

Town of Bedford

Zoning Board of Adjustment Minutes

August 16, 2022

A regular meeting of the Bedford Zoning Board was held on Tuesday, August 16, 2022, at the Town Meeting Room at BCTV, at 10 Meetinghouse Road.

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

Absent: Len Green (regular member).

Call to Order and Roll Call

Vice Chairman Neal Casale called the meeting to order at 7pm and introduced members of the Board. Ms. Thomas will be a voting member this evening. The third item on the agenda has been withdrawn per the applicant's request.

Approval of Minutes – July 19, 2022, Meeting

MOTION to approve minutes from July 19, 2022, was made by Mr. Gilbert. Chair Morin duly seconded the motion. Ms. Thomas and Mr. MacPherson abstained from the vote. Roll call vote was taken - all in favor. Motion carries, minutes are approved.

Rules of Procedure Vice Chair Casale stated we will go over the rules of procedure for the meeting. Please silence all cell phones. We will have a presentation from each applicant. They will introduce themselves to the Board and present their application including the five criteria necessary for the variance. We'll have public input after the applicant presents the application. If you wish to speak in favor or in opposition to any of the applications, we ask that you give your name and address first, and then you address your comments only to the Board, not to each other. And that there's no debate between the parties. If you have any questions concerning the application, we ask that you address those to the Board. After public input, for or against the application is given, we'll give each of the applicants a chance for summation. All the applicants will be heard in order of notice. If we do take a recess, which that shouldn't be required tonight, we will by vote. The Board will go into nonpublic input to deliberate and vote after each application. You can wait for the vote tonight or you can call the Planning office after 8:30 tomorrow morning to find out the result. Rescheduling hearings: 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 each 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 made in its decision. Concerning the variances, we have two variances tonight, the third under new business has withdrawn their application. Concerning those variances that we have in front of us, I will not go through the five criteria at this time. We're going to ask each applicant to go through their application and address the five criteria as part of their presentation. That way it's recorded. For a motion to pass

this evening, there must be three affirmative votes out of the five members that are voting this evening. I'm going to ask anyone that is going to speak this evening to please rise at this time to get sworn in. Honorable Council is exempt. If you're on the fence about speaking, I ask that you do stand and swear in just in case, so that we don't interrupt the meeting. Raise your hands. Do you swear or affirm that the testimony you're about to give in these hearings will be the truth, the whole truth, and nothing but the truth. Thank you. So, the criteria for granting a variance, again, I will not go through the five criteria at this time. We ask each applicant as part of their presentation to go through their application, addressing each of the five criteria. For motion to pass, again, it must get three affirmative votes out of the five.

Old Business & Continued Hearings None

New Business

Item 1. Kim Castelo - Request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow an in-ground pool 18 feet from the side property line where 25 feet is required at 380 Donald Street, Lot 43-23, zoned General Residential.

Vice Chair Casale stated first item that we have in the agenda is Kim Castelo. You can step up to the table. Good evening. So, if you could introduce yourself and where you live.

Ms. Kim Castelo: Kim Castelo, 380 Donald Street, Bedford, NH. I'm here for a variance for an inground pool. Vice Chair Casale stated thank you, you may proceed. Ms. Castelo continued I'm not sure what to do. I hate public speaking. Vice Chair Casale stated so just in general, what you're asking for, and in particular in this request, it's for a setback, one setback, and then I'll ask you to read through all the five criteria which looks like this. You filled this out as part of your application, so you just can read right from the sheet, but if you can give us a general idea of why you're asking for the variance, and in particular the setback and why you need the setback. That would be helpful. Ms. Castelo stated OK, I don't have a copy of it with me. Is it on the computer? Ms. Hebert stated it's on that file, so if you scroll to the beginning, I think Page 1, the file that you had opened. It says ZBA Packet, scroll to Page 1. Ms. Thomas stated it actually starts on page 4. Ms. Castelo stated oh, I see. OK, right there. Thank you. OK, so do I just read the application or do I just give you... Mr. Casale explained so give us a general idea of what you're trying to do and why you need the variance and what exactly the variance is. And again, just go through the five criteria because we need that on record. Ms. Castelo continued OK, so I'm asking for a variance from my abutter because the setback is 25 feet. And the area where the pool is going to go is on a very steep hill, and the idea is to take some earth down from the steep hill and build up. Vice Chair Casale asked so can you do me a favor? Can we go to the plot plan? So, can you show us the kind of overhead? Ms. Hebert stated the plot plan is your survey plan that shows the location of the pool. Vice Chair Casale said there we are, so if you could describe in that picture what you're trying to do and why, but in particular, you can't move the pool, say anywhere else, and why you need the variance? Ms. Castelo said OK. Where the pool is on this survey, it's a steep hill, so we would cut into that hill, build a stonewall, and to get it just would be too close to the house. So, I need a variance on the abutter's side, otherwise it would just be too close to my house. There's not enough room. And if you could see on this survey, I don't know if I can. I wish I had like a stick or something. So, there's an existing stonewall there. Do you all see where that is? So that actually continues, that very faint line that is like a triangle at the top. That's an existing fence and that stonewall goes beyond that fence. I don't know why the surveyor cut it off there. Vice Chair Casale stated so, just to help you out a little bit because I realize you haven't done this before, most likely. One of the questions that I would ask is why

can't this pool go anywhere else on your property that would avoid this variance. So, why can't it go, if you look north or south, if you're not sure which direction is which on your plot plan there, why the pool can't be behind your home and maybe off to the right a little bit. Because I don't know what that area is, and I don't know what's there. And this doesn't show us elevation, meaning we don't know the steepness. One of my questions big questions would be why can't the pool go behind your house? Ms. Castelo replied right. That's a great question, Neil. There's not enough room for the setbacks on that side. I would need more variances on that side of the property. Vice Chair Casale replied OK. Ms. Ports stated you have a topographic map that you could show the menu of photographs, and then you could read through the criteria. Ms. Castelo replied OK, so where do you want me to go next? Ms. Ports said scroll down to the pictures. Vice Chair Casale stated that's OK, no worries. Ms. Castelo stated OK, so this is a map of showing you a lay of the land, where am I, 380, here. And these lines, I guess, indicate how steep the hill is so, yeah, there's nothing else really to do with that land, so it's a great place to flatten it out and make a pool. It's really hard to upkeep that area because it's so steep. I can't get a lawn mower up there, so weeds tend to grow out of control and as far as aesthetics go, it's not pleasing. This pool is going to make it look so much more beautiful too, and it will enhance the property—not just the property, the neighborhood. Vice Chair Casale said thank you, do you want to go over your five criteria? So go back to the application, and all you have to do is read through every single one and tell us why you feel the variance should be approved. So, you can start at number one and read the... Ms. Castelo asked so this number one a variance is requested? Vice Chair Casale replied yes, and then just keep reading and you'll be good. Ms. Castelo asked from Article III, Section? Vice Chair Casale said no, go to number one. So, under facts... Ms. Castelo asked facts supporting the request? You want me to read the question and the answer? Vice Chair Casale said yes, please.

Granting the Variance Would not be Contrary to Public Interest.

Ms. Castelo stated granting the variance would not be contrary to the public interest, because... do I have to read what's in parentheses? Vice Chair Casale said yes. Ms. Castelo continued, in responding to this question, please address 1, whether granting the variance would alter the essential character of the locality and 2, whether granting the variance would threaten public health, safety, or welfare. Applicant's response. This is a private property, and the public will not have access to the pool. Currently the abutter's view to this location is a steep hill, unable or difficult to mow and maintain weeds and trees. Proposed will only enhance essential character of the neighborhood. If granted, the view from the left abutter would be a beautiful inground saltwater pool with a stonewall and Cambridge ledge stone patio, built-in fire pit and waterfall. Abutter from across the street is a driveway. All other abutters will not be affected. This variance will keep the public health, safety, and welfare safe from entering private property.

The Spirit of the Ordinance is Observed.

Ms. Castelo continued the spirit of the ordinance is observed because the proposed use will not conflict with the implicit purpose of the ordinance. Proposed waiver is for a private property. If granted, this will not increase traffic. It will not minimize road frontage. If waiver is approved, the property value will increase. And I wrote this because during my research, 100 percent return on investment for future homeowners with saltwater pools.

Granting the Variance Would Do Substantial Justice.

Ms. Castelo continued granting the variance would do substantial justice because aesthetically will enhance property, neighborhood and return on investment is 100 percent. Said land will be more maintained and not overgrown for a more upscale character of said neighborhood.

Values of Surrounding Properties Would Not be Diminished.

Ms. Castelo continued the values of the surrounding properties will not be diminished for the following reasons: Allowing the variance will only add value to the surrounding properties and aesthetically enhance the property and neighborhood. If waiver is granted, there will be no structure that blocks any views, including sunset or sunshine, to abutters' property. Neighbor to left is happier, well, that's an assumption, because I can cut down many trees, and he now has more sunshine for his pool area.

Literal Enforcement of the Provisions of the Ordinance Would Result in an Unnecessary Hardship.

Ms. Castelo continued 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 the steep hill distinguishes my property from others. As you saw in that map, all other houses really don't have that steep hill except my left abutter. Requests is a side yard adjacent to only one neighbor whose property line is mainly land only where the pool area is going to be—no standing structures. Said neighbors' house is at the top of the steep hill with a side pool abutting my property covered by 4 foot of wood beams and 6-foot fence. No view of my side yard from his house. Across the street is the driveway leading to Rose Hill of Bedford condos.

Denial of the Variance Would Result in an Unnecessary Hardship.

Ms. Castelo continued denial of the variance would result in unnecessary hardship because no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property, because the provision of the ordinance from which a variance is sought is due to a restriction on the use of landscape. The steep hill is a limitation. Permitting use or any other requirement of the ordinance. The proposed use is a reasonable one because this is for a private property that will have 100 percent return on investment for future homeowners. Will enhance neighborhood and be more maintainable to property care for said land given the steep hill. 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. The property cannot be reasonably used. In strict conformance with the ordinance due to the landscape and a variance is therefore necessary to enable a reasonable use of it. Vice Chair Casale said thank you, nice job. Ms. Castelo said I got through it.

Vice Chair Casale asked does anyone in the audience wish to comment or have any questions? I don't believe I swore you in. You'll have to be sworn in, Sir. Do you swear to tell the truth, the whole truth and nothing but the truth in this testimony? Please go to that microphone, Sir, and I need your name and address, please.

Mr. Anthony Gianitsis: My name is Anthony Gianitsis. Yes, I live at 376 Donald Street. Vice Chair Casale asked you sent in a letter, just to confirm, to us already? Mr. Gianitsis replied my wife did, yes. Mr. Gianitsis continued the only question I have is I have a beautiful stonewall along my property and it's like 5 feet high in some spots. It's very steep, it goes down, probably, and my garage and my house is brick and granite. It's just really steep, but if she, you know, she told me the way I would go along with it, but she said that you people need 5 feet. And I agree with that, because if it ever fell, I'd need to work on it. I need someone to work on it. You know what I mean? I've been there 36 years. It is a beautiful area, and we love our house, but that's OK with me as long as there's a 5-foot variance from my walk. Vice Chair Casale stated OK, so just to be clear, we can ask that of her. But we cannot enforce that the Planning Department could not do that. I also can't have it come into a motion for approval or not. So that would be something that would be a civil matter outside of our jurisdiction. Ms. Castelo said it'll be fine. Vice Chair Casale continued we certainly will ask them to do that, but we can't enforce it. Mr.

Gianitsis said well she came over and talked to us. Ms. Castelo said yes, it will be 5 feet. Mr. Gianitsis continued so as long as it's 5 feet, I have no problem with it. I mean, it is nice. The stonewall is already up in the back, you know, it looks really nice. Can't blame her. She's got an investment there, but I definitely want if my wall falls, because with all the blasting—they did a rose terrace. It loosened up a lot of it at times. So, with the falls, I'd like to repair it right away and I'd like to get in there, that's all.

Chair Morin asked quick question for you. Looking at the plan that we have, there's basically that rock wall just on your side of the property line, and that's where the property line ends? Mr. Gianitsis replied the property line is about another foot or so after the wall or two—probably about this much. I think there's a marker there. They got 2 markers where Bedford is, and I pay taxes in both. Thank you on that one. Ms. Hebert stated there's a photograph of the wall in the packet as well. Mr. Gianitsis stated yeah, there was one in the picture too, I think, the end. Vice Chair Casale asked anything else, Sir, you want to add or? Mr. Gianitsis said no, that's about it. See the wall. Then just go straight up. And it's like a twelve pitch, you know, my front lawn's a treat too. Thank you. Ms. Thomas asked is your house, the red one? Ms. Castelo said yes. Ms. Thomas replied OK, and this is where the pool would go in this area. Ms. Castelo said yes.

Vice Chair Casale asked anyone else in the audience wish to ask any questions or make comments? And is there anything else you'd like to say in response to what you heard or anything else? Ms. Castelo stated I would just like to respond to Tony that it would definitely be 5 feet—the fence. And I would like to add to that too is I want to clean out all that area near his wall with him, because I don't want to be responsible for his wall falling. And then I want to put, I don't know what it's called plastic or whatever, and then a bunch of little rocks to avoid weeds growing near his wall, to help it maintain your wall better. Vice Chair Casale replied OK, great, thank you. Does the Board have any questions? Bob? Sue, any questions? Alex?

Mr. Kellermann said I was just curious looking at this picture. Have you started construction on the? Ms. Castelo replied just the back retaining wall because even if the variance is not granted, I would rather have that area flat so I can maintain it better. It already looks better with the stonewall instead of a steep hill with weeds, I feel. Vice Chair Casale asked got any questions? Chair Morin replied I'm all set, thank you. Vice Chair Casale asked Dave? Mr. Gilbert replied all set. Vice Chair Casale asked no one else? Seeing no other questions, is there a motion to move into nonpublic deliberation?

MOTION to go into nonpublic status for deliberation was made by Ms. Thomas. Chair Morin duly seconded the motion. Roll call vote taken – all in favor. Motion carries 5-0.

Vice Chair Casale stated so we'll go through the criteria.

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

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

Chair Morin stated I don't see that happening. They're all pool next door, pools around the area. So no, I don't.

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

Consensus of the Board is no.

2. The spirit of the ordinance is observed because:

Chair Morin said I think it is observed due to the fact of the small lot, constraints with the contours, and stuff like that. It's not the biggest pool in the world, it's, you know, I'd say it is a medium to small. So, they're utilizing what they have well. And I think it meets the spirit when it comes to making sure that there's a distance between residences and stuff like that. Vice Chair Casale and Ms. Thomas both said I agree.

3. Granting the variance would do substantial justice because:

Chair Morin said again, it gives him the opportunity to have a pool. Vice Chair Casale said yes, in what seems to be the only place that she can have a pool. And you know, as John had mentioned, too, it's not an unreasonable size. Sometimes we have people coming in with double this and they want to jam it in. They think that it's reasonable.

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

Board agrees there is not any 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:

(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 well, just looking at the property compared to others in the area, she does unfortunately have that steep slope in the backyard that comes down to where the house is, so it's very limited on what can be done. So, I think there is a hardship there and she's able to mitigate that and put in a pool in a reasonable amount of space. So, I think she meets that criteria. Vice Chair Casale said I agree. Anyone else?

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

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

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

Vice Chair Casale stated OK, having gone through those, is there a motion? Chair Morin stated just to put on record that we did receive two letters. Vice Chair Casale replied oh, yes! So, one was Anthony, Gianitsis. He has already stood up, and then there was one other from a Claire Poisson. I'll just read it real quick in regard to this application. I'm going to condense it a little bit. As an owner/resident of 22 Rose Lane, Rose Hill of Bedford, and an abutter, I support the application request. Since the applicant's purchase of 2016, successive enhancements have substantially improved the aesthetics of the property. The proposed will continue enhancing the neighborhood in its value given the severe slope between 380 Donald Street and South abutter. The intent of the setback is essentially maintained as proposed.

Impact to Rose Hill is nil to positive. The somewhat random landscaping in the subject corner of the property has been dramatically improved by a very attractive stonewall. I trust Costello will appropriately landscape the street side visual.

Vice Chair Casale said thank you for bailing me out on that one. Any motions?

MOTION Ms. Thomas moves that the Zoning Board of Adjustment grant a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow an in-ground pool 18 feet from the side property line where 25 feet is required at 380 Donald Street, Lot 43-23, zoned General Residential as per our deliberations. Chair Morin duly seconded the motion. Roll call vote taken – all in favor. Motion carries 5-0.

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

Vice Chair Casale stated so that has been approved. Ms. Castelo replied thank you so much, everybody. I guess the next step I go get the permit? But I think, go ahead... Vice Chair Casale said yes, you'll handle that through Planning. Ms. Castelo replied OK. Ms. Hebert clarified yes; you will apply for your building permit at the Building Department. Ms. Castelo said OK. Thank you very much.

Item 2. Chris Sharpe - Request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow an addition 24.25 feet from the side property line where 25 feet is required at 59 McIntosh Lane, Lot 16-38-22, zoned Residential and Agricultural.

Vice Chair Casale stated if you could introduce yourselves and then you can start your presentation.

Mr. Chris Sharpe: Good evening, my name is Chris Sharp. I live at 59 McIntosh Lane. This is the builder (Mr. Chris Gilbert) for the proposed addition that has joined me this evening. I'm not sure if he's going to be speaking. Vice Chair Casale said you did not swear in. Mr. C. Gilbert said I can. I was going to be here in support if we needed to. Vice Chair Casale said yeah, if you're going to give any input, you'll have to stand up. Do you swear that the testimony you give will be the whole truth and nothing but the truth? Thank you. OK. Mr. Sharpe continued so the proposed construction of an addition to the home to build out a walk-in closet. The house was built in '87. The walk-in closet is really small, and I have a wife that's not happy. So, we're proposing an addition that is, if you look at the photograph, it's commensurate with the deck that exists—exactly the same depth as the deck that exists. And in doing so, it would encroach upon the setback required of 25 feet by 9 inches.

Vice Chair Casale asked can you point out the setback with the pointer? Show us the deck. Mr. Sharpe said the deck is right here. And so, this is the deck, and so the addition would be obviously off the master bedroom because anywhere else in the home, I wouldn't be able to get a walk-in closet to the master, which is what it is intended to allow for. So, it would be coming off the end of the house, the gable end of the house right here and then be even with the deck. As I mentioned, doing so, it would encroach upon the setback 9 inches. Why you just can't take away the 9 inches is if you move back with the angle of the property line, and of course, the commensurate setback line, you would have to move it back over 5 feet to be within that to gain back the 9 inches and the roofline on the gable end already requires narrowing it by three feet on each side to have it be useful as a closet because the roofline goes below where the wall line would be. So, for that reason I'm here this evening.

Mr. C. Gilbert stated you'll probably see on the plot plan that the proposed addition goes straight back flush with the right side of the house. So, what he's saying is, I don't know if you all understood it, but the 9 inches—it does encroach by 9 inches. Ms. Thomas stated go to page 7 because you can see it there. Mr. Sharpe said so you see the proposed is flush with the right side of the house. The master bedroom is on the back right corner, obviously. There's a bathroom in there right now, partial closet, bathroom. Vice Chair Casale suggested if you if you could use the pointer again, it would probably be easier. Mr. Sharpe said sure he can. Mr. C. Gilbert stated so right on that back, the furthest back corner of proposed, in the back right corner, right there, it is encroaching by 9 inches. If you bring it back to meet setback, by estimation, would be you'd lose 5 feet of the addition. Ms. Thomas asked because of the diagonal on the property line? Mr. C. Gilbert replied yeah, just the way that it cuts it off and then it kind of would take away from what we're trying to do with the two spaces. Mr. Sharpe said so the space is intended to be a walk-in closet and then of course it has to accommodate the tub that's existing in the bathroom as well. Both have to be—you have to come out of this with both of those intact to make it useful. Vice Chair Casale added and to make your wife happy. Mr. Sharpe said correct. Those are important things. Vice Chair Casale replied we understand that. Mr. Sharpe said she's probably watching on TV now and laughing. Vice Chair Casale asked if that's all you have, do you want to go through your five criteria, please? Mr. Sharpe responded sure.

Granting the Variance Would not be Contrary to Public Interest.

Mr. Sharpe stated granting the variance would not be contrary to the public interest because: whether granting the variance would alter the essential character of the locality, or whether granting the variance would threaten public health. A three-quarter foot or 9-inch encroachment will not alter the character of the locality. The post work would be conducted in the rear of the existing home and would not be visible from the front of the home. The side view of the home from the abutters would look the same as they currently are adjacent to woods and have vegetation and woods protecting them. And public health and safety and welfare in the community would remain unchanged.

The Spirit of the Ordinance is Observed.

Mr. Sharpe continued the spirit of the ordinance would be observed because the spirit of the ordinance is observed for two major factors: the 9-inch and three-quarter-inch encroachment would be negligible to the naked eye and the eye of an abutting observer. The buffering area of the abutters is full of brush and trees, allowing the abutters to feel the spirit of the ordinance in full effect.

Granting the Variance Would Do Substantial Justice.

Mr. Sharpe continued granting the variance would do substantial justice. Substantial justice would be my ability to fully experience the property with no negative result for the neighbors or abutters. The master bedroom was directly adjacent to the second-floor addition. It would make the addition on any other part of the home nonfunctional.

Values of Surrounding Properties Would Not be Diminished.

Mr. Sharpe continued the value of the surrounding properties would not be diminished. The surrounding properties may be unaware of the property enhancement as a result of the minute nature of the encroachment and the natural vegetation acting as a visual buffer.

Literal Enforcement of the Provisions of the Ordinance Would Result in an Unnecessary Hardship.

Mr. Sharpe continued literal enforcement of the provisions of the ordinance result in unnecessary hardship. Special conditions of the property distinguish it from the properties in the area because the hardship would simply be not being able to fully enjoy the owned property and expand the closets space

adequate capacity for lifestyle for two adults. The roofline of the home would require an encroachment on the 2nd floor on 3 feet per side, total of 6, and reducing the footprint by 9 inches would require the length of the building to be reduced by 5 feet. Both reductions would greatly reduce the functional space and cause to question whether the addition would be effective for its intent. Do you want the other sections of those read as well? Vice Chair Casale replied yes, please.

Denial of the Variance Would Result in an Unnecessary Hardship.

Mr. Sharpe continued denial of the variance would result in unnecessary hardship because no fair or substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property because no private or public interest would be affected or diminished. The purpose is to protect the interests of the abutters because the portion of the home closest to the property line has roof lines that limit the ability to achieve the closet space.

The Proposed Use is Reasonable.

Mr. Sharpe continued the proposed use is reasonable one because the proposed enhancement allows for the home improvement. As the home was constructed in 1987, it lacks current standard amenities such as adequate closet space for two adult professionals. If the criteria of subparagraph A above are not established, explain why the property cannot be used in strict conformance with the ordinance and why the variance is therefore necessary to enable reasonable use of it. The property enhancement is well within the property limits and is 97 percent compliant with the setback limits. The property is buffered with vegetation and trees, allowing no visible encumbrance to the abutters.

Vice Chair Casale stated OK, thank you and there's no one in the audience for questions or comments. So, questions by the Board? Bob? Mr. MacPherson said no. Vice Chair Casale asked Sue? Ms. Thomas stated no, I'm good, thanks. Vice Chair Casale said I don't have any. Dave? Mr. Gilbert said no. Vice Chair Casale said well, that's pretty simple. OK, anything else you'd like to add before we go into deliberation?

Mr. Sharpe stated I did go and speak with three of the neighbors, actually I spoke with two of the neighbors and I know another one called to ask about the removal of vegetation and trees, and that is affirmative. There will be no removal of trees or vegetation within the space. Vice Chair Casale replied OK, thank you. And just for the record, we did receive one e-mail. I don't have my one-mile glasses on. So, we had two emails that came in. One from a Peter Stillman: I reside at 11 Cider Mill Road and abut the property. And I'm paraphrasing here in the interest of time. If its variance is no more than 9 inches given, I understood the information correctly, I have no problem approving that variance. It is our hope to retain as much privacy between our properties. That privacy is facilitated by the preservation of existing trees and other vegetation. We ask that the Board and Mr. Sharpe give this request fair consideration and avoid the removal of trees and vegetation on or near the property line if at all possible. This is not a demand, just request and maybe one that all would agree is not all that unusual. And then the second one from the Landman's at 55 Macintosh. They're unable to attend. We find that if the setback for the proposed addition remains at 24 1/4 feet or more, this is acceptable to us. Vice Chair continued motion to move into nonpublic input for deliberation?

MOTION to go into nonpublic status for deliberation was made by Mr. Kellermann. Chair Morin duly seconded the motion. Roll call vote taken – all in favor. Motion carries 5-0.

Vice Chair Casale said OK, so go ahead through the five criteria.

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

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

Chair Morin said I don't think there's going to be any change in the locality. Vice Chair Casale said barely—or 97 percent if that's accurate. I don't know math wise if it is, but maybe even better than that.

(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:

Vice Chair Casale stated because of course this is for overcrowding is why we have these setbacks mainly and we're only talking about 9 inches. That's my opinion. Anyone else?

3. Granting the variance would do substantial justice because:

Chair Morin said it gives them the opportunity to build the addition and, you know, something I'll bring up in the hardship piece, but due to the way the house was located on the lot and the way the angles are, it makes it very difficult on that side of the house to go backwards.

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:

(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 stated again, the way the house is situated and the way the property line goes, it makes it very difficult for anything to happen on that side of the house. Again, we're only talking about $\frac{3}{4}$'s of a foot. Ms. Thomas stated and it's only in the corner. It's not the whole length of the addition. It's just that very last back corner. Vice Chair Casale added and treed and it's a small amount and, again, the purpose is to avoid overcrowding and we're talking about 9 inches.

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

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

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

MOTION: Mr. Kellermann moves the Zoning Board of Adjustment grant the request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow an addition 24.25 feet from the side property line where 25 feet is required at 59 McIntosh Lane, Lot 16-38-22, zoned Residential and Agricultural per our deliberations. Chair Morin duly seconded the motion. Roll call vote taken – all in favor. Motion carries 5-0.

MOTION by Ms. Thomas to move back to public input. Chair Morin duly seconded the motion. Roll call vote taken – all in favor. Motion carried 5-0.

Vice Chair Casale said so that motion is approved. The variance is approved. Mr. Sharpe said thank you for your time.

Vice Chair Casale asked Planning, anything else? Ms. Hebert replied not tonight. Vice Chair Casale said OK, motion to adjourn?

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

Meeting adjourned at 7:40 pm.

The next meeting will take place on September 20, 2022.

Respectfully submitted,

Sue Forcier