site which would result in the loss of significant habitat or flood control protection.**

Chair Morin said specifically what we're approving is in the Commercial Zone. That piece doesn't have an issue with us that we have heard. Anything else, they might do for the back, they're probably going to have to come to us anyway, depending on what they're going to do, or the Planning Board is going to deal with it. Mr. Casale said it does add some impervious area compared to what it has right now with the parking lot, but others will deal with that.

- (f) Adequate and appropriate facilities will be provided for the intended use.**

Board agrees yes.

Chair Morin said so, with that, do we have a motion?

**MOTION: Mr. Casale moves that the Zoning Board grant the request for Request for a Special Exception in accordance with Article III, Section 275-21 and Article XII Section 275-91C, to allow for the construction of a 4,000 square foot garage at 137 Bedford Center Road, Map 20, Lot 41, Zoned Commercial, as per our deliberations, and with the following conditions:**

1. **The garage shall be used to store vehicles and equipment and shall not include interior finished space for office or any other accessory use;**
2. **The garage shall not be connected to water or sewer utilities; and**
3. **The applicant needs to include buffering in the plan that will provide effective year-round screening and that that plan is approved by the Planning Department.**

**Mr. MacPherson duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.**

**MOTION: Mr. Gilbert moves to go back into public input. Mr. Casale duly seconds the motion. Roll call vote taken – all in favor. Motion carried 5-0.**

Chair Morin said you guys are all set. Thank you. Ladies, do we have anything else for this evening? Ms. Hebert said we do not.

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

**Meeting adjourned at 8:57 pm.**

**The next meeting will take place on June 21, 2022.**

Respectfully submitted,

Sue Forcier