

A

Town of Bedford
August 20, 2019
Zoning Board of Adjustment
Minutes

regular meeting of the Bedford Zoning Board was held on Tuesday, August 20, 2019 at the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH.

Present: John Morin (Chair), Kevin Duhaime, David Gilbert (alternate member), Neal Casale (alternate member), Karin Elmer (Planner 1)

Absent: Gigi Georges (Vice Chair), Sharon Stirling, Melissa Stevens, Len Green (alternate member)

Chairman Morin called the meeting to order at 7:00 p.m. and introduced members of the Board. Chairman Morin appointed alternate members David Gilbert and Neal Casale as voting members for the evening.

1. **Approval of Minutes:** July 16, 2019

MOTION by Mr. Duhaime to approve the minutes of the July 16, 2019 meeting of the Bedford Zoning Board of Adjustment as written. Mr. Gilbert duly seconded the motion. One abstention: Mr. Casale who was absent for the July meeting. Vote taken - all in favor. Motion carried

Chairman Morin explained the rules of procedure for the meeting and he let everyone know up front that the normal board size is 5 voting members; however, there were only 4 voting members present this evening. By State law you must have 3 affirmative votes for whatever the motion is in order for it to be approved. When short the full 5 voting members, applicants are given the opportunity to table and appear at the next meeting or proceed forward this evening. If there is a 2:2 tie in a vote this evening that is not reason for an appeal.

He noted that item #4 – Jeffrey and Shirley Ginn had requested to table, so that application will not be heard this evening.

He performed the oath on those who were going to provide testimony or thinking about providing testimony this evening and swore in all speakers.

2. **Applications:**

1. **Boys and Girls Club of Manchester/Camp Foster** – Requests a variance from Article IV, Section 275-28.A in order to renovate a boat storage building within the 50 ft. wetland setback at 36 Camp Rd., Lot 34-19, Zoned R&A.

Keith Moreau, Facilities Manager for The Boys and Girls Club Manchester explained that he oversees the properties in Manchester and at Camp Foster in Bedford located at

36 Camp Road. The Boys and Girls Club Manchester is asking for a variance to renovate an existing structure that is a little over 50 years old that needs repairs so they may get it to look more like the areas of the camp they have just rebuilt. They would like to add doors to the outside of the structure so they will be able to secure the boats there on site over the winter and not have to bring the boats up to Stebbins Hall to secure them for the winter. They do not plan to excavate, add any fill to the area, or expand at all on the footprint of the building that is already there. They are just looking to enclose it.

Mr. Moreau reviewed the criteria for the variance:

1. Granting the variance would not be contrary to the public interest because:
 - (1) Whether granting the variance would alter the essential character of the locality:
 - (2) Whether granting the variance would threaten public health, safety or welfare:

Mr. Moreau explained that the existing footprint of this structure will not be changed, nor will the volume or renovation that results make it any bigger. It will allow The Boys and Girls Club Manchester to secure the structure and will improve the public safety by reducing the possibility of unauthorized theft or use of the boats when staff is not there.

2. The spirit of the ordinance is observed because:

Mr. Moreau explained that the result will be an improvement upon an existing structure.

3. Granting the variance would do substantial justice because:

Mr. Moreau explained that the integrity of the existing structure will be evaluated and repaired and improved. Enclosing the structure would deter any unsupervised use of the equipment that could result in any drowning or dangerous situation if the boats are used without supervision.

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

Mr. Moreau explained that the values of the surrounding properties should be improved by this renovation because the building will look dramatically better and be more in line with the improved safety for the area.

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. Moreau explained that it is an existing use for at least the last 50 years for the structure and their goal is to improve on the safety of the area and the structure.

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

Mr. Moreau said this is an existing structure which they hope to improve the safety and appearance of. Denying the variance would result in a less safe structure and area. The proposed use is reasonable because it will allow us to increase the security of our boats reducing the risk of unauthorized and unsupervised use of the boats when the facility is closed. In addition, the buildings' physical appearance will be improved.

Chairman Morin opened the floor for questions from the board.

Chairman Morin asked if the existing frame would remain and if they are enclosing the frame or replacing the whole building. Mr. Moreau said that they would not be replacing the building. They are going to use the bones of the building, hang things off of it and use the existing concrete piers that are in the ground to make sure that they can secure everything. There may be parts that have to be replaced if rot is found; but they intend to use the existing structure. Chairman Morin said that had been his concern. He went to look at the structure, and from everything he has read it did not say that it was going to be a new building; so, what he perceived was that the existing structure would be used. Mr. Moreau said that their contractor believes the structure is worth saving, and it is not something that would need to be taken down like other parts of the old camp. The structure is much newer than the parts of the camp that they just took down and replaced. It is an opportunity to save the structure before it gets to the point where they would have to take it down.

Chairman Morin opened the floor for public commentary. There was none.

MOTION by Mr. Duhaime to move into deliberations on this variance application. Mr. Gilbert duly seconded the motion. Vote taken – all in favor. Motion carried.

Chairman Morin reviewed the application:

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

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

Chairman Morin indicated there was no evidence it would alter the essential character of the locality. The only person who would have a visual of it would be the person across the pond and they're not here providing testimony, so they should not have an issue with it.

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

Mr. Duhaime would argue that securing the boats would be an enhancement of safety. Chairman Morin also indicated that the Conservation Commission was very supportive of the application.

2. The spirit of the ordinance is observed because:

Chairman Morin indicated that the Conservation Commission looked at it and felt it was reasonable to enclose it. It basically looks like a carport that is going to be enclosed.

3. Granting the variance would do substantial justice because:

Chairman Morin said it would help the organization secure things.

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

Chairman Morin indicated we have no expert testimony and he thinks that other camps next door would not like to see their property value going down.

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

Chairman Morin indicated it had been a camp for many years, and they are stuck with where the pond and boathouse happen to be. Again, for the amount of actual change to the building it is just some walls and doors being added. There is no roof being added, and the pitch of the roof is not changing so it will not change any drainage from the roof.

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

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

Chairman Morin explained that it is a “scales of justice” type of thing for the public and the applicant. He does not see a lot that is changing with this application. The footprint stays in the same location and nothing is going to change.

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

Chairman Morin said it is reasonable to be able to secure your items.

MOTION by Mr. Casale that the Zoning Board of Adjustment grant the request for a variance from Article IV, Section 275-28.A in order to renovate a boat storage building within the 50 ft. wetland setback at 36 Camp Rd., Lot 34-19, Zoned R&A per our deliberations. Mr. Gilbert duly seconded the motion. Vote taken - all in favor. Motion carried.

MOTION by Mr. Gilbert to move out of deliberations on this variance application. Mr. Duhaime duly seconded the motion. Vote taken – all in favor. Motion carried.

2. David Kelly Chiappetta – Requests a variance from Article III, Section 275-22.A in order to keep an already existing above ground pool 11.6 feet from the side property boundary where 25 feet is required at 425 Donald St., Lot 43-83, Zoned GR.

David Chiappetta and his wife Kelly are the current owners of 425 Donald Street.

Mr. Chiappetta reviewed the criteria for the variance:

1. Granting the variance would not be contrary to the public interest because:
 - (1) Whether granting the variance would alter the essential character of the locality:
 - (2) Whether granting the variance would threaten public health, safety or welfare:

Mr. Chiappetta explained that granting this variance would not alter the essential character of the locality as pools are customary and can even be considered traditional in a residential zone. The applicants purchased the home in 2015 and the property already had a 6-foot fence enclosing the back yard. The pool is an above-ground pool and the ladder is designed to be locked in an upright position eliminating easy access when not in use. Given that the property is fenced in and the design of the ladder's safety features there is no threat to public health, safety or welfare.

2. The spirit of the ordinance is observed because:

Mr. Chiappetta explained that the setback regulations are designed to protect abutters from a given property constructing buildings, etc. too close to the property line. Granting the variance would not hinder the quality of life of the abutting properties. Pools are considered customary, and to some very important part of citizens' lives in residential zones. The abutting property is owned by Donald and Denise Laliberte who have expressed their support for the granting of the variance.

3. Granting the variance would do substantial justice because:

Mr. Chiappetta explained that when they, as applicants, looked at the property and where to erect the pool the #1 deciding factor was the safety of and for their children. The applicants wanted the pool in the direct line of sight from their patio, as well as in close proximity to the pool and also visible from a number of locations within the home, as well. The applicants did not want the pool in a location on the property where they couldn't see it almost all of the time. When looking at the natural elements/variables of the property the current location was the only location that met their safety requirements while not having to alter the natural landscape of the property due to a natural slope, as well as a large oak tree that has been on the property for a significant period of time (guessing about 50+ years).

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

Mr. Chiappetta explained that the applicants' home and property are landscaped and maintained significantly well, and there should be no concern that the owners wouldn't care for the pool in the same manner. The pool was professionally manufactured and installed by Empire Pools. This addition to the property would not impact the value of the surrounding properties as it is not a permanent structure.

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. Chiappetta explained that due to age of the property, lot and surrounding properties the setback requirements create a significant challenge to find the most appropriate layout for improvements to be added within reason, for example the lot has two road frontages which contain a unique situation in setback requirement, but also add to safety concerns that the applicants had in making the decision to not have the pool in the far back of the lot. Having a road frontage in the back of the property adds a level of anxiety for the security of the home and lot. The applicants did not want to have the pool close to the road which is walked by many families and children of all ages who live in the surrounding neighborhoods. After the property was surveyed for this application having the pool in the back of the lot would also create issues with setback requirements. Having the pool erected in its current location provides the owners/applicants to have a constant view of the pool from a number of locations in the house, as well as patio. In addition to the safety concerns that the two road frontages present, the unique natural landscape of the lot, as well as the permanent structures that are present (house and garage) drastically limit the options to erect the pool. Moving the pool closer to the garage in an attempt to bring it into the setback requirements would require the owners to alter the natural landscape of the lot (removal of the oak tree).

(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. Chiappetta explained that pools are customary in residential zones and granting the variance will not hinder the quality of life of any of the abutters. It would not present issues as it relates to their property.

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

Mr. Chiappetta said a pool is customary in residential zones to be enjoyed by families and landowners. The applicant was a competitive swimmer in his youth serving as a lifeguard for a number of years and feels very strongly

about teaching his children about water safety while encouraging them to find passion and fun in swimming.

Chairman Morin opened the floor for questions from the board.

Mr. Casale asked about #2 and the spirit of the ordinance being observed. He noted that Mr. Chiappetta said that he was first made aware that a permit was needed by the electrician. Mr. Chiappetta indicated that was correct. He bought the pool in February received a call in May when he was away for business saying that the installers could come erect the pool – which they did. He had no idea he needed a permit and apologized for that. When he called an electrician to come wire it, the electrician asked if the Chiappettas had a permit – this was the first time Mr. Chiappetta had even thought about it, and he indicated that he didn't even know he needed one. This started the process, and he immediately went to Terry at the Building Department to start getting the permit for the pool. In completing the process with Terry, Mr. Chiappetta found it was likely he would need a variance. Ms. Elmer was great and helped him through that process. He hired someone to survey the land as soon as he could get them out there. Unfortunately, it was not in time to make the July meeting, but he did have that work professionally done.

Mr. Casale asked when the contract was signed with Empire Pools and if Mr. Chiappetta signed the contract himself. Mr. Chiappetta said that he didn't even remember signing the contract, to be honest. He bought the pool and paid for it over the phone and went and saw it, perhaps in February. He is unsure if he signed anything, but he remembers going to look at it and he came home and ended up paying for it over the phone on credit card.

Mr. Casale asked if anyone at Empire Pools told him that he needed to secure his own permit or look into the Town regulations. Mr. Chiappetta did not recall anyone doing so, and when they came to install the pool he was never asked for a permit.

Mr. Casale asked about #5/unnecessary hardship and mentioned that Mr. Chiappetta talks about the safety of others, but he is a little confused because entire area is enclosed by a fence so he wonders what the security issue is for the neighbors. Mr. Chiappetta said what he was trying to communicate was that having it in the back of the lot in an area where they are not always there and cannot always see from their patio and where they are most of the time, to him created a level of discomfort. In his mind he thinks it would be easier for someone to jump a fence where he cannot see them and hop in a pool that he cannot see that is not visible from the home. This is why they wanted the pool to be closer.

Mr. Casale said that there were “drastically limited options”, but there were other options where the pool could be placed. It seems to him that where the pool is currently sits further away from the house than if you put it in front of the play area. He asked what prevents him from putting it there because it seems closer to his patio and his house. Mr. Chiappetta said there is not much room between the patio and the play area. The plan drawing is not an accurate representation of how much room there is. After he submitted the application he thought about the fact that he probably should have taken a better photo; however, the leach field and the septic system exist somewhere on the other side of the fence sort of where the porch is. He is unsure how far back the leach field and septic goes, or how far under the fence it goes. In his opinion the plan drawing is not a good representation of what the yard actually looks like.

Everyone looked at photographs of the yard projected on the screen. Chairman Morin noted that when looking at the photographs you can see that behind the pool in the play area there are trees behind the play area which are not depicted on the plan. To move the pool toward the trees would be a challenge and the pool would have to be moved up pretty far to get it away from the trees. Mr. Casale said it was not impossible. Chairman Morin agreed it was not impossible but looking at the plan and pictures you can see that the tree line does make a difference. The surveyor put in the big oak, but he did not put in the other trees on the plan.

Mr. Chiappetta apologized and explained that he has not done any renovations to any of the homes they have owned previously, so he really wasn't familiar with a permitting process and said that as soon as he found out he needed one, he engaged the town immediately and began the process following the appropriate steps.

Chairman Morin opened the floor for public commentary. There was none.

Mr. Chiappetta indicated that he included a letter of support from the direct abutter with the application. Chairman Morin indicated it is in the packet and file from David and Kelly who are the neighbors closest to the side of the yard where the pool and they have indicated that they are in favor of the project. It is on record.

MOTION by Mr. Casale to move into deliberations on this variance application. Mr. Duhaime duly seconded the motion. Vote taken – all in favor. Motion carried.

Chairman Morin reviewed the application:

1. Granting the variance would not be contrary to the public interest because:
 - (1) Whether granting the variance would alter the essential character of the locality:

Chairman Morin doesn't see any change in the neighborhood with a pool especially with a 6-foot fence that goes around the yard. If you couldn't see anything back there before you're not going to see anything now.

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

Mr. Duhaime said it looks like it is properly secured.

2. The spirit of the ordinance is observed because:

Chairman Morin indicated that, unfortunately, that area has some small lots. Looking at the plan there is limited space to put the pool, it could be up against the trees and some other areas, but he can understand the placement in regard to safety. The nearest abutter to the spot agrees with the project, so Chairman Morin personally doesn't have an issue with it. Mr. Casale said that he mentioned before that although the Zoning Board is supposed to look at each individually it never really plays out that way down the road, and here we are saying there are other options, and although the abutter right now is o.k. with it, we do not know about the next one. Chairman Morin agreed, but said, unfortunately we do not make decisions for the next people. Mr. Casale indicated we do make decisions based on the purpose of the ordinance which is to prevent buildings from being too close to lot lines and abutters and because there are some other options (and we don't know the potential of those options because we

do not know where the septic is). He said we know the size of the pool, but we do not have any testimony except from the homeowner that it might be a little bit tight to put it up further against the patio. The way Mr. Casale looks at it is that there are other options so that it is not encroaching in whole or in part more than what it is as proposed.

Mr. Gilbert understands what Mr. Casale is saying, but he really thinks there is only one other option (to move it closer to the patio and the front fence), but we don't know whether that is an option because of the septic. We also don't know if there is enough room there because we don't know how many feet that is. Mr. Gilbert thinks that the letter from the abutter weighs very heavily on this and if they do not have any problem with this then that is good with him. Mr. Duhaime said he echoed that.

3. Granting the variance would do substantial justice because:

Chairman Morin indicated we can basically use all of the things just said in #2 to justify this.

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

Chairman Morin said that we've had no expert testimony on that.

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

Chairman Morin said it could go back and forth about where specifically that septic area is, and it is hard to see because of where the trees are – looking at the plan it looks reasonable to him where it is located and he thinks it meets that part of the criteria.

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

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

Chairman Morin indicated again that all of the things said in the last 3 items could be used in justification.

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

Chairman Morin said it is reasonable to have a pool.

MOTION by Mr. Gilbert that the Zoning Board of Adjustment accept the request for a variance from Article III, Section 275-22.A in order to keep an already existing above ground pool 11.6 feet from the side property boundary where 25 feet is required at 425 Donald St., Lot 43-83, Zoned GR per our deliberations. Mr.

Duhaime duly seconded the motion. Mr. Casale opposed Vote taken – 3:1. Motion carried.

MOTION by Mr. Gilbert to move out of deliberations on this variance application. Mr. Duhaime duly seconded the motion. Vote taken – all in favor. Motion carried.

3. **Hercules & Chrysanthe Nagios** – Requests a variance from Article IV, Section 275- 28.A to create a building envelope 25 ft. and 10 ft. respectfully from the edge of two wetlands where 50 feet is required in order to construct a home on a non-conforming lot on Maple Dr., Lot 21-24-48, Zoned R&A.

Richard Kohler licensed wetland scientist and subsurface system designer appeared to represent the project on behalf of Sanford Engineering. Mr. Kohler performed the wetland delineation on the site for Mr. Sanford's office. He reviewed Mr. Sanford's presentation indicating that the property is a one-acre lot located on Maple Drive. The original subdivision was recorded in 1968 prior to wetland ordinance being created. A drainage channel bisects the lot creating two separate building envelopes. There is also a small isolated 950 square foot wetland along the northeast corner of the lot. Pre-existing non-conforming lots are considered buildable lots provided the new building, well and septic system comply with the current setback requirements. The proposal is for the applicant to build a 2,600 square foot 25-foot from the wetland drainage channel and 10 feet from the isolated wetland pocket at the northeast corner of the property. They are requesting a variance to allow an encroachment, 25-foot setback from the rear wetland and 10 feet from the front wetland to create a building envelope for a proposed new house as shown on the plan. The plan is conceptual and the footprint may change. The required front setbacks of 35 feet and side setback of 25 feet would still be maintained. The Conservation Commission did an extensive review of this proposal and the minutes were included in the packet provided to the Zoning Board. After much debate on whether a smaller home should be proposed on the lot the commission voted to recommend the construction of a home not to exceed 2,600 square feet within the proposed building envelope with a condition that no drainage be directed to the isolated wetland pocket adjacent to the road.

In summary, to address the Conservation Commission's concerns staff would recommend a modified condition of approval to state that the applicant provide a drainage memo for the proposed lot development to verify that no additional runoff be directed to the adjacent properties or into the isolated wetland. If the Board is unsure of approving a variance for a conceptual building and not the actual footprint of the proposed home for actual construction, the Board may wish to table the application and request the applicant to submit building plans. If the Board approves the variance the applicant will then proceed to the Building Department for permitting.

Mr. Kohler reviewed the criteria for the variance:

1. Granting the variance would not be contrary to the public interest because:
 - (1) Whether granting the variance would alter the essential character of the locality:
 - (2) Whether granting the variance would threaten public health, safety or welfare:

Mr. Kohler discussed a variance from Article IV: A home to be built 25-feet from a man-dug drainage channel that has developed into a wetland and 10-feet from an isolated small 960 square foot depression in the front yard that has also developed into wetland.

He said the architectural placement is consistent with the character of the neighborhood and with agreed-to stormwater management mechanisms there is no threat to the public health.

2. The spirit of the ordinance is observed because:

Mr. Kohler indicated measures will be in place to mitigate the decrease in the setback to the resources. This lot pre-existed both dredge and fill regulations and wetland setback regulations; so, imposing the regulations for this particular lot would render the lot unbuildable without any compensation to the owner who could in no way foresee the restrictive wetlands setback regulations.

3. Granting the variance would do substantial justice because:

Mr. Kohler said that allowing relief to build a reasonable home consistent with the neighborhood and provides substantial justice.

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

Mr. Kohler indicated that the lot will be consistent with adjacent abutters and the neighborhood in general. Market forces indicate that the new home construction would be consistent or better than the existing surrounding's real estate and would not adversely affect the surrounding property values.

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. Kohler said to adhere to the setback would render this lot unbuildable and present a huge hardship for the surviving widow, Mrs. Nagios, who is left with this lot as an asset to facilitate her retirement. The family was not aware of wetland setback impact until recently. Historically, pre-existing lots in the area have been afforded enough leniency to construct a reasonable home and it would be an unnecessary hardship to not do the same for this lot.

(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:

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

Mr. Kohler indicated the provision of the ordinance is met to keep the building a reasonable distance from the wetland and in the upland. As this lot pre-existed setback regulations, the upland area is not big enough to facilitate a home and strict adherence would be unfair to the landowner while upholding no fair and substantial benefit to the public. This lot pre-existed both dredge and fill regulations and wetland

setback regulations and allowing a reasonable-sized house to be built on a lot that the Nagios family has been paying taxes for 47-years as a building lot is a reasonable proposed use.

(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:

Mr. Kohler said that this lot pre-existed both dredge and fill regulations and wetland setback regulations which if strictly enforced would render the lot unbuildable and allowing a variance to build a reasonable-sized house is a reasonable proposed use.

Chairman Morin asked for professional input on the wetlands themselves. He understands that the Conservation Commission heard testimony and made a recommendation, but Chairman Morin desired more information. As an environmental biologist and wetland scientist, Mr. Kohler said that he provided a function and value assessment. He explained that wetlands are graded by their value and functional assessment based on criteria such as nutrient uptake, habitat, etc. He said that the two wetlands have a low function assessment. The manmade channel is a storm water runoff channel that carries water from several properties. There is a shallow water table in the entire neighborhood, so particularly in the Spring thaw water is directed (and sometimes not directed so well) into the drainage channel and is allowed to flow through the neighborhood and through different culvert infrastructure and carried away.

When Mr. Kohler initially observed the isolated pocket up front his first and immediate concern was what it's function and value was as a potential breeding habitat for amphibians (or habitat in general). He looked for primary and secondary indicators that it was a breeding habitat. During his first visit in early June he did not observe any individual amphibian species nor any saturation at the surface or inundation, which told him that there is not enough hydrology in the soil to facilitate amphibians in that particular wetland system. As for the drainage swale in the back, Mr. Kohler indicated there is quite a bit of debris including tires and old plywood structures and things of that nature. He observed one or two frogs that existed in there because there were some areas of ponding. He thinks that amphibians or wildlife are using it as a corridor to get to much better wetland environments to inhabit and to use as breeding grounds.

Based on his assessment, Mr. Kohler thinks both of the wetland systems have a low functioning value, particularly the isolated pocket in front because of the runoff and the nature of where the runoff comes from (there is a high volume that comes off the road and carries road salts, oils and other contaminants) which precludes a healthy environment for those amphibians.

The proposal does not impact the wetlands directly – it just proposes that the setback be reduced and best management practices be designed and constructed to preclude any delivery of any other contaminants or anything from residential use. Mr. Kohler stated that because of the topography of the lot it is unlikely that there will be any point source runoff directly from the development into the rear swale. The Conservation Commission requested that no storm water runoff be delivered into the front pocket. It's his belief from following the wetland without trespassing too much, that the isolated pocket was more than likely contiguous with a larger wetland system that had been filled over the years by adjacent development. This is because the groundwater discharge is occurring at the toe of a fill

extension. The yard to the North is elevated a couple feet higher than the subject lot, and it's not natural the way that the wetland comes to an end along that raised yard space. Mr. Kohler believes that is what has precluded the hydrology from being sufficient enough to facilitate amphibians.

Chairman Morin opened the floor for questions from the board.

In an effort to look at different options, Chairman Morin asked why the back-building envelope could not be used. Mr. Kohler said it could be used but in his opinion and in the opinion of the developer the primary impacts of the drainage swale (which is a wetland) and secondary impacts of the surrounding upland would be substantially greater and could have a greater effect on wildlife that migrate through there (on the westerly sign of the manmade swale you see evidence of mammalian tracks of deer and other woodland critters that are using that area as a corridor, and amphibians are using the drainage swale as a corridor. There is a very substantial inundated scrub-shrub wetland (When trees or shrubs alone cover less than 30% of an area but in combination cover 30% or more, the wetland is assigned to the Class Scrub-Shrub) northerly of the swale on the subject lot and Mr. Kohler believes that amphibians are using the wet shallow channel to get to better grounds. Where it says "Open Water Wetland" on the proposed plans that is where individual amphibians are trying to get to. The implications of crossing that swale and getting to the open water wetland would be more substantial than this proposal, but it is feasible.

Ms. Elmer noted that the Conservation Commission asked the same question. The problem is that when the Conservation Commission looks at a property they try to see what is least impactful for the wetlands. To build in the back a dredge and fill permit would be needed to cross the brook; on the other side there is no actual fill of a wetland or crossing at all, so that is the main reason the Conservation Commission went with the plan they did. The applicant did provide a Plan B showing the building envelope in the back, but when the Conservation Commission reviewed it the option with the building envelope in the front was less impactful than building the house in the back. This is all documented in the Conservation Commission meeting minutes.

Chairman Morin's other concern is that he doesn't ever remember sitting on a plan of a building that was conceptual. Ms. Elmer stated that there was a conceptual building plan for a home on a corner lot on Old Farm Road (off of Ministerial Rd.) a number of years ago that was the same situation. Chairman Morin remembers the project Ms. Elmer is referring to, but thought that it was an actual plan, not conceptual. Mr. Casale asked if there would be a problem down the road with that. Ms. Elmer indicated that she did not know. Mr. Casale asked Chairman Morin what his issue was with it. Chairman Morin indicated he would prefer to have more specifics. Mr. Gilbert said, "if they keep their 2,600 square foot home within the proposed setback..." and then he shrugged. Chairman Morin said that basically they can go no closer than the 25-foot setback in the back and 10-foot setback in the front. Ms. Elmer indicated the downside is that it gives them more room to build "more stuff" and they could build decks or sheds and other things when you approve of an envelope versus an actual structure that has limitations. Mr. Gilbert said that they would still have to stay within the setback or come and see the Zoning Board again. Ms. Elmer said that is incorrect. If the Zoning Board was to approve the envelope things could be built anywhere in the envelope without having to come back before the Zoning Board (for example: Any size shed, any size deck, or garage). Mr. Casale indicated that could change the Conservation Commission's feelings about...(sentence not finished). Chairman Morin indicated they would only have an issue if they were putting a shed up and they were within the 50-foot setback. Mr. Gilbert

indicated that he watched the Conservation Commission meeting and their big thing was, “within the proposed building envelope with the condition no drainage be directed to the isolated wetland” – that was the crux of the whole thing. Mr. Gilbert said the Conservation Commissions main points were “2,600 square feet within the setback and don’t direct any drainage to the wetland.”

Mr. Duhaime indicated seeing an actual plan would make it easier to weigh in on this. Mr. Kohler said the actual plan may or may not show a different footprint, but it is not going to show any additional outbuildings or additional structures other than a residential home with an attached garage. There are no plans for any other outbuildings, but whether or not any future owner would want to erect one wouldn’t have any effect on what we would bring back to this board for review. Ms. Elmer said the variance goes with the land for all future owners, not just this owner. Mr. Kohler asked if that would be a stipulation that granting of this variance would be conditional upon no additional structures – just the 2,600 square foot max residential building. Chairman Morin asked Mr. Gilbert what the Conservation Commission said about the building envelope. Mr. Gilbert said, “They were going more towards the drainage.” Ms. Elmer said that they approved a building envelope with a maximum square footage, and Mr. Gilbert indicated that they wanted the drainage away from the isolated wetland. Ms. Elmer said that they understood they were not recommending the exact footprint that was there. It doesn’t mean that the Zoning Board has to follow through with that – it was just the Conservation Commission’s recommendation. Chairman Morin asked for some help from Ms. Elmer in looking at the plan. He asked if every actual piece of the ordinance is followed if the only buildable area is the little gray piece on the plan. Ms. Elmer indicated it was that piece as well as another one to the back that is a weird shape. Mr. Gilbert said that is the only place they could put something in addition to the building without a variance and it is away from the wetlands on both sides. Ms. Elmer indicated they could not fit a whole house there. Mr. Gilbert asked if a deck could be put there, and Ms. Elmer answered affirmatively.

There were no further questions from the board, so Chairman Morin opened the floor to the public for anyone who would like to speak in favor of this project.

Chrysanthe Nagios approached the microphone and indicated that she owns the land. She said that she and her husband bought the land 47 years ago and have been paying real estate taxes for it. She indicated that she lost husband in October and it has been very difficult for her. Her house (located next door to the land being discussed this evening) was too big for her, so she sold it and moved out. She is selling the land because she wants to move away and needs the money. She said that they bought the land so that they could sell it for their retirement, but things sometimes don’t work that way. She said the land was buildable when they bought it, so she doesn’t know what the problem is. She said it would help her a lot if this could be approved

Bill Burke, Chrysanthe Nagios’ son-in-law, approached the microphone and said he obviously supports it for the reasons Mrs. Nagios mentioned. He said she would like to move on with things and having this wrapped up fairly soon would greatly benefit her. Mr. Burke said his in-laws bought the lot a number of years ago and have been paying taxes on it as a buildable lot, and things have changed over the years. He thinks the proposal that Dave (sic) brought forward is reasonable for neighborhood and reasonable for other things that have been approved in town. He doesn’t think what they are looking to do is unreasonable.

Chairman Morin opened the floor for public comment in opposition of the project application.

Ron Provencher of 24 Gault Road approached the microphone and indicated he lives down the hill from this property. He said all of our neighbors have had significant water levels that have to be pumped out of their basements. He said that he personally got “drowned” twice over the 30 years he’s lived at this home. He would hate to see this happen again. He asked about the building envelope and how it would affect him in the future if they had the option to build or move the water that is there such that it raises the water level of all the abutters. He indicated he is one house over from the neighbor that abuts the property. Mr. Provencher began to say that he doesn’t know how we can prevent future users...and then he indicated he did not fully understand that discussion – and asked if they could basically do whatever they wanted with the property. Chairman Morin asked for clarification. Mr. Provencher asked if whoever owns the property (the 1st, 2nd, 3rd, or 4th owner) can do anything they want; build anything they want; and move existing waterways. Chairman Morin indicated that waterways can’t be moved and what we are looking at is a specific footprint that could be put on the property. He said that this footprint, if approved, would be the only thing approved. If someone came in 10 years down the road and build something else they would #1) Have to come back to a Board and have to deal with whatever the ordinances are at that time. Mr. Provencher asked, “So that doesn’t impact the sale of this property?” Chairman Morin asked him to clarify and Mr. Provencher said he is worried about things happening after the sale of the property to another owner. He asked if any changes need to be made if future owner would need to come see the Zoning Board. Chairman Morin said that if approval is given tonight, if whoever purchases the property down the road wants to do something other than what is approved tonight (if it is approved) they would have to come back before the Zoning Board.

Chairman Morin asked Mr. Kohler to provide an explanation about water movement. Mr. Kohler said that Mr. Provencher’s concerns were legitimate and that abutters have concerns about how they may be negatively affected by the proposal. Mr. Kohler explained that right now the landowner is unfairly burdened by being the recipient of a lot of stormwater runoff from raised adjacent properties and the roadway, and not by easement. He said there is a lot of drainage coming off from the property on the North, and properties from the East and from the road that are falling into this lot because the grade is original/natural grade and has not been raised up for yard space like surrounding properties. He said that they do not want to create any burdens, nor can one legally create any burdens by ordinances and regulations for development to any abutters or properties downstream; but in his professional opinion, by the proposal and by the development of this property not only are we helping to manage our stormwater runoff from impervious surfaces on site, but more than likely we are going to mitigate existing conditions that occur in the Springtime when there’s ponding in the isolated pocket. Through infiltration measures it is likely we can take up water that is not being taken up in the Spring. We may find that this development actually improves an existing situation. He said this occurs often with development and that it is not intuitive, but right now there is uncontrolled runoff on the property that has no grading or drainage infrastructure designed to handle stormwater. The stormwater just goes in and ponds at the lowest point. By this development we actually can have some influence on that in a positive way. He said that they are certainly not proposing any hardship hydrologically downslope. He said it is the nature of the soils in that area and that it is a shallow water table and he is sure that probably everyone in that subdivision has wet cellars or the means to preclude wet cellars. It’s just the nature of the soils in that area. By this development there will be no net increase to that, and conversely, he thinks we could improve the existing situation.

In looking at the regular/colored plan Chairman Morin had a question for Ms. Elmer – and asked about the front small wetland and asked if the dimension of 10 feet goes to a building envelope, not the house itself. Ms. Elmer indicated that is correct. Chairman Morin said that is actually bigger than 10 feet. Ms. Elmer indicated that is correct. Chairman Morin said his question is: If we looked at that footprint, then utilizing the way it's documented as 25 and 10 feet respectively they could actually increase the footprint as it is because it is bigger than 10 feet. Ms. Elmer said that was correct and if the Zoning Board was to give them the envelope they could build a squarer house rather than a rectangular house, in other words, they would have the ability to change the footprint. The Zoning Board has the option of not allowing them to change the footprint or allowing whatever that setback is with that footprint and change that so that whatever future footprint comes in has to meet the same setback. Chairman Morin said he had just realized that the front pocket is was not 10-feet to the building, and what we usually go by is "10 feet to the building". Ms. Elmer indicated that is correct. Mr. Kohler said that it may fall into the definition of structures and would stormwater infiltration structures need to respect that setback...then he indicated that he did not do the design but knows that knowing where the roofline is and where the particular valleys would be with those intersecting walls – the open area between the 10-foot setback and the house would more than likely be where infiltration structures might be placed. He asked if those structures would not be allowable. Ms. Elmer indicated that they are allowed and that we do not have a 50-foot disturbance buffer, it is strictly a structure setback. Rain guards, swales, and landscaping treatments are not considered structures. It would only be considered a structure if an underground drainage system or stormwater system was put in.

Chairman Morin said that puts another question in his hat – He said there is a proposed building and that a 10-foot setback is being asked for, but it is actually more than 10 feet. He said more specifics would be better. Mr. Kohler said that in the statements he read earlier that were prepared by Earl Sanford (of Sanford Surveying and Engineering) the opening statement said, "If the Board is unsure of approving a variance for a conceptual building and not the actual footprint of the proposed home for actual construction the Board may wish to table the application and request the applicant to submit the building plans." Chairman Morin said we may not need a specific building plan, but he would like more accuracy in regard to the setbacks. Because a 10-foot setback is what is being asked for, but that is not what is being shown on the plan and he would rather have more specifics, especially if we are looking at a footprint. Mr. Kohler said that they are not saying that it cannot be 10-feet, but asked, "why isn't the structure illustrated requiring 10 feet when it looks like it could...(sentence not finished)?" Chairman Morin said what could help would be to give an ACTUAL distance – the more specifics the better. Chairman Morin understands that the Conservation Commission looked at it, but in a wetland issue when he sees that inaccuracy in the 10-foot figure it puts a question mark out there for him. Mr. Kohler said he understood. Chairman Morin said that they would be glad to offer them the opportunity to table and get more specific information for next month – that is the applicant's decision to make. Mr. Kohler is sensing that might elicit a favorable decision. Chairman Morin said for him it would, but he could not speak for the others on the Board. Mr. Kohler is concerned about the earlier point made about the number of voting members, and he does not want to have to make an appeal if the Board would be more satisfied with more information and that would be in the applicant's best interest.

Chairman Morin checked with the other members of the Board to see how they feel. Mr. Gilbert asked if what Chairman Morin is asking for is the specific distance between the 10-foot setback and the structure. Chairman Morin said that is correct and that he would like to

see an actual number. Mr. Gilbert said what is running through his head is that the applicant could potential move the whole footprint of the house further back because you would still be within the 25-foot setback, and if you came away from there you could still go even further. That is the applicant's choice. Chairman Morin said they could even move it southerly to get a little further away. Mr. Gilbert asked if Chairman Morin's concern is having as much setback from the wetland as possible. Chairman Morin said his concern is the 2 pieces: 1) The Conservation Commission and the Zoning Board looking at a conceptual footprint and 2) There are specific numbers in the application saying 25 and 10 feet. The 10 doesn't meet 10 where the footprint is. So, he would like to be given a real number - - if it is greater it will only make our decision a little bit easier. We are always looking for more space between a structure and a wetland. Mr. Duhaime said he agreed with Chairman Morin's assessment.

Chairman Morin asked if there was anyone else from the public who would like to speak about this application.

Mr. Provencher approached the microphone again and indicated he and his neighbor have a question about what is meant by the 10 feet and 25 feet and where it is displayed on the plan. They viewed the plan on the projection screen. Chairman Morin explained that the edge of the blue area on the plan indicates a wetland and the edge of that blue wetland in the front of the lot is being shown as 10-feet from the proposed residential structure on the plan. Mr. Provencher says that he walks Maple Drive 3 times every day and the wetland does not stop there; it goes in front of the street on Maple Drive. Chairman Morin said the scientists are showing the blue area on the plan is considered a wetland based on soil samples and those types of things. The plan is showing that there is a 10-foot setback between the proposed structure and the wetland in front, but unfortunately the setback does not go all the way to the house, so it's actually more than 10 feet between the house and the wetland, and he would like to see a more specific number because it is contradictory to the actual footprint. You never know if down the road the property gets sold and people go to do something and they wonder, "Wait a minute...we have a footprint, but it also says 10-feet"; so there is a contradiction between the two that Chairman Morin would like to see as defined as possible.

Mr. Provencher says that it makes him nervous because he sees water pooling beyond the end of the blue boundary for the wetland on the plan (where the curve of the wetland is) and the water covers most of Maple Drive. He said the water goes a lot further than that in the Springtime. To put it in layman's terms Chairman Morin said because there happens to be surface water doesn't make it a wetland. A wetland is determined by the soils and types of plants. There are a number of things scientists look at to deem it a wetland. Mr. Kohler indicated you can have impoundment and inundation far beyond the boundaries of a wetland. To simplify things further, Ms. Elmer said, "Just because it is wet doesn't mean it is a wetland"

Derrick Skillings approached the microphone. He live next door to the lot on the North side (the front wetland/blue area in the front on the plans goes into his property). Mr. Skillings said that he and his wife are not necessarily in favor of the project or against at all. Mr. Skillings and his wife realize that if they wanted to keep the lot as woods, then they would buy it. Basically, he and his wife would like to ensure that the water will not be rising in their sump pump pit more often, because it already gets wet. Their sump pump kicks on every 10-15 minutes. Right now, it is dry, but the sump pump runs often. The year they bought the house it was dry and they didn't realize how much of an issue it was until the following year. Their biggest concern is that they do not want this to occur (water rising in their sump pump pit more often). He thought the house would be built closer to the street/25-

feet from the pavement of the street (that's what he thought the variance was asking for); but now he thinks he might be completely wrong about that. Members of the Board indicated there was a 50-foot setback and 75 feet in other areas. Mr. Skillings asked if the front wet area would not be filled in and would stay the way it is. Mr. Kohler indicated that is correct. He said there would be no impact to it which would preclude anything burdening the Skillings property. Mr. Kohler said the hydrology is running southerly off from Mr. Skillings property. Mr. Kohler said the fact that they are not impacting it and that the gradient is running away from you (inaudible). Mr. Skillings said, "Like you said earlier, it could possibly enhance some of the area based on the water being pumped away when it rains and where the water is drained could help the area" but he wondered if it would impact people downstream. Mr. Kohler said with modern drainage structure in aggregates that were used in development we could actually make the surrounding uplands more qualified to absorb and take on that saturation. By careful and thoughtful planning, we could not only prevent any future on site runoff issues, but potentially and likely improve existing ones.

Mr. Casale understands Mr. Kohler has addressed the way the water flows from the front pocket and asked Mr. Kohler to address how water runs from the channel. Mr. Kohler said the flow is the same – southerly. Mr. Skillings asked if when it rains water coming off the roofline would be directed back to the West to the man-made channel. Mr. Kohler said that is what they were thinking of doing, as well as infiltrating water from the roofline into the soil surrounding the house on the property itself. The soil will take up the runoff from the impervious surfaces and infiltrate it into the water table. Chairman Morin said the Conservation Commission said they didn't want to see anything going into the front pocket area that is located next to Mr. Skillings' property. Mr. Skillings asked if there would be a walkout basement on the proposed home. Chairman Morin indicated there are no specifics about the house, it is just a conceptual spot on the plan to place the home. Mr. Skillings shared that the depth of his basement is wet, so whatever is built should be built up high enough. Again, Mr. Kohler said it is the nature of the soils and the topography in that area, and this proposed development is going to have negligible effect on the existing conditions it's just the nature of the soils in that neighborhood.

Chairman Morin said that the Zoning Board received a letter this evening from Jonathan Breen of 14 Maple Drive which is located across the street from the lot, and Mr. Breen didn't say he is for or against the development, but he is very concerned about water issues and the size of the proposed footprint for that area. Mr. Kohler thinks most of these issues have been addressed tonight as far as the impoundment that occurs in the Spring melt and how they are going to mitigate it, and right now this property is burdened by a lot of offsite deliverance coming on to it, and there is a lot of water coming from the road and adjacent properties into the Nagios' property which has been left as a low spot because the other lots have been raised, so that is the reason for the impoundment. In regard to the size of the house, they have used aerial imagery to calculate existing square footages using shadow footprints from the roofs. The home to the North will be larger, and the one to the South is slightly smaller, but the overall size of the house and the impervious surfaces are consistent with the neighborhood.

Chairman Morin swore in Jennifer Fisher's testimony since she had not been present for the earlier swearing-in. Jennifer Fisher and Ronald Fisher just purchased Mrs. Nagios' home, so they are on the opposite side of the stream being discussed this evening. She indicated that in the notice she received there is a difference of 10-feet and 25-feet and she asked if the 25-feet is in the back. Ms. Elmer indicated on the plan where the 25-feet is located. Along with the other neighbors, Ms. Fisher is concerned. She has not walked the area and is unsure of the

pitch of the property, but she is concerned whether the circular area of water would be disturbed and the flow would be changed. She is concerned that the water would spread further down the road. She doesn't know if it is going in the opposite direction. She and her husband are new to the neighborhood, so they do not know the history of what bad storms do. They have not yet been in the neighborhood in the Winter or Spring because they just purchased the home 2 months ago. She is concerned that disturbing the land would cause the water to change flow. Her home does not have an underground basement (the home is at ground level) and she is concerned about any of her finished space on the ground level could experience any damage from any potential water flow changes. She pleaded to the Board to perhaps get additional opinions and studies about changes to the land and waterway.

Chairman Morin asked how much change in height or level of the existing ground would take place. Earl Sanford of Sanford Surveying and Engineering said conceptually the ground will go up 4 feet from the road. To address the abutters concerns, part of this action will require a significant amount of sand to be brought in which will have the ability to soak up some of the drainage into it. It will be basically a flat lawn around it. Mr. Sanford called Jeremy Spooner at Bedford Public Works to get more history because if there is an issue with that water coming on to Maple Drive he would work with Mr. Spooner to make sure that it is effectively directed into the swale at the back side. Part of the issue is that the swale is dug and when the castings were done the casts ended up sitting mostly to the right-hand side so it acts as a berm that prevents the water from this lot from getting into the drainage swale. By the looks of the swale it was meant to drain the whole neighborhood. Mr. Sanford said they are prepared to make an improvement there. The key thing is that they are working to infiltrate the water only in an overflow situation. If it were to overflow they would want the water to go into the dug channel. Chairman Morin commented it sounds like any overflow from is being pushed to the back to follow the stream that was built years ago.

Ms. Fisher asked if the front will be changed to channel into the back. Mr. Sanford said that Mr. Breen's letter indicated that extreme events had been pushing water into the road. Mr. Sanford was not aware of that, and he thinks that the Town corrected a lot of that, but he was not 100% sure, so that is why he made the call to Mr. Spooner/the Town to make sure that they are not making anything worse in any way. Right now there is a little berm that prevents the drainage from getting into the swale in the back as intended, so he is prepared to make the situation better and get the water coming off site (not from their own development) into the at a better situation than the situation that currently exists. They are not going to make it worse and would like to go beyond that in developing this site and make sure it's draining positively to the most logical place which is the swale that bisects the property. Mr. Sanford said that they would like to put in foundation drains that work on gravity, so they will need to raise the land up and put some fill around it, so that is why they have a little retaining wall.

Mr. Sanford added that they will not be touching the wetland. When he appeared at the Conservation Commission meeting he told him that if there was any value in the wetland it would be that it allows water to come into it (even though he is not sure this is the fairest thing because it is other people's water that is coming into it), but it has value because water seeks a low depression and it is a depression that draws the water to it. A dredge and fill is not occurring and they are not changing any of the blue area on the plan. The blue area is protected and they cannot legally touch it, so it will continue to remain somewhat low. They may change the upland part so that if it overflows it will not go into the road, but rather will go into the ditch. That is the only change. They are not touching a square inch of any of the blue area because it is protected by New Hampshire law. Ms. Fisher understands that but

said that you don't necessarily need to touch the water to change the flow of water. Just changing the land, itself can certainly change the direction of water flow and that is her concern. She doesn't want her front or back yards to become a sponge full of water and she has concerns. She pleads to board to investigate it further before approving the variance application.

Ms. Evelyn Lewis of 12 Maple Drive said that while she feels sorry that Mrs. Nagios lost her husband there are several other ladies who live on Maple Drive who have also lost their husbands. Mrs. Nagios got her money when she sold her house, which is terrific, but if there is a problem and any water comes down onto other neighbors' property we will not have all kinds of money to fix our places up. We are still living there and would have to pay for this. Ms. Lewis has a lower level to her house and doesn't want water coming into her place because that would be terrible.

Ms. Fisher added that another wetlands property on Old Farm Road that was approved years back and she would like to ask the Board to learn what happened in that case and whether any wetlands related to the property became changed. She has strong concerns about potential problems on her property.

Mr. Duhaime asked if the sheet flow on the existing land goes from top to bottom or if it ponds. Mr. Sanford said it mostly goes into little wetland which is the low point. It infiltrates in that area. Fortunately, there is enough infiltration that it does not become a standing pond. Mr. Sanford said that everybody has very valid concerns because it is a high-water table and the neighborhood so flat that engineers scratch their heads trying to work it, but again, he has done engineering and his intent is to be sensitive so they are not making it worse for anybody.

Board member, Mr. Gilbert has been living on Maple Drive for the past 5 years and commented that he goes by the property where the house is proposed every single day and sees that the area in the front does get elevated with runoff and when the Spring thaw happens it causes a little bit of standing water but he has never seen it cross Maple Drive to the other side. From where it stops it does not go South. It just pools up and then freezes and then it comes back down in the Spring. That's not to say it won't ever happen, but he has been there for 5 years and has not seen it happen.

Going back to the prior discussion, Chairman Morin asked if they would be willing to table in order to get more specific about some of everyone's concerns. Chairman Morin explained to Mr. Sanford that the section where 10-foot setback is requested – the 10-foot setback is to a line on the plan and not to the actual building. Setbacks are normally done to the edge of the building, so the problem he sees is if we approve a conceptual only footprint then the 10-foot number is not really 10-feet, it is larger. Mr. Sanford said it wouldn't be consistent with the plan mentioned by Ms. Fisher on Old Farm Road. Chairman Morin indicated that personally he is not looking at Old Farm Road, he is looking at the plan for Maple Drive because every plan the Board reviews is independent of another. Mr. Sanford thinks it comes down to what is fair for the landowner and how much you make them go through a detail design. Chairman Morin's concern is if he is dealing with a conceptual plan he wants to know it is going to be a certain size and certain area it will take up. If he looks at the square on the plan as conceptual and part of the variance request is to be 10-feet from the structure, but it is actually 20-feet from the structure it may present questions down the road about what was approved. Chairman Morin asked why the conceptual drawing was not done to go out to that 10-foot spot. Mr. Sanford answered that he has worked with concrete and foundations

and people and designers for 40-years and they need some leeway, or else they will always go across the line. He says it gives “sensible flexibility” in the placement of the house. Sometimes someone falls in love with a design which has an ell and the parameters say you must stay 25-feet off the back and 10-feet off the front. These 25-foot and 10-foot figures have been recommended by the Conservation Commission to address conservation concerns but afford a reasonable amount of flexibility for the placement of the house. If Mr. Sanford were laying it out he would say, “Don’t go to 25-feet in the back, go to 28-feet and give yourself some flexibility. Once they push that 3-feet then suddenly the extra 5-feet on the front that you’re referring to – if you can get parameters set, it makes it so much nicer going down the stretch and they can then get in to what the dream house is that someone would like to be built there. We don’t know what kind of house the person will want to build, so if we go for a solid design, then we have to come back in front of the board if anything needs to be switched around.

Chairman Morin’s problem is that we are looking at a conceptual 2,600 square foot footprint and it is unclear whether that means 1,300 square feet on one floor and 1,300 square feet on the other floor or is it one large 2,600 square foot ranch? Mr. Sanford says the footprint is only one level, so it’s a footprint only. Quite frankly, he said it is adjusted up because he doesn’t want people have to come back if there is a need for any adjusting. Time is of the essence, so he would rather discuss some sort of further restriction if it is on the table. Chairman Morin indicated he is just having a hard time wrapping his head around it. Mr. Sanford said to think of yourself as a prospective builder and if you were trying to build your house and figure out what you could do and you are seeking to find out where you can fit your house between – and if a 10-foot setback is too small they could push it to 15-feet and be right on the corner. Mr. Sanford is trying to make something that works for the future and accommodates a reasonable envelope.

Mr. Sanford thinks the Board has had the chance to go through the wetlands regulations which specifically have an issue with lots that pre-existed the regulations. The regulations are very specific and almost task this Board with giving leniency. Item H and I in the wetland regulations say, “provide in all new subdivisions approved subsequent to the adoption of this article sufficient lot size without limiting.” Mr. Sanford indicated it is a bit unique because it is not a side setback or a front setback and there is already language in the wetland regulations that would speak to him that there should be leniency for lots that were already on record which would be damaged by this ordinance.

In the next item they speak to this directly: “Recognize that unequal and unique burden of wetland property owners in minimum restrictions which may be placed upon such properties.” Mr. Sanford says the Nagios property is exactly such property, created in around 1969-1971, purchased in 1971 and built on around 1973 well before any of these regulations came into play. Mr. Sanford thinks it’s critical to understand those two items when it comes to the regulation. For years when Mr. Sandford was working in the town he didn’t need to get a variance for pre-existing lots. Variances were only considered to be for new subdivisions built after the ordinance. There are probably dozens of sites that he did in the 1990’s that were grandfathered from the 50-foot setback, and he has been working in the town since 1990 when he moved to Bedford and built his own home in town. Mr. Sanford feels the Zoning Board is tasked with some leniency on pre-existing lots. If anything is unreasonable, he would like to discuss it because he wants the house plan to be reasonable. He just requests a reasonable envelope, and if it is possible to get a reasonable envelope with 15-feet he can probably live with that. He sized the plan based on a balance of the house to

the left, and a balance of the house to the right trying to be somewhat mathematical in his intent for what size house to put on the plan.

Mr. Sanford said he would like to make every attempt not to push this forward if there is any way we can work it out. Ms. Elmer reiterated that since there is only a 4-member Board this evening Mr. Sanford would need 3 affirmative votes. A tie vote is a denial and would not a basis for an appeal.

Chairman Morin indicated if Mr. Sanford would like to move forward, it is fine and the Board could move into deliberations and a vote. It is totally up to Mr. Sanford to decide. Mr. Sanford asked Ms. Elmer if the variance was voted on and denied and he came back with a smaller envelope what is the flexibility. Ms. Elmer indicated the way the law is written is that the Board would have to look at the application and see if it was a substantial change. If they did not feel it was a substantial change they would not hear the application. Mr. Sanford indicated that he gets the vibe that this Board doesn't seem to want to see something reasonable be able happen here. He has listened to everyone's concerns and asked if it is reasonable to ask Board members to address their concerns.

Chairman Morin asked if there were any concerns amongst the Board. Mr. Gilbert indicated he wanted to be sure of what Chairman Morin was asking for and wondered if what he is asking is for the distance from the 10-feet to the house. Chairman Morin explained that he is trying to get specifics. Mr Gilbert would like to know if Chairman Morin is telling him that he needs a specific number and to please come back. Chairman Morin said he would feel better with a specific number, but that is him and he doesn't know if the other members of the Board are all set with it or not.

Mr. Gilbert noted that there is a 25-foot setback on all sides – the channel in the back and the two sides North and South; a 50-foot setback from the front – and he asked if the 10-foot setback from the existing wetland , is 10 foot all the way around the wetland is fine. Mr. Sanford answered, “Yes”. Mr. Gilbert asked how close the house was going to be to the 10-foot setback in the front. Mr. Sanford said there was some discussion at the Conservation Commission meeting about filling the front wetland in, but we are trying to protect it because it has the ability to infiltrate of its own right. Mr. Gilbert feels good about that request and feels o.k. about voting.

Mr. Duhaime asked it was possible to throw out an equation where they are asking for essentially 35 feet – and you take 20 + 10 and say you can't go any closer than 10-feet (or whatever number we choose it to be) so that way he still gets his wiggle room, but we also kind of understand where they are going to be in that envelope - - we set the minimums, but he can't be 20 and then get the extra.

Chairman Morin feels that it seems like a huge footprint, and we've received the clarification that the 2,600 square feet is just for the first floor only. Mr. Sanford corrected him and said that the 2,600 square feet is the total footprint above and below, but he is happy to entertain a smaller area. As an engineer he is interested in what is the biggest thing we can do, but if the Zoning Board would like to bring the size down, he would rather leave with a smaller footprint and an approval than to push it out another month. Ms. Elmer said the one thing about a footprint, whether it is a cape or a colonial, it is still going to have the same roof, and it is not necessarily the footprint with drainage and all those other things (whether it is one-story or two-stories), it's the roofline that needs to be taken into consideration. Mr. Sanford

clarified that the area in the back is probably going to be a deck, but they wanted to be conservative on the plans and show it as a roof.

Mr. Casale had two 2 things he wanted to discuss further: 1.) He wanted to revisit Chairman Morin's concern about this being conceptual and that the Zoning Board would be approving an envelope. So, if we are approving (or not) if we are dealing with the envelope only, this house could expand to 3,400 feet as long as it is in that envelope and now we are getting away from the maximum the Conservation Commission recommended. Mr. Sanford said that he is happy with the recommendation of 2,600 square feet maximum. He said we could put a number on it and he is even offering a reduction. He said that they recognize that this probably larger than what is going to get built.

Mr. Gilbert said he liked what Mr. Duhaime had to say about taking that 10-feet in the front and add some other figure (ex. 15-feet) and call it 25-feet from the wetland or whatever the number is – and specify that. He asked if that would satisfy the need to go back and measure it. Chairman Morin said it would break it down a little more, that's for sure. Mr. Gilbert doesn't know the numbers, but the setbacks are all on 3 sides and the conceptual footprint could move up or down, left or right within that 25-feet only and be 2,600 square feet. Chairman Morin stated the only piece the Zoning Board is putting a regulation on is the wet areas. Ms. Elmer said that this is the only buildable area, so the Zoning Board would actually be granting a variance on that too because that is not in the building envelope. It is what a standard property line setback would be but the wetland pretty much takes everything. Where the conceptual home is drawn on the plans is the only buildable area.

Mr. Casale asked Ms. Elmer again to clarify the potential drawback to approving the envelope versus having an actual footprint – and clarification about what she said about the additions that could happen outside of this approval. Ms. Elmer explained that if you approve the envelope anything and everything can get built within that envelope. Mr. Sanford said that you could stipulate the 2,600 square feet on top of it. Ms. Elmer indicated that is correct. Mr. Casale asked for clarification that if we stipulate 2,600 square feet only then they are limited. Ms. Elmer explained that when you approve an envelope it means this house can move anywhere, it can change shape, they could add a shed and all of that, unless you put conditions on that approval. Mr. Duhaime asked if that includes decks in that square footage. Ms. Elmer indicated that is correct. Chairman Morin asked if it would mean all building, basically. Ms. Elmer said that is correct, unless you said, “no sheds”; however, it does not preclude someone coming back in 10-years and asking, so you can make those conditions upfront. Mr. Casale asked if those add-ons would be included if we put a maximum 2,600 square feet. Ms. Elmer explained it can be included or not – it is up to the Zoning Board; or as Chairman Morin said, like most normal people when you build something you have to have an exact setback and the surveyor has to go out and pin those locations before the contractor shows up to dig his foundation, and in the past when a contractor has screwed up they come back to the Zoning Board and you've made him move it; so it is whatever the Zoning Board is comfortable with. She indicated it is always cleaner with just a house setback. It's easier for everyone to interpret 6-years down the road than wondering, “What did they mean by that?”, but she said, “it's not something that you can't not do

Mr. Duhaime indicated he is o.k. either way but he would hate to just arbitrarily put some numbers on restrictions and have it hamper the applicant and save time (rather than pushing it out for 1 month) and put in something that hampers them in the long run.

Ms. Elmer said to think of it as a lot that is allowed to be built on. You still have to meet all the setbacks. You have a lot, and if your builder goes in and he has parameters that he has to build in a certain setback and away from certain things. She said we've had other houses come in where the developer originally built it right up along one edge and then a future homeowner comes in and wants to do something else and they are denied. Chairman Morin indicated that he did say earlier that he was uncomfortable with "conceptual". Mr. Sanford duly noted that and said that he is trying to see if there is a compromise and indicated that he is in a position to compromise. It's a matter of the flexibility that is offered. He has been told that 2,600 feet is not what it is really going to be; it's going to be a lot less than that, but at the same time, we are talking about the Zoning Board approving maximums, so he could certainly live with the condition on the approval of 2,600 square feet. Chairman Morin indicated he could be somewhat comfortable if it included limiting *all* building on the lot to 2,600 square feet and that those parameters are met within the wetlands. Mr. Gilbert reiterated the figures: 2,600 square feet, 25 feet, and 10 feet for the wetland, no drainage directed toward the isolated wetland. Mr. Sanford said his only request would be that no untreated drainage...(sentence not finished). He said that there are some natural contours and as engineers they like to make sure the balance is in favor of an environmentally friendly thing. We might grade it so that some of the drainage is going in a different direction but we would balance that with some grading where something may send some drainage in there but keep the balance. He asked if it could be changed to "no untreated water" to go in there he would be fine with it. He can live with the other 2, but he's not sure how you would enforce it. It would mean building a retaining wall up high acting as a curve to try and move water against nature's desire which is downhill. Chairman Morin what Mr. Gilbert was speaking to was exactly what the Conservation Commission approved. Mr. Sanford said he understands that. Ms. Elmer indicated that she thinks that the Conservation Commission got confused by the end of the meeting, though too. Mr. Gilbert agreed with her on that point but said that the wetland stops right there – and it is what it is – it is not going anywhere unless you have more water from an event or runoff in the winter. It is not going to go South unless you have an over-active Winter or a big rainstorm, and quite frankly, he's never seen that happen in the 5-years he's lived on Maple Drive. Mr. Sanford said it is not a "make or break", but just speaking to a reasonableness. Mr. Gilbert indicated the Conservation Commission's condition was that they want all of the drainage to flow away from that, so it wouldn't go North, it wouldn't go West, it wouldn't go East; it's all got to go South. Mr. Sanford said it is a natural bowl, so if we go in and excavate downhill from the wetland...(sentence not finished). Mr. Gilbert corrected to say that the Conservation Commission were talking about the runoff and drainage from the property and they just want you to drain everything away from that. Mr. Sanford said that clarification works for him.

MOTION by Mr. Casale to move into deliberations on this variance application. Mr. Gilbert duly seconded the motion. Vote taken – all in favor. Motion carried.

Chairman Morin reviewed the application:

1. Granting the variance would not be contrary to the public interest because:
 - (1) Whether granting the variance would alter the essential character of the locality:
Mr. Gilbert doesn't think it's contrary to public interest.
 - (2) Whether granting the variance would threaten public health, safety or welfare:

Mr. Gilbert thinks 2600 maximum square foot envelope is very representative of what is in neighborhood. Mr. Gilbert doesn't see it threatening the public health, safety, or welfare.

2. The spirit of the ordinance is observed because:

Chairman Morin says the spirit is to keep the buffer between a wetland and a structure. The Conservation Commission did go through it and worked back and forth and came up with a compromise so it looks like it meets the spirit of the ordinance under that context.

3. Granting the variance would do substantial justice because:

Mr. Casale says there's nowhere else to do this reasonably and make use of the lot and not further affect the wetlands vs. what would happen if they put it in the alternative envelope out back. The indicated spot, it the best spot.

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

Chairman Morin indicated we haven't heard any expert testimony of that.

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

Chairman Morin said this one definitely meets the hardship criteria of how this is set up and the envelopes you have to play with.

(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. Gilbert says they're trying their best to stay a reasonable distance between the building and the wetland and in the upland. It looks like the setbacks are met. He doesn't see a problem from that standpoint.

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

Chairman Morin said reasonable to try and build a lot on empty lot and you are working with what you've got.

MOTION by Mr. Gilbert that the Zoning Board of Adjustment grant a variance from Article IV, Section 275-28A to create a building envelope 25 feet and 10 feet respectfully from the edge of two wetlands where 50 feet is required in order to construct a home on an existing non-conforming lot on Maple Drive, Lot 21-24-48, Zoned R&A with the stipulation that we adhere to the conceptual house plan's square footage of 2,600 square feet within the proposed building envelope, with the condition that no drainage from that structure be directed to isolated wetland. To address the Conservation Commission's concerns Staff would recommend a modified condition of approval to state that the applicant provide a drainage memo for the proposed lot development to verify that no additional runoff be directed into

the adjacent properties or into the isolated wetland. Mr. Casale added the amendment that the 2,600 square feet should be maximum including decks, porches and all buildings. Mr. Gilbert agreed of that – per our deliberations. Mr. Casale duly seconded the motion. Vote taken – 3 were in favor, Chairman Morin voted against. 3:1 Motion carried.

MOTION by Mr. Gilbert to move out of deliberations on this variance application. Mr. Duhaime duly seconded the motion. Vote taken – all in favor. Motion carried.

4. **Jeffrey & Shirley Ginn** – Requests a variance from Article IV, Section 275-28.A in order to construct a garage addition with finished space on the second floor 31.4 ft. from the edge of a wetland where 50 feet is required at 49 Col. Daniels Dr., Lot 31-6-13, Zoned R&A.

As indicated earlier in the meeting, Jeffrey and Shirley Ginn had requested to table, so their application will not be heard this evening.

5. **William Carter** - Requests a variance from Article IV, Section 275-28.A in order to construct a new garage to replace an existing garage 13.5 feet from the edge of a wetland where 50 feet is required at 100 New Boston Rd., Lot 2-8, Zoned R&A.

William Carter of 100 New Boston Road introduced himself and provided history indicating that he came before the Zoning Board in December 2018 and got an approval for a 24'x24' garage that was going to be 10.8 feet from the wetlands. Through the process of getting a contractor and getting ready to build the garage - the contractor began work on the garage last month and began digging and found that the 11'x22' foundation was not a full foundation it was just a slab with a 2-foot knee wall. It was determined at that point that he could not put a full foundation attached to it due to the fact that the structure could not hold it. There is a lot of loam on the land, so basically the contractor proposes more of a floating foundation. At that point, Mr. Carter asked to move it 2 feet forward and 2 feet closer to the road. He went back to his surveyor and had all the work done, sent his builder to the Building Department and showed them all the plans which raised a little bit of a red flag. It was going to be moving it further away from the wetlands. He went to the Planning Department and it was expressed to him that it would be in violation of his variance. That brings us up to date on where we are today.

Mr. Carter reviewed the criteria for the variance request for Article IV, Section 275-28 zoned ordinance to build a 24x24 garage to replace an existing 11x22 garage. Prior variance was granted using existing foundation, but with excavation found foundation not suitable to use for building.

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

Mr. Carter said granting the variance would not alter the essential character of locality as an existing garage was on the site.

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

Mr. Carter indicated that granting the variance would not alter the essential character of the locality.

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

Mr. Carter said the public health, safety or welfare would not be with the building of this new garage, as there was an existing garage, so he was doing the same thing he was doing back in December.

2. The spirit of the ordinance is observed because:

Mr. Carter said the spirit of the ordinance is observed because a current garage did sit on that foundation. A 24x24 garage is to be built on the current site foundation to be moved further away from wetland.

3. Granting the variance would do substantial justice because:

Mr. Carter said it would allow to build a 24x24 garage where an 11x22 garage was. Current variance allows a 10.8-foot setback. New foundation would be further away from the wetland.

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

Mr. Carter said the values of the surrounding properties would not be diminished for any reason. Values would not be diminished because a 24x24 garage would add to the tax base. New garage would add value to surrounding properties. It would be a newer garage than the 11x22 garage that was on the property.

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. Carter said unnecessary hardship would occur not to have a 2-car garage. The existing garage is torn down, so there is no longer even a single car 11x22 garage. Other properties in the area have a minimum of 2-car garages if you look at all of the building that is going on in that area and in the Town of Bedford every house has a minimum of 3, so he thinks this would be a reasonable use going from a 1-car to a 2-car garage. Being within the 50-foot setback in the wetlands is a special condition which he has approval from the Conservation Commission to be 10.8 where we are going to be further away.

(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. Carter said prior variance was granted using the existing foundation. Since the existing foundation is not suitable to be added to or to do the building moving the foundation would be further away from wetlands.

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

Mr. Carter said the proposed use is a reasonable one because it would allow him to have 2-car garage.

(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:

Mr. Carter said he is within 50-foot wetland setback. This is to be a better use of the foundation.

Chairman Morin opened the floor for questions from the board.

Mr. Duhaime asked if we would go from 24 to 30 to 24x24? Mr. Carter said, “No, it’s always been 24x24.” The original plans were 24x30 but once it was plotted out it would not fit in that envelope, so he was allowed a 24x24. That is what the building permit that he currently has says. Chairman Morin asked if he was originally approved for 24x30, though. Mr. Carter indicated that is correct, but unfortunately it would not fit. Chairman Morin indicated that he shrunk the building and it had to move 2 feet away from the wetlands. Mr. Carter said it would be 13.2 feet. He has a very un-traditional lot that and where he put the garage was really the only place he could put it. When he had to make some changes he realized when he started digging that the new foundation is going to be really close to a tree that is on that property that we were trying to save, so he was really just trying to move it further away, and knowing the slope of that property – where the garage existed there is a downhill slope and that garage entrance is going ask him to dig into the side of the hill to be able to make the turn to go into the garage now as it is. It is a very limited spot so he has to go with what he’s got there. He thought he had it 3 weeks ago, but now according to his builder what we are going to be doing is not a full foundation; it is a floating foundation with pylons that are going to be screwed into the ground 8 feet allowing less digging, less obtrusiveness to that wetland which will allow the soils to be able to drain better before it gets into the wetland that is behind the garage this time

Chairman Morin opened the floor for public commentary. There was none.

MOTION by Mr. Gilbert to move into deliberations on this variance application. Mr. Casale duly seconded the motion. Vote taken – all in favor. Motion carried.

Chairman Morin reviewed the application:

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

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

Chairman Morin doesn’t think so. It will probably make it look nicer getting rid of the older garage and putting up a nice new one

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

Chairman Morin indicated we haven’t heard any of that.

2. The spirit of the ordinance is observed because:

Chairman Morin thinks Mr. Carter has met it better because he was approved for a closer variance but now it’s moving out a couple more and the building is shrunk down a little

more too. Mr. Casale also thinks the floating foundation does a lot to allow for better drainage before it even hits the wetlands, so that is an improvement.

3. Granting the variance would do substantial justice because:

Chairman Morin it would give Mr. Carter the opportunity to have a garage, and to have a bigger garage.

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

Chairman Morin indicated that we haven't heard any expert testimony dealing with that.

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

Chairman Morin said those who were here to see the applicant's first appearance before the Zoning Board in December noted that with the hills along New Boston Road it pretty much limited where he could be and try and keep the garage in basically the same area.

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

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

Chairman Morin it has already been discussed that it is not hindering the public's issue due to the variances. It is a very unusual property the way it is set up and it is giving him the opportunity for a garage.

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

Chairman Morin said having a garage is reasonable.

MOTION by Mr. Casale that the Zoning Board of Adjustment grant the variance from Article IV, Section 275-28.A in order to construct a new garage to replace an existing garage 13.5 feet from the edge of a wetland where 50 feet is required at 100 New Boston Rd., Lot 2-8, Zoned R&A per our deliberations. Mr. Duhaime duly seconded the motion. Vote taken - all in favor. 4:0 Motion carried.

MOTION by Mr. Gilbert to move out of deliberations on this variance application. Mr. Duhaime duly seconded the motion. Vote taken – all in favor. Motion carried.

6. New Business

- None

The next meeting will take place on September 17, 2019.

7. Adjournment

Motion by Mr. Gilbert to adjourn the meeting at 9:19 p.m. Mr. Duhaime duly seconded the motion. Vote taken – all in favor. Motion carried.

Respectfully submitted,
Tiffany Lewis