

Town of Bedford
July 20, 2021
Zoning Board of Adjustment
Minutes

A regular meeting of the Bedford Zoning Board was held on Tuesday, July 20, 2021 at the BCTV Meeting Room, at 10 Meetinghouse Road.

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

Absent: Sue Thomas (alternate member)

1. Call to Order and Roll Call:

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

2. Approval of Minutes: June 15, 2021

MOTION was made by Dave Gilbert to approve the minutes of the June 15, 2021 meeting of the Bedford Zoning Board of Adjustment as written. Mr. Casale duly seconded the motion. Roll call vote was taken - all in favor. Motion carried 5-0.

Chairman Morin stated for tonight's meeting all items will be done in order of the agenda. For rules of procedure, we'll have a presentation by the applicant followed by input from those in favor and in opposition. No debate will be allowed between the parties. I'll ask anybody who is testifying, you are to address the Board please and the Board only. And then after we've got all that, we will ask for a summation from the applicant. Again, all applications will be heard in order of notice. We will go into a non-public input to discuss and vote on the applications. You can wait for a vote tonight or call the Planning Office after 8:30 tomorrow morning for the decision of the Board. I'll ask all folks here to please silence your phones that way we don't have to worry about the noises during the hearings. I'm not going to go through the five criteria at this time. We're going to ask the applicant to do that during their presentation. Any party has thirty days to request a rehearing from a decision of the ZBA. The Board has thirty days in which to respond to such request per RSA 677:3, tomorrow being day one. All requests must be in writing and must contain new evidence. Please point out any errors you believe the Board has made in its decision.

For those willing to speak this evening, I'm going to ask that you please stand, and we'll swear you in. If you're even thinking of it, please stand that way we'll have you all sworn in, so we don't have to stop to do it later on. Please raise your right hand. Do you swear the testimony you give at this hearing is the truth, the whole truth and nothing but the truth?

Room affirms.

Chairman Morin stated if anyone is here for Carnevale Spa Associates, those items have been tabled until August 17th's meeting. So, our number one item is Rafael & Alyssa Peschiera. They are requesting a variance from Article III, Section 275-22(a) Table 1, Table of Dimensional Regulations and footnote 3, to allow for the creation of a substandard lot containing 1.3 acres where a minimum lot size is 1.5 acres at Ministerial Branch, Lot 9-7. Come on up, introduce yourself.

Jeffrey Kevan from TF Moran's Office began his testimony: I'm Jeff Kevan with TF Moran's office. We're the survey/civil engineering firm that prepared the application and performed the survey on the property. So, this is just an aerial - gives you a general overview of the property and where the site is located currently. The surveyed site is 2.88 acres - almost 2.9 acres. The tax card reads 3.4, so when we were approached to survey and look at a subdivision based on the tax card, there was more than enough than three acres to do two lots on the site. That's why we proceeded. So, we've surveyed the property and again its 2.88 acres. So, this shows the two parcels that are out there again. It's zoned RA - Residential Agricultural. Currently there is a house here with a driveway coming in on this side of the property. The barn sits on the opposite side of the site. There are no wetlands on the site. The soils are actually very good, well-draining soils. Looking at the subdivision standards, the lots will meet all frontage site setback requirements. Both lots exceed the twenty thousand square foot buildable areas that is required by Bedford. Also, you can see we've shown the hundred by seventy-five-foot box that Bedford looks for as well as the 4k area and well on the site. So, both sites easily support the system. Based on state lot loading calculations based on soils, they both exceed lot sizing required. This is a tax map that shows the surrounding area and as you look at it, again these are numbers that came off the tax cards that show a lot of the lots surrounding this are less than one and a half acres. They are, a number of them on Fieldstone Drive, Buttonwood Road, and Ministerial Branch, you can see are less than the acre and a half. So, when we subdivide this site, we would have one lot that's an acre and a half, meets all requirements. The other one would be 1.38 acres, just under 1.4 acres, so roughly five thousand square feet short of compliance. As I stated both lots would conform to all other standards as required by Bedford and the State of New Hampshire. I don't know if you have any general questions you want to ask, or I can go into the criteria.

Mr. Casale requested to go back to the prior slide.

Chairman Morin asked why don't you go into your application and then we'll go from there?

Mr. Kevan continued, so granting the variance would not be contrary to the public interest. The proposed lots, again, would be 1.5 acres complying with all standards. The other one would be 1.38 acres, slightly under the required area, but meets all other area and frontage setback requirements and that it is very similar to the surrounding lots within the neighborhood. We do not feel it would be contrary to the public interest to create this one additional lot. The spirit of the ordinance is observed again with buildable area 4k and state lot loading calculations met. Both lots were well in conformance with all other standards. Granting the variance would do substantial justice. It would allow the creation of the second lot and again the landowner has been taxed on 3.4 acres for a period of time thinking they had greater than the three acres, which would have easily met it. We feel, by allowing both lots and, in that they comply, are in conformance with many of the lots in the surrounding neighborhood and would allow substantial justice to create the second lot. The value of the surrounding properties will not be diminished. Again, this would just create a second residential lot that is very much consistent with size and everything else with the lots in the neighborhood. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application. Again, when looked at, we're well within

the standards of Bedford. There are no wetlands. It allows plenty of room for buildable area and septic and so forth. So, it's in compliance with all other standards both with this town of Bedford and the State of New Hampshire. The purpose is a reasonable one in that it is zoned RA, and we would just be creating an additional residential lot that, again, is very much in compliance with many of the lots in the surrounding area. I'll turn it back to you and answer any questions you might have.

Chairman Morin asked if there were any questions.

Mr. Green stated you said there would be no diminution in value. What do you base that on?

Mr. Kevan answered, again what you have is a lot that is of similar size to the ones in the area. So, it's going to sell for a reasonable price in that the only way it would diminish in value is if that lot couldn't support a house similar to the ones in the neighborhood, right. So, both these lots can easily support any house that they want to build on them. Like I said, the soils are all very well-drained and can support the septic systems. There are no wetlands to prohibit development on any portion of these parcels.

Ms. Jude said, you say that it is consistent that they are under one half or in the surrounding area and I didn't get a chance to count how many in the neighborhood are under 1.5 acres? Mr. Casale responded, I counted only three out of the twelve are less than 1.5. Mr. Kevan added, the three lots in the back, behind them and then... Mr. Casale added, I didn't count that, I was counting Ministerial. Mr. Kevan commented, okay, oh. I'm just looking at this. So, if you look at most of the lots behind them are less than an acre and a half. Diagonally off this corner is 1.1 acres. Then, just one lot over to the north is 1.2. Then as you move up, you can see these lots are all of similar size and appear to be well under the acre and a half. If you go down Fieldstone or Flintlock Road, many of them are less than the acre and a half.

Ms. Jude said, thank you. That was my only question.

Mr. Casale asked Mr. Kevan, can you tell me, aside from the tax issue with the town (which is not our issue), aside from that what hardship do you see that is not shared by other property owners in the town? That's one question. The second is, how is this property unique in, therefore, creating a hardship? Mr. Kevan answered I guess the uniqueness or part of the uniqueness of this is that both of these lots are probably more developable than you come across in a lot of the lots. There's a lot of wetlands and whatnot on other parcels that create a lot less buildable area than these do. So, what you have is two lots that conform to Bedford requires – not just frontage requirements, lot area, but buildable area requirements that aren't required elsewhere, but that's fine. These comply with all of those as well as meeting the state's requirements by 30 percent, 40 percent exceeding the amount of land that they need to support the lots. I think it is rather unique that you have some very prime land, well-developable, and because of I guess the records of the town or what have you, they thought they had well over three acres, and it turns out they're a tenth of an acre or .12 acres shy of meeting the technical requirement of the town.

Mr. Casale also asked, I'm assuming that the homeowner is not going to present any evidence. Do you know how you're going to address the issue of density that a couple of abutters have mentioned as far as if the property is subdivided and that the issue is that you're taking an already, what appears to be, dense lot and moving everything over to 1.5 acres so that then the other 1.3 can be developed at some point? So that was an issue that a couple of abutters mentioned. One in particular that stated that the land is already dense with what's going on there aside from the house and the farm machinery, farm animals. Can you address the issue with the density the people are concerned about? Mr. Kevan answered, I haven't heard the specifics. I just heard what you had to say. So, this is the aerial. I don't know that this is

densely developed. If the question is are they going to take the farming animals and whatnot that they're doing and move them onto the property with the house, the answer is no. The intention is that they would relocate themselves and the animals and put the house or the two lots up for sale.

Mr. Gilbert asked, can you go back to the map you were just on? My question is driveways. I read that the existing property has one way in and one way out and it would have to be different. They'd have to change that. Mr. Kevan answered, so more than likely what we're indicating for the subdivision when we go to the Planning Board is that the driveway that comes straight into the garage would be utilized. The other one would be closed off at the street. So, you have one driveway there. The second lot would need to have a driveway that would come off across from Ministerial Circle. Mr. Gilbert said I guess my question is ... (and this is a question for you, Becky) is there a distance from a T-intersection that you'd have to have a driveway away from it? Or can you take a driveway right off and bring it right into Ministerial Circle or from there? Ms. Hebert answered, lining it up is probably the safest alignment for the driveway. It can't be offset from the intersection, and it would need to be at least one hundred feet from that T-intersection if it wasn't lined up to create a four-way intersection. Does that make sense? Mr. Gilbert replied, yes, so they're committing to that because, maybe, the distance from the circle down the road isn't one hundred feet. The frontage is only one hundred and thirty something I think it was? Ms. Hebert said yes. Mr. Kevan added, it makes most sense to come in across from Ministerial Circle because it will provide the best site line. As you can see, we'd be on the outside part of that curve. As you move away from that then you have the curve to deal with as far as sight line. If you're lined up with it, you have clear sight line down both roads in either direction. Mr. Gilbert said, okay, I just didn't know the distance thing and all that so thank you.

Mr. Greiner said, I had two questions. Dave asked one. The other one is (and it does make sense the offset directly from Ministerial Circle). I assume that there's no issue with any kind of setback you wouldn't have to come back for a variance for a driveway based on replacing it. Mr. Kevan said no. Mr. Peschiera made a request to address the board and Chairman Morin replied not at this time. Anything else, Bill? Mr. Greiner replied no, that was it, John.

Chairman Morin said, okay, one of my questions for you is, looking at the Tax Map (or whatever it was) you've talked about a good number of smaller lots in that area. Do you know how long ago those were developed or put together prior to the zone changes? Mr. Kevan replied, I do not. Basically, again, I was looking at the character of the neighborhood and whether this would be consistent or not. Ms. Hebert added, sure, this particular lot was created in 1965 so it is one of our older neighborhoods. Chairman Morin said, so Len brought it up earlier about value and stuff like that. Has an appraiser been talked to dealing with the value issue? Or is it just...? Mr. Kevan replied, no, we have, again, I guess the question would be more what would decrease, what would cause a negative impact on value? Here you have, you know, again, 1.38 acres all dry, no wetlands, no encumbrances on the property that prohibit or would have an impact on development on that site. So clearly 1.38 acres can support a house that's consistent with that neighborhood where you have that range in lot size from an acre to the acre and a half. Unless somebody has something where they think there would be a reduction in value because, again, of that tenth of an acre, I guess I didn't feel it was necessary to have an appraiser go in. Typically, when someone's selling their property, they hire an appraiser. The appraiser takes properties within that neighborhood based on the size of lot and what they're selling for and that's what determines it. This lot would be equivalent to or close to equivalent to almost all lots surrounding them. Chairman Morin stated, the only reason I ask it is because the specific criteria for that is talking about diminished values, which you brought up. But unfortunately, we don't have any expert testimony when it comes to an

appraiser dealing with that. Just asking. Mr. Kevan added, no, I get it. I'm just saying I guess common sense is if this lot is equivalent to a large number of lots in the area, then there should be no diminishing of value for sale of anybody else's property.

Chairman Morin said, okay. Last question right now anyway. Say a house is put on that lot, if approved. You say it's a dry lot, but how are the slope issues as in would a house or buildings make a difference as in water flow to any of the neighbors? Mr. Kevan responded, no. Basically, what you have if you're looking at it these contours are coming kind of diagonally across this new lot and are kind of semi bowled as in creating a ravine or a flow path kind of down the middle of this so flow path is perpendicular to the contour. So really flow path is basically going front to back on the site. Chairman Morin said, okay. Thank you. Any other questions from the Board before I open it up? Mr. Kevan added, sorry, it's going from front to back so it's flowing backwards towards the back of the site, but again its perpendicular when we would do it, we would have to look at any type of development to just illustrate that there is no impact from drainage on the neighboring properties.

Chairman Morin said, alright. At this time, I'll open it up to public. What I'll ask you to do is go to one of the microphones. Give us your name and your address. And again, you're speaking to the Board, so please direct all your comments to the Board. Go ahead, sir.

Rafael Peschiera testified: Hi, my name is Rafael Peschiera and I just wanted to say that for the driveway situation, it would be fine coming from the road but there actually is already a driveway in there from the past that goes to the barn which could be utilized. If not, then a driveway being placed there would be fine. Addressing the issue of diminishing value, or I think if anything, it might increase the value because it is the only farm in the neighborhood. Which seems to also, for certain abutters, be a point of contention. So having the animals removed and, on another property, would seem to better serve their interests. Chairman Morin said, thank you. Next?

David Harrison testified: Good evening. David Harrison, 15 Stonehenge Road. So basically, beyond your map you've shown tonight. Still in the neighborhood. Neighborhood circa 1965-1975. Most of the lots in that timeframe were one acre, including my 1.1. I am concerned with the plot that's demonstrated on the screen here this evening. If I look at that plot and I look at the drilled well with a seventy-five-foot setback, I see it hitting the front of the house as it's laid out there on the plot. And also, the radius setback abuts right up to an adjoining property and just about abuts the existing houseline after they subdivide. They, currently I understand that they are talking about the removal of animals, but where the drilled well (where it's indicated now) there is a barn and it obviously does not sit back seventy-five feet, which is also a requirement. I have concerns. I don't necessarily believe that it's going to improve the neighborhood property values. It has the potential to decrease it with the added traffic. If you look at that part of Ministerial Road, it's the oldest section of the neighborhood. It is a very narrow roadway as compared to other road infrastructure in town and that the bend as you come up to Ministerial Branch to Ministerial Circle, it narrows there. And during the winter months, that can be a pretty bad area. Thank you and the Board members for listening. Chairman Morin said thank you.

Earle Lakin testified: Good evening. My name is Earle Lakin. I live next door at 23 Ministerial Branch. My map plot is 9-6. I approached this meeting tonight with the understanding the animals were going to remain, and I don't see how we can get a guarantee from this group that if you grant that subdivision, that the animals will not remain. We've had problems. The residents are aware of them, with the fact that this farm is here. There is an excessive number of animals on the plot at the moment. There's a very large

manure pile that is down at the bottom of the property. The smell, the odors, the fact that we have an increased population of insects and rodents in the area impinges on all the people around this property. So, I have concerns unless you can guarantee that the animals will be removed. The situation is still the same. If you grant this, the fact that it does impinge on health and safety of the surrounding properties with the amount of animal waste that exists and, in most cases, it has not been removed. I understand that they have the right at the moment as far as New Hampshire rules are concerned, there are no zoning laws in Bedford about the amount of animals you can have on a farm in a residential area. Certainly, there are similar locations around like Manchester and Amherst who limit the number of animals to one horse per acre. They now have seven horses, two cows, five goats and a number of chickens and other animals in that particular piece of property. If you grant this particular thing, and you add additional structures to that property, you are restricting further the movement of those animals. I think that granting this does not maintain the spirit of the Bedford zoning ordinances. The value of the surrounding properties will be impacted. In fact, they already have been. My property value has gone down as a result of the overcrowded condition of the animals in there. We've tried to put our house on the market and our real estate people have indicated that the big drawback is the farm next door and the overcrowding. I am obviously against it. Also, I don't see any merit to the owner's claim that there will be substantial hardship or substantial financial losses. I understand the town has misidentified it for a number of years and they have paid excess taxes. That is something they should take up with the tax assessor and not use this Board as the reason for it. I have a copy of this letter. I have presented it to the Board, and you'll get more details from that. Chairman Morin said thank you. Mr. Casale said, Mr. Lakin, I have one question. Did a realtor tell you, give you any monetary figures? Mr. Lakin replied, no, she did not at the time. Mr. Casale inquired, but stated that the value went down because... Mr. Lakin answered yes. The value if the property is diminished. Mr. Casale said thank you.

Mr. Green said, I have a question. Diminished from what? What was the starting figure and what was the ending figure so we can have some idea as to what you're talking about as to diminish? Mr. Lakin replied, I purchased that house for about \$360,000. Mr. Green asked when? Mr. Lakin said back in 2014. The market has gone up substantially since then. Again, as I said we attempted to put it on the market, but the realtor says you will not get the market value, the current market value, with that property next door in the condition that it stands in right now. Mr. Green asked, what's the current market value? Mr. Lakin replied, the current value? She had something like \$475,000. Mr. Greiner said, Mr. Lakin, I'd like to ask, the diminished value that your realtor suggests is the case now that you wouldn't get full market value. That's based on what's there today, right? I'm assuming that's the case, not if they subdivided. Mr. Lakin said, it's based on what's there today. Mr. Greiner said okay. Thank you. I think that's important for the Board to understand. Chairman Morin said thank you.

Richard McNamara testified: My name is Richard McNamara and I live at 52 Buttonwood Road, which is directly behind the subject property. We have a two-acre lot there. That was actually, I can give the Board some background, we've lived there since 1984 and have owned the property since 1982. In 1969 much of the property to the south of the property on Buttonwood was developed consistent with zoning regulations at the time as one acre. We bought two of those one-acre lots in 1982 and consolidated them and built a house in the middle of them. Partly in reliance upon what was around there, I'm going to address the standards and statute in a moment, but first I just wanted to address a few things that have been said. I think you've already received a lot of input from a lot of abutters who are very concerned about the use of the lot, which is lawful, but nonetheless injurious. We get a huge whiff of cow manure, horse manure, the noise of the animals. So do all the abutters. The property is being used lawfully but the present use of the property is injurious to neighbors. You can't grant a variance on the condition that

somebody is going to move animals out. I don't think that that's reasonable. I don't think you can guarantee it and if that is the case, it sort of shows there is no real hardship. Three's just a chance to make some money. That brings me back to the 3.4-acre issue. I guess my hearing isn't what it used to be. I wasn't clear on why there was a 3.4-acre indication anywhere in town records. Because there was a lot line revision. Somebody tried to subdivide that property in 1985. This ZBA granted it. It was unlawful. A lawsuit was brought. The Superior Court Judge Dalianis reversed this Board and found the lot line was illegal and it wasn't, as the opinion states subdivided into two lots because then everybody knew, and the opinion states it was a 2.9-acre lot. So, everybody knew that. Whoever bought it, knows the history of the property. They know because there have only been three or four owners since that time and people have either real or constructive knowledge of property they buy. There shouldn't be a suggestion, oh well we always thought we had three acres. No one thought that. The public record, the court records and the town records show that that's not the case. To address the legal standards, they're very clear. There's no public interest in a crowded lot. That's what you have. You have no guarantee that all these animals won't just be moved over and all the smell and all that will not be worse. The spirit of the ordinance I don't see how if an ordinance is an ordinance there's no ordinance that suggests that it's just a suggestion, it's an ordinance - it is a rule. There have to be reasons to vary from it. Substantial justice is done as I said a minute ago. There's no suggestion that anybody's being taken advantage of that, oh, we bought a lot thinking we had 3.4 acres and now we can't use it. If that's so, then somebody didn't do their homework. I don't believe it for a second. And if it's true, that all the hardship is well we want to subdivide it. We'll move our animals out and make some money, that's not substantial justice. The values of the surrounding property in my opinion, actually in the opinion of my wife... I'm speaking for her because for tax reasons the property is now in her name even though we both live there. She's babysitting my grandchildren--our grandchildren--tonight. The owner of the property can state that in his or her opinion, the value of the property is diminished and that's acceptable in a court of law. But we don't have anything here from Moran accept common sense. There's no expert testimony. There's no evidence before the Board that the values of property would not be diminished. And finally, and sort of summing up, there's absolutely no evidence anywhere that enforcement of the ordinance would result in a hardship. As you can see from the abutters who are concerned by the current use of the property, this property is already damaged everyone who is an abutter. I live right behind there in reliance on the 1986 lawsuit we brought and one: We located our swimming pool close to that lot line and when my six-year-old grandson came from Washington to visit this summer, he got in the back, and he said what's that smell? The smell is, of course, from the horse barn and the cows, and the bull and the manure. So, I don't see any unnecessary hardship. Nobody really wants to use the property for anything in a specialized way. They just told you they want to sell it and make some money. They bought it knowing (or should have knowing) they had a 2.9-acre lot and there would be litigation over it and whether it could be subdivided. The Superior Court decided it couldn't. So, the law and the evidence before you compel a finding that the variance must be denied. I'll answer any questions anyone might have. Mr. Green said, the only question I have is there any provision in the law that prevents us from putting in as part of the stipulation that no farm animals can be on either property? Is that permissible or not permissible? If the answer is we can put in a stipulation, it would seem that removing the animals meets what you want? Mr. McNamara replied, except you haven't satisfied the law. Ms. Hebert added, as a planner I wouldn't recommend that. It's very hard to enforce over time. It puts a tremendous burden on town staff and it's very specific to one landowner when you're looking at the property as a whole. Mr. Green asked, so you can't do it for the... in perpetuity? Ms. Hebert stated, it would not be advisable. Mr. Green said, thank you. That answers my question. Mr. Greiner said, let me follow up maybe where Len is going. Trying a different angle. Could you tie tearing the barn down to it? Ms. Hebert replied, yes.

Mr. Kevan asked, can I make a comment? I just touched base with them. They're in agreement with stating that the ... so they are trying to acquire land to relocate the animals to, okay? They're in agreement to say that the barn would be removed prior to sale of this additional lot. Ms. Hebert replied, it's likely that the Planning Board, if the owners were successful in receiving a variance, would also require the barn to be removed because in Bedford the zoning stipulates that accessory structures need to be located on the same lot as the principal structure. You wouldn't be able to maintain the barn and the house and create a lot line between them. You'd have an accessory use on the lot and the principal use would be on the adjacent lot.

Mr. Greiner said, and one more question. There's no regulation that can come forward that's going to remove their animals? Ms. Hebert answered, no. Mr. Greiner added, so their animals are going to stay as long as they want them to stay there. The only teeth that the town might have is to grant a variance, potentially, with the stipulation the barn comes down. That's the only... it's either only going to be present conditions as long as they want it to be present conditions or the only teeth the town would have would be to require the barn to be torn down. Is that fair to say? Ms. Hebert said, that is fair to say but if they wanted to put a barn on the existing lot or a future owner wanted to build a barn on the existing house lot, there's nothing in Bedford that would prevent a new landowner moving in and keeping a horse or a sheep or a cow. It's unlikely, but there's no rule against it. Mr. McNamara asked, may I address that comment? I haven't researched it and I'm not acting as counsel, I'm just a resident. But to grant a variance on a condition that animals not be (unclear what was said) substance creating a servitude, which would have to be recorded, which would have to run with the land. I don't know if you could do it. Here's an easier way to address the problem. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. This board has to find that to grant this variance. There's no evidence that there would be an unnecessary hardship. There's just an opportunity for somebody to make some money. Thank you.

Mr. Peschiera added, one thing to address is that you can put in a deed that certain things are not allowed. It could be re-deeded in a certain way. Chairman Morin replied, that's got nothing to do with us, though, when it comes to the deeding. Mr. Peschiera said, but that can be done. The other thing is the 3.4 acres. It was advertised as such, and it is something that has been taxed as such for many years. For someone to say that there's no one that would believe that it's not 2.9. We didn't know. The surveyors didn't know until actually getting involved in trying to subdivide. This has been the thought of the previous owners. It was ours when we bought it and I bought it knowing that I could subdivide if and when it made sense to. It's not simply a matter of you can make money. It's a matter of what makes sense for the area. What makes sense for the neighbors? We have no grudge against any neighbors. We understand there are people that like farm animals the way that farms run and others that don't. It doesn't make sense in that area, but it's the property we have. So, whether we live there and have a house, there is no room for having animals and continuing to have a neighborhood that is happy all along. It makes sense to subdivide, have a house and not have the barn with the animals there. Chairman Morin said thank you.

Trygve Halverson testified: Good evening. Trygve Halverson. I'm an abutter. Nothing personal here. Good loving family living next door, but our concern is crowding. Our concern is another well in a community that is already very at risk. That at times we've run short of water. That's really our greatest. Those were my comments that I wanted to bring to the board. But listening to the discussion of 3.4 versus 2.9 in the late 80's, my father-in-law owned this property we own now. And two previous owners to this family approached him wanting to buy 0.2 acres from him so that they could subdivide a lot that wasn't

large enough to subdivide. So that further supports the comments of the lawsuit that won't allow for this property to be subdivided. The McKeon's knew it. Chris and I don't know that the next owners prior to know it, so I don't know how that wasn't an awareness of anybody. But I'm also shocked the Town is taxing for something that it isn't. We don't support the subdivision because of our concerns over water. Thank you. Chairman Morin said, thank you. Anybody else?

Sue Holstein testified: Sue Holstein, 33 Ministerial Branch. A couple things. In terms of not knowing the acreage of the land when you bought it, that's due diligence. When you buy a piece of property, you get it surveyed so you know what the acreage is. They didn't do their due diligence apparently if they didn't know that they didn't have enough acreage when they bought it. And then, I've lived on Ministerial Branch for nearly 40 years now. I'm on one of those lots that is not an acre and a half. At the time that our property was subdivided back in the 1950's--that whole area was subdivided—and those were legal lots at the time. They met the zoning requirements. What they're asking for now and trying to use as justification, and there are many areas in Bedford like this, that's why are you having 1.5-acre minimum zoning if you're going to allow that as a--the previous zoning—as an excuse to get around the current zoning. So that's my concern. It seems to be just invalidating our current zoning law if you're going to allow that excuse to get around current zoning. Because our lots were legally created at the time that they were subdivided. Thank you very much. By the way I love the animals. I'm one of the few neighbors that doesn't mind them. Chairman Morin said, thank you. Sir?

Trygve Halverson added, just a question to the board. Currently the lot is zoned for residential agricultural. I'm wondering if that is due to the size of it. If it were subdivided, would it not lose that zoning so that the ability to keep the animals is irrelevant and they wouldn't be able to? That would get rid of everybody's concern for it. Ms. Hebert responded, most of the town is zoned residential agricultural. This neighborhood is too. It's not the specific lot. Trygve Halverson questioned, so I could add animals to my lot? Ms. Hebert stated, you could, yes. Chairman Morin asked, anybody else?

Andy and Beth Violette testified: (Andy) Hello, we're Andy and Beth Violette, 12 Ministerial Branch. We are in agreement with the objections our neighbors have stated previously. (Beth) So our lot is 1.1 acres and was built in the 1950s. We just wanted to keep it simple and ask that you not grant the variance. We're in agreement with the concerns that have been raised. The way the property is currently being used is impacting the neighborhood in a negative way. The concern is if there's no guarantee that this is going to... I don't know that we're going to see the guarantee that that's going to change. There are significant concerns. I know they don't fall under ordinances per say but just things like having horse excrement at the end of your driveway or around the neighborhood and running through it because it's not picked up. It's not an ordinance, I don't know why it's not an ordinance, but it just impacts us. So that's a concern as well as all the other concerns that were raised. Chairman Morin said, thank you. Anyone else?

Chris Irish testified: My name is Chris Irish. I'm at 54 Buttonwood Road right behind a direct abutter. We've had to test our water three times so far. I'm waiting on another test. The first two tests came back positive for fecal bacteria. The view from my backyard is a 15- to 20-+foot manure pile any point of the year. We can't really use our backyard because you go back there all you can smell is manure, horse flies, everything else. We bought the house hoping to garden, make a nice yard back there. We went from seeing three horses when we moved there to goats, cows, pigs, and just an acrid smell that wafts all the way to the front of the property. Waiting on the water test to see this third one comes back. We're going to have to move forward in some way to rectify that situation. But I am completely against it. Chairman Morin said thank you.

Ashley Fairbanks testified: Hi, I'm Ashley. I live at 54 Buttonwood Road as well. I saved ten years to buy my house. I was buying my dream house and it has been two and a half years of struggle. Two and a half years of smell. Two and a half years of noise. I understand the animal thing might change, but I did do my due diligence and I did check to make sure that I wasn't going to be moving where there would be construction. I lived around construction my whole life. I wanted to move somewhere quiet. I just had a baby. I don't want a house being built behind my son's room. I really wanted to have a yard where he could enjoy... just breathe the air... fresh air and not have construction... not have a house on top of us. I do have a smaller lot. I wanted a bigger lot, but when I found the house, I fell in love with it, and I said well there's bigger lots all around me so I'll have enough space. I'll be happy here. I thought it was my forever home. It has been every single day a struggle at my house because of this farm. Everyone else has been amazing. If you look at the ordinance or the things that are required. They're not met. It will do harm to us. I talked to my realtor. He said five to ten percent knocked off the value. Value isn't just resale. Value is living there. And I don't want to hear construction and I know you guys can't do anything about the farm and it is what it is. I'm trying to... I wear headphones as much as possible, but I'm really asking to please... I don't trust anything that would be done with this property. I was told an acre a horse is appropriate by both realtors, and I've never heard of someone having seven horses on less than 3 acres. That's just the beginning of it. None of the provisions are met to grant it. I'm begging you not to grant it. Thank you for hearing me. Chairman Morin said thank you.

Alyssa Peschiera testified: Hi. I'm Alyssa Peschiera. I just want to say that living there I feel like we can't please anybody. Whether we have animals or don't have animals, I thought that this would be a good solution for the neighborhood because I don't want to sell this property as a farm property to somebody else that's going to come in and get the same treatment that we have. We have animal control at our house once a month. He never finds anything wrong with our property. We've had the state inspect us... inspect our manure pile and everything. And everything is above board. We have five children that we live with. I teach riding lessons to kids in the town. It's very much not welcomed. So that is the hardship. This lot being advertised as a farm property in a neighborhood that is not a farm community, is false. It should be like everybody else. Like all the other people that stood up and have one acre or slightly over an acre and just a regular Bedford neighborhood is what it should be. Chairman Morin: Thank you. Sir?

Mr. Lakin stated, and one more thing. I'd like to add one other thing. It's not just the smell and the number of animals. It's the fact the animals are not properly controlled. If you look at the Bedford Police log, they'll show in the last three years there have been ten incidents of the police have gone out there because the animals have gotten loose, crossed on other peoples' property. This spring, then went across our lawn, dug it up with their hooves and nothing was done. They sent their children over to fill the holes. The other thing is a woman who is not here tonight, she lives across the street. She just lost her husband. She had to deal with the fact that one day there was a horse on her lawn. She stopped the two daughters and said you have a horse loose. The girls went home assuming they were going to tell their parents to deal with the horse. The horse was still out there an hour later. That's when I then called... Chairman Morin stated, I'm going to stop you on that topic only because the issue is we no control over the animals and stuff like that. I just want to make it clear. I've let it go. I've been generous in that section, okay. But by right we don't have any jurisdiction over the animals. We have jurisdiction over the property. How the property is used due to the fact your whole neighborhood is residential agricultural, anybody in the neighborhood could have animals of some type. So really, the splitting of these lots and the animal issue are two different issues. You brought it up in one of your last comments as if there's a nuisance, that's a police issue. But unfortunately, it's not our issue. I just want to bring this back to we're dealing with the

properties itself and not the animals. It was brought up about water issues. That's different how its related, but I just want to bring this back a little bit and try to get away from the ... Mr. Lakin replied I understand that sir, but we can't ignore the fact that the town has responsibility of making sure these animals are controlled. When they wander the street where there's young children out there, and horses and goats and bulls are wandering around without any control, then that is a problem that the town has and needs to be recorded by whoever is here from the town to make sure something is done. Chairman Morin said, yes. And I agree with you, sir. The town does have an animal control officer and officers to try to deal with those issues, Ma'am?

Ashley Fairbanks stated, I would rather take my chances with someone having a reasonable amount of animals than listen to a house being built behind my new baby's room and the house that I bought to settle down and have a family in. So, again, I'm just begging you to not approve this variance. Thank you again. I just wanted to make it clear it's not just the animals, for me. Construction, listening to that... is worse than listening to their cows, in my opinion, which is pretty bad, also. Just a side note there. Chairman Morin said, thank you. Anybody else?

Ginny Knoettner testified: Good evening. My name is Ginny Knoettner. I live at 40 Buttonwood Road. I am not one of the abutters, but I am here to support all the abutters and neighbors in my neighborhood. I just feel the objections that have been brought up for granting the variance to establish and creating of a substandard lot of 1.38 acres at 21 Ministerial Branch is uncalled for. This has been a property that has been there. I have lived in Bedford for 47 years at my house. This was always a property that was horse related as far as having a couple horses. That was it. It was a stable. It's not considered a barn. Now, as far as they're saying they want to move on, then why create two lots? If they want to move on and sell, sell it as a one whole piece of property and let it be. For what they're trying to do to create two pieces of property. You can see monetarily what they're trying to achieve. And I just don't feel it is advantageous to the neighborhood. It had been one piece all these years. Everything, Mr. Rasscinin is the gentleman who had these properties. He was the developer. He owned these properties. I'm sure I don't know any of you have been here that long that remember Mr. Rasscinin. He developed all those lots behind there. It wasn't substandard. It was a way that way done back then. I live in an area that was Bill Morin's area. His lots are all divided up accordingly to what was then. I purchased my home in 1974 from him. Depending on where you're at, I just don't think. I think the issues have also been when they bought their property, they should have had it surveyed. It was always the 2.8 or whatever. Where they came up with the 3. That doesn't make sense. If their realtor came up with that, and that's what they showed, then the realtor should have showed them. They should have looked for evidence of where it was not the way it was. Yes, maybe they do have a thing to say with their town, the real estate agent, whatever. But that's not the issue. It was always this way. It has never changed. This property was always this way. As Mr. McNamara mentioned, it was 2.8. Okay, I will just say its 2.8 then, alright? In that range. But as far as this was never even brought up that they're considering selling this property? They're going to move? I mean the issues with what has been going on. The stable, since they've moved there, it's deteriorated. The broken windows – they've got a huge pine tree that has come down. They've never cleaned it up. The horse manure is out in the street, never mind down on the properties. We smell...we have flies more than we ever, now I can wonder why? Now that I realized there's manure. I don't know, do you have to remove manure from your property in Bedford? I go to the Bedford dump. I see people bringing their chicken, horse, whatever manure. Are there any regulations having to do with removing that? Chairman Morin said, Ma'am I'm going to ask you to get back to the, again, we're not here for the animal issue. The animal issue has nothing to do with dividing of two properties, of one property into two. So, if you've got specific criteria as in the splitting this property, that's what we're looking for. Criteria that... the animal

thing is not helping anything right now. Ms. Knoettner replied, okay. As far as the line, it's dividing the house and the barn. If you're trying to make another segment to whatever they want to sell, that barn could not be there is what it sounds like, what Becky was saying. The Planning Board, it would have to come down? Ms. Hebert answered, it's an accessory structure to the house, yes. But I would caution everyone to look at the land, not at the owners. Owners come and go. Look at the, you don't know. You don't condition planning approvals on someone selling their property. You don't have any guarantees that those types of things are going to happen. You've got to look at the land. Ms. Knoettner added, well I must say, I have a lot of concerns here. I've lived here a long time. The previous owners--there's been no issues. This time around just seems to have deteriorated the whole neighborhood--anyone walking by there, riding by there and so forth.

I wish that Mr. Larkin's objections had been put in or voiced so we all could have heard an eloquent letter that Mr. Larkin had sent to all of you to read. I hope that is in the minutes. I wish everyone here that is in objection could have seen and heard and read what he took the time to write to you. Chairman Morin said, we have all the documentation. We've all received it. We actually have more than just his. I think we have a packet of three or four plus all the testimony here tonight. Ms. Hebert said, three letters. Tyler MacDonald requested that his letter be read. Tyler S. MacDonald asked his letter to be read into the record. Ms. Knoettner asked, can I ask all those other people that sent in letters, what is their opinion? Chairman Morin replied, I will go through them. I will let you know. I'm giving you guys the time to give your testimony, and these will be documented as we get going here. Ms. Knoettner said, okay, that's wonderful. I appreciate your letting me take the time. I know your time is valuable as mine is too. I just wanted to voice my opinion that I do support all the abutters, the neighbors. I just do not go along with this variance at all. Chairman Morin said, thank you. Sir?

Mr. Harrison asked, Mr. Chairman and board members, is it possible that the board would request of TF Moran's representative to clarify whether or not all setbacks currently in the subdivided lot meet minimum expectations? Because the drawing up there as stated earlier in my first testimony...well setback of seventy-five feet does not appear to meet the minimum. It's up against the, what's delineated as the house lot. Also are there any deviations that would be requested on any setbacks from adjoining property lines as far as where the driveway is going to be going? Since the driveway is going to need to be directly across from Ministerial Circle, that's going to bring the entrance of the driveway off of the roadway directly right up against the corner marker between the two properties. Chairman Morin said, so basically on the well issue, you're talking the existing house now? Mr. Harrison replied, no, I'm talking about on the new lot where the TF Moran diagram up there shows the well head with a seventy-five-foot radius and it, the outside of the circle, is the seventy-five feet. Then there's a house plot area put on the map and that circle goes on the inside of the line. Chairman Morin said, the building footprint. Mr. Kevan said, if you look, do you want me to answer? Chairman Morin said, yes, please. Mr. Kevan explained, if you're looking at the well radius, again, this is to comply with various criteria. So, a 4k area is shown. In Bedford you show a seventy-five foot by one hundred buildable envelope. It does not dictate that that's where everything gets built. This just shows that there is adequate room on the lot to do so. This well is shown there, and the well radius is completely within the lot and conforms to all standards. We've dug test pits back where we've shown the 4K area, but again, there's nothing to say that if this lot is developed that the well gets moved to the front, the well gets moved to the back. This just shows that there's more than adequate room to place the well, the well radius and the 4K. Mr. Greiner commented, I think his question is and if I'm not understanding it, maybe you could clarify at the microphone. Your question was the circle for the radius impinges on this building envelope? And I think you're saying the answer is yes, Jeff, but that is allowable, correct? It can impinge on the septic radius, so there has to be a stand-alone

septic and well. Mr. Kevan said, correct. Ms. Hebert added, and the building department rules require the well to be completely contained on the property as well as the subdivision regulations. There's a well release that would be required for that portion of the well radius. Mr. Kevan said the reason we haven't, I mean there is room on this other lot where a well could be placed on the front of the house and the well radius would be contained completely on the site. We haven't shown that because this dug prior to a specific date and, therefore, it's grandfathered in that location. We've checked that with the state. If you want us to show another well radius, we can, and the well radius would be completely within the lot. Ms. Hebert said, if that particular well wasn't decommissioned as part of the subdivision, you would need a well release or a well easement on the adjacent property because you're drawing your lot line through ... Mr. Kevan replied, not according to the state, but we could provide that. Ms. Hebert replied, according to the town's rules. Mr. Kevan said, and that's fine. Like I said, we could also show a new well being dug on that lot and the well radius would stay completely contained within that property. The well would probably go just in front of the existing house and that well radius would fit right in there. Chairman Morin asked, sir?

Mr. McNamara added, if I may? I appreciate the fact that the Chair is trying to keep this on track away from animals and towards the legal standards. I don't find that repeating what I've already said would help. But there has been some comment about a question of Moran or other people thinking this was a 3.4-acre lot. I have a copy of the 1984 decision reversing the ZBA's decision to give a lot line modification to this 2.9-acre lot. Which, actually, Miss Hebert gave me. I didn't have my copy even though were Plaintiffs suing the town at that time. What struck me, I'd like to introduce this as an exhibit if you don't have it. A plan was done in 1972 showing the property as 2.9 acres. What's interesting about the opinion is that one John G. Kelly of Thomas F Moran, Inc., who was then employed by the Town of Bedford as Chief Surveyor, testified about the Town tax maps and that they were consistent and changed to conform to the Durgin Plan of 2.9 acres. So, I guess Moran lost their files. May I introduce this as an exhibit, part of the record of this case? Chairman Morin said, yes. Sir?

Mr. Violette stated, during this discussion, it's just occurred to me, sorry about this, an objection that I want to make crystal clear in regard to well water. I live on 12 Ministerial Branch and have already been told my well is one of the shallower wells in the neighborhood or in the town. I guess I would personally object to the variance based on the fact that another well to be dug near my property, who knows might cause my well to suffer and thus I would have to pour financial resources into my property because of this decision and I object to that. Mr. Casale asked, Mr. Violette, are you, you said you're 12 (Ministerial Branch)? Are you, you're diagonal from the property, correct? Mr. Violette answered, correct, yes. Ms. Fairbanks said, I wanted to say another thing about what's required to give the variance for hardship. I think it's pretty hard for someone come up and say the hardship is that no one's happy with the way I'm running my property so that's a hardship so now I'm going to subdivide and create more hardship on my neighbors. I just ... the hardship is made up. The hardship is not there. There would need to be a real hardship for this to be legal. There is not a hardship. The only hardship is things have been run a certain way. People are not happy. Definitely don't need to go into it. But I just wanted to make that clear that there's not a hardship. There's a relationship that hasn't been made by not being neighborly. That's not a hardship. That was created. Chairman Morin said thank you. Anybody else? Any last statements from the applicant?

Mr. Kevan said, I'll just say if there was a plan done by Moran in the past, we weren't aware of it, obviously or we would have brought it forward. As far as the 3.4 acres, all we were stating is, based on the tax cards and on how the property has been taxed, it's taxed as 3.4. So, from our due diligence, if somebody asks us to do a subdivision, we check to see if the lot is of reasonable size to do that before we would start.

That's why we proceeded because it appeared that there was more than enough acreage. I've explained about the wells and so forth. As far as diminishing of value and a lot of health and safety things that's all focused on this use and the animals. As far as overcrowding or density, what I've been referring to as far as lot sizes, typically you're looking character of the neighborhood. Is this in keeping with the character of the neighborhood? That's what I've been saying as far as if I have 1.5 acres that complies and 1.38 acres that's slightly under, the lot area, the lot style and the houses that could be built would be in keeping with the character of the neighborhood. Hardship, I agree, is very difficult to find a specific item as far as hardship. These lots all comply with all other standards of the state and the town of Bedford and can easily support a house similar to those in the neighborhood. So, because of the slight reduction in this one lot, we feel that is the hardship that everything else conforms. The lot can support everything. To try to address some of the concerns of the neighbors as far as the animals, the farm use, the applicant has agreed that they would remove that barn and their full intent, they're trying to find property where they can relocate that's more compatible with the way they want to use the property. They have agreed that they would remove that barn prior to the sale of that additional lot. Chairman Morin said, sir?

Mr. Lakin questioned; would you ask the residents if the property was surveyed when they purchased it? Chairman Morin replied, actually, I think it was brought up during some testimony that it wasn't. Mr. Lakin added, I believe it was, sir. I live next door. There were surveyors out there. They put a tag on my property when they surveyed it after they purchased the property. Chairman Morin: What we're looking at, it's 2.9, whatever, that's the number we're looking at. Mr. Lakin said, but if they were saying its hardship because they always thought it was 3.4, they did their due diligence when they bought the property and either the surveyor was wrong and confirmed that 3.4 or they knew at the time there was 2.9 acres. Ms. Peschiera stated, we did not have it surveyed until whenever we started this process in February or something like that. There were no tags on the trees either. We knew where the property lines were if that's what he's referring to because there's rock walls surrounding the property. But there were no tags until this survey.

I wanted to address the well issue. I have had previous experiences at other properties as well, so I understand the concern. But our barn also uses a lot of water. I would say just as much as a house. So, it really wouldn't impact the amount of water coming out of the neighborhood any more than the barn does currently. We have three one-hundred-gallon water tanks that we fill daily in addition to other, smaller ones as well. Chairman Morin said thank you. Any last questions from board? Seeing none. Last question, just please make sure it's a new topic, not the same thing so we can move on?

Mr. Halverson said, just briefly a comment. A number of things said by the applicant and the Moran employee are opinions and ideas, not necessarily details or specifics. The water issue is a concern. Three hundred-gallon barrels or not, the water and the well issue is the concern. Not the animals or anything else. Chairman Morin replied, thank you. Mr. Kevan added, what was being said there is they're filling three hundred-gallons – that's approximately the same as or similar to what a house would use.

Chairman Morin said, so at this point, I will ask for a motion. Before I do that as I mentioned earlier, we did have letters. We had Mr. Larkin's letter. We've had that for some time. We also had a letter from the MacKenzies and MacDonald, Tyler MacDonald. And all those letters are against the application, so you know that. But we have them in our packets and they are also in the official file. At this point I will take a motion to go into non-public input for deliberation.

MOTION to go into non-public input for deliberation by Mr. Green duly seconded by Mr. Gilbert. Roll call vote taken - all in favor. Motion carried 5-0.

Chairman Morin said, alright, we are in non-public input for deliberation. So, first item.

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. Green thinks it would alter the character because there's a substantial chance it would take a barn and animal and remove them. But he says there are no guarantees of that. Mr. Greiner says it could be stipulated. Mr. Green is referring to the animal issue and that it would seem that the greatest chance of removing what appears to be the nuisance or the public health issue, is best served by granting the variance, thus there is a greater chance of changing the dynamic of horse manure. Mr. Greiner recalled two pieces of testimony heard regarding realtors saying a five to ten percent diminished value from the house based on what's there. And the other gentleman said he heard he'd have a less-than-market price. So, to Mr. Green's point, if you're looking at substantial justice from a financial standpoint, it would be (in a perfect world there would be no barn there, no animals there) and that's how that theoretically would enhance or buffer the value. Since animals can't be prevented or regulated as to number, we will have to either approve or not approve the subdivision potentially with a condition that the barn is removed. Chairman Morin shares the potential of two lots, one would be 1.5 and the other would be 1.38. The essential character of the locality is looked at as the lots in the surrounding area. And that doesn't change. There are smaller lots in the area. For that prong, it meets it in the basics of lot size. Mr. Casale disagrees because the farm animals and such do have an effect. He is concerned if the farm animals, trailer, etc., stay, they could be all moved to one smaller area which makes what the abutters are feeling even worse and even less out-of-character with the neighborhood. Instead of a larger area, more spread out (which currently is an issue), now you're condensing it onto one lot. Seven horses going from 3 acres to 1.5 acres is an issue to him. He feels the valuation decreasing is important. Ms. Jude confirms you could condition the variance on the barn being removed since it's an accessory structure to the house and Ms. Hebert reminds accessory structures need to be located on the same lot as the principal use but cautions the Board they may or may not sell the property and ownership is not something the town can regulate or control. Mr. Greiner requested the mechanism for a contingency of the barn and any other accessories, and the timeline explained. Ms. Hebert shared if the board conditions their variance approval on the removal of the barn, that would be conveyed to the Planning Board, and it would become a condition of the subdivision approval. The lot is not legally subdivided until a plot is recorded at the Registry of Deeds. The Planning Department makes sure that all conditions of approval have been satisfied before the plans are finalized and recorded. When it involves the demolition of a structure, we need to make sure that that structure is, in fact, removed from the property before the plot is recorded. Mr. Greiner confirms the Planning Board could require a bond to make sure that gets taken down and Ms. Hebert agrees. Mr. Greiner also confirms if it was approved that way and the owners didn't do anything for twelve months, the approval would expire. Ms. Hebert explains that the property owners don't need to act upon the variance. It could be granted, and the owners could change their mind and decide they don't want to subdivide, and the condition would just go away. Mr. Greiner questions, so there's no variance, no subdivision or nothing. Ms. Hebert confirms the variance would expire if it wasn't acted upon and they or a future owner would have to reapply. Mr. Casale comments taking the barn down doesn't ensure the animals would be removed. Another structure could be built to house animals. Abutters are not mentioning the barn. They have issue with all the other items that come along with the farm and the potential to condense all of what's there onto a 1.5-acre lot that the board has no control over. They may or may not move.

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

Mr. Casale mentioned at least three people testified and one letter was received regarding health and safety concerns with well water. Mr. Greiner is concerned about if a new well needs to be dug and the three hundred gallons per day being a lot of usage. Chairman Morin mentioned water safety from neighbor perspective due to testimony about testing issues and issues with water quality. Mr. Greiner comments if the farm was no longer there, there would be no increase in usage (from testimony provided). And, if there's no manure, (if they don't consolidate to the one lot) water quality should hopefully get better (not worse) over time. Mr. Green would have liked to have seen some documentation regarding the water problem – is it a quality issue and/or is there a flow issue? The testimony we have isn't necessarily giving the board all the facts. Mr. Casale remembers one testified regarding quality and the others were a low water table issue. Mr. Gilbert brings up the fact if you have fecal matter in the water, how long does that take to go away? Mr. Casale says that is more of a problem if there is a low water table.

2. The spirit of the ordinance is observed because:

Chairman Morin says the spirit of the ordinance is spacing, basically. It is a certain size to keep things spread out. Mr. Green says the spirit is there given the fact other than this .12 acres, it meets all the other requirements. We've had tons of variances especially on the 114 area into Manchester, where we've granted variances allowing them to come up to the boundary line because those old lots are so small. Chairman Morin reminds the board every application is a separate item, and they are not grouped. They are all handled one at a time, individually. Mr. Greiner adds to John's point, if they are subdivided 1.5 and 1.38, (a .12 difference for one of the lots). If you didn't know when this was subdivided, might think it was subdivided twenty years ago. It's not overly small, even though it's non-conforming to today's regulations, it's still 20 to 30 percent bigger than several lots in the area.

3. Granting the variance would do substantial justice because:

Mr. Casale doesn't agree. Several of the abutters commented about it. Mr. Kevan had a hard time with this, and he stated, "I agree hardship is difficult." He does not see the substantial justice. Someone mentioned it's not a good reason that they were maybe taxed erroneously by the town. This is not the equalizer. Ms. Jude, Mr. Greiner and Mr. Gilbert agree. Ms. Jude is not sure the reason given of the landowner being able to sell would warrant the variance. Mr. Green doesn't think making a profit is a negative. Mr. Casale doesn't think that is a hardship and doesn't see where there is a hardship. Mr. Greiner finds testimony about the property shows it is the one piece in the puzzle of the neighborhood lots that is out of place. He wonders about the potential to grant the variance with a condition on it that could make things better today.

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

There was no expert testimony given to this. Taking into account what several abutters said about real estate appraisals, Mr. Casale thinks the valuation they're getting and realtor's stating that it's lower than it should be due to the farm, which has nothing to do with what this is about. It does have to do with their concern of the potential condensing of all the animals and the farm implements down to 1.5 acres. This creates an even greater issue than having these items on the property as it stands today. Chairman Moran agrees, yes, if they stay, but no, if they move. That is an unknown and the board agrees they have to go with what is there now.

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. Greiner notes that it is a much bigger lot than others in the neighborhood. Nothing stands out topographically or geographically or anything.

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

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

Mr. Casale does not consider the reason given that it was thought to be 3.44 acres is not good support. Mr. Green believes that should have come up in a Title search and should have been discovered via due diligence that the property was subject to a lawsuit. That is a matter of public record. Chairman Morin says the board must go by the actual 2.88-acre size – not what shows on a tax map.

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

The Board agrees it is reasonable and there are no issues here.

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

MOTION: Mr. Casale moves that the Zoning Board deny the request for a variance from Article III, Section 275-22 A, Table 1, Table of Dimensional Regulations and footnote 3, to allow for the creation of a substandard lot containing 1.38 acres where a minimum lot size of 1.5 acres is required, at 21 Ministerial Branch, Lot 9-7 as per our deliberations. Ms. Jude duly seconds the motion. Roll call vote was taken - all in favor. Motion carried 5-0.

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

MOTION by Mr. Gilbert to adjourn the meeting. The next meeting will take place on August 17, 2021. Adjournment Motion by Mr. Gilbert to adjourn the meeting at 8:45 p.m. Mr. Green duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.

Respectfully submitted,

Sue Forcier