

Town of Bedford
September 15, 2020
Zoning Board of Adjustment
Minutes

A regular meeting of the Bedford Zoning Board was held on Tuesday, September 15, 2020 via the Zoom meeting platform.

Present: Kevin Duhaime (Vice Chair), Len Green (regular member), Neal Casale (alternate member), Elizabeth Jude (alternate member), Karin Elmer (Planner 1), Rebecca Hebert (Planning Director).

Absent: John Morin (Chair), Sharon Stirling, Melissa Stevens, David Gilbert (alternate member)

I. Call to Order and Roll Call:

In Chairman Morin's absence, Vice Chair Kevin Duhaime served as Chair for the evening's meeting. Chairman Duhaime called the meeting to order at 7:00 p.m. and introduced members of the Board. He appointed Ms. Jude and Mr. Casale as voting members this evening. In accordance with the right to know laws all members present indicated they were alone in the room while on this Zoom call. Ms. Hebert indicated she was alone in the room; however, her daughter may pop in and out of the room.

Ms. Elmer read the following statement:

- *Due to the Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Zoning Board is authorized to meet electronically.*
- *This meeting is being conducted using the Zoom platform. All members of the Board have the ability to communicate with each other during the meeting, and the public has access to listen and participate by dialing 929-205-6099 and entering the Meeting ID # 96696150177 and the meeting Password 331833. Instructions regarding remote access to the meeting have been published in advance and are available on the ZBA agenda, which is posted on the Town website.*
- *There is no physical location for the meeting, which is permissible pursuant to the Governor's Emergency Order. Town of Bedford is providing public access to the Zoom meeting by telephone, and the meeting will also be broadcast live on BCTV's Channel 22.*
- *Members of the public may email staff at planning@bedfordnh.org to ask questions during the meeting or notify us of technological issues. If you have joined the meeting*

using Zoom, you may also ask questions when the Chair opens the hearing for public comment through your phone connection.

- *All votes will be taken as a roll call vote.*
- *If there are technological issues during the meeting, the Chair will recess the meeting and we will try to correct the problem. If the issue continues, the application will be postponed, and the meeting will be adjourned.*

Ms. Elmer reviewed the agenda.

Chairman Duhaime stated the following: This will serve as notice to those participating and may wish to speak that you are required to tell the truth, the whole truth and nothing but the truth.

Any party has 30 days to request a rehearing from a decision of the ZBA. The Board has 30 days in which to respond to said request(s). (Per RSA 677:3) Tomorrow being day 1. All requests must be in writing and must contain new evidence. Please point out any errors you believe the Board made in its decision.

II. **Approval of Minutes: August 18, 2020**

MOTION by Mr. Green to approve the minutes of the August 18, 2020 meeting of the Bedford Zoning Board of Adjustment as written. Ms. Jude duly seconded the motion. Roll call vote taken - all in favor (1 abstention – Mr. Casale). Motion carried 3-0

III. **Old Business and Continued Hearings:**

- 1.) **Thomas Hamel** – Request for a variance from Article IV, Section 275-28 in order to construct an in-ground pool 41.8 feet from the edge of a wetland where 50 feet is required at 201 Campbell Road, Lot 16-8-7, Zoned R&A.

Continued from August 8, 2020:

The ZBA must determine if circumstances have changed sufficiently to warrant acceptance of this reapplication per Fisher v. Dover. When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition.

Chairman Duhaime explained that the ZBA had talked about this last month and asked the applicant to revise the drawing to show the rain gardens. Before the ZBA can accept the application they have to determine if there has been a significant material change to the original application

The group viewed the revised drawing. A narrative from the wetland scientist had also been included in the board's staff report prior to the meeting. Chairman Duhaime noted that the Conservation Commission supported the project; however the first time the project was heard by them, they did not. The ZBA needs to determine if the Conservation Commission's acceptance of the project and the additional rain gardens is enough of a material change to accept the rain gardens.

Chairman Duhaime opened the floor for comments or questions from the board.

Q: For clarification Mr. Casale asked if it was not true that whether the Conservation Commission approved the plan or not, that is not what we should be taking into consideration in regard to whether or not this is a significant change.

A: Ms. Elmer explained that it can be one of the items that you can use to determine whether you think there is a material change

Q: “Just their approval, or the substance of why they approved it,” Mr. Casale asked.

A. “The plan, their approval, the whole packet – everything can be taken into consideration to determine whether you feel there has been a material change.” Ms. Elmer replied.

Mr. Green commented that it would seem there has been a substantial amount of work done. He said the rain garden and the approval of the Conservation Commission would indicate there has been some substantial change.

Ms. Jude said that she tends to agree with Mr. Green that the addition of the rain gardens seems pretty substantial enough for an additional review.

Mr. Casale agreed that there had been a substantial change.

Chairman Duhaime indicated he was on the same page with everyone on this.

MOTION by Mr. Casale that this is a substantial material change. Mr. Green duly seconded the motion. Roll call vote taken – all in favor. Motion carried 4-0.

Mr. Hamel said his presentation is a follow-up to the meeting he attended last month where the Zoning Board had requested additional information regarding the rain gardens that he proposed and their effectiveness in mitigating any rain or water coming from the pool as well as preventing pollutants from hitting the wetlands. The proposed general location of the rain gardens was also requested. Mr. Hamel submitted the letter from his wetland scientist that details what the rain gardens will do; and the draft copy of the plot plan which shows the relative location of the two rain gardens. Based upon the wetland calculations and the amount of pool that is encroaching the wetland setback there was a requirement of approximately 140-square feet of rain gardens. The plot plan shows two 70-square foot plots and the relative location is at the 2 corners where they are encroaching the wetlands. The actual location of where it is going to be can't be determined until the pool has been put in because the location of the rain gardens need to be on a downward slope in an area that will basically flow the water into the rain gardens so the rain gardens can prevent the water from hitting the wetlands and will give it time to hit the rain gardens and then soak into the ground to prevent any kind of contamination of the wetlands.

Mr. Hamel believes that he has answered the questions he was asked about providing additional information for the Zoning Board.

Mr. Hamel said that because of the unique location and topography of his land the wetland is in a “V” shape with the wider part being along the road and coming to a point at the back of his house. No matter where he has tried to locate his pool he's been unable

to get it 100%-not encroaching the wetlands and setback. The design he now has is a drastic change in location and pool size from what was originally presented. The pool is approximately 25% smaller and he was able to locate the pool closer to the back of the house. It runs parallel to the house. The limiting constraint is that the deck off the back of his house extends a little past the house and the excavation equipment needs 10-feet of area around the pool in order to do the excavation.

Mr. Hamel read the criteria for his 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:

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

Mr. Hamel feels granting the variance will not be contrary to the public interest because it will have no impact or alteration of the essential character and intended use of the property, and it will not threaten public health, safety or welfare. Mr. Joshua Green, who is a certified wetland scientist, and Mr. Craig Francisco, who surveyed the property; identified the wetland locations and setbacks; and completed 2 different pool designs in 6 different locations. What Mr. Hamel is presenting tonight is the final and best. The submitted plot plan locates the pool as close as possible to the house and deck and minimizes the setback to the wetland encroachment and only occurs at 2 corners of the pool which is 8.2 and 6.3 feet together vs. the original plan that he submitted on which he was encroaching 22-feet and about 99% of the pool was in the wetland setbacks.

2. The spirit of the ordinance is observed because:

Mr. Hamel said the spirit of the ordinance is observed because the installation of the pool will be located as close to the house and deck and still provide access for the excavation equipment of 10-feet around the dig site and will have no impact or alteration to the wetland. To minimize the minimal encroachment of the wetland setback the pool will be a saltwater pool, so he will not be using bromine. No chemicals will be used. The pool deck constructed around the pool will be of porous material and grass to provide better drainage to the property. The construction of 2 rain gardens of 140-feet-total using deep-rooted native plants will allow rapid seeping of the waters if a leak did occur, in order to prevent pool water from reaching and contaminating the wetland.

3. Granting the variance would do substantial justice because:

Mr. Hamel said that granting the variance would do substantial justice because by allowing reasonable use and enjoyment of our property similar to the neighborhood standards and remain consistent with existing zoning. Because of the special conditions and location of the wetlands the proposed use is reasonable.

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

Mr. Hamel said that installation of the pool and the associated landscape improvements will increase the value of his property as well as surrounding properties and will be consistent with neighborhood property standards.

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. Hamel said that strict compliance to the setback ordinance would prevent improvement to the property in a manner that is reasonable, customary, and compatible with other neighborhood properties, and it would cause practical difficulty to enable compliance with the ordinance in light of the scope of the project. Due to the “V” Shape of the wetlands and the location of the wetlands on our property this is a unique and distinct property from other pieces of property and there is no reasonable use that could be made of the property that would be compliant with the 50-foot wetland setback.

(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. Hamel said the 50-foot wetland setback variance would prevent the installation of a pool or any other significant improvement. It would prevent us from the intended use and enjoyment of our property and would incur an unnecessary hardship owing to the special conditions of the property that distinguish it from other properties. The property cannot reasonably be used in strict compliance with the wetland setback ordinance.

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

Mr. Hamel said the wetlands setback variance will substantially deprive and unduly burden us in making any reasonable use or improvements to our property. The area of variance being requested is reasonable use of our property considering the unique setting and location of the wetlands on the property and its environment. It would not alter the essential character of the neighborhood, property, public health, safety or welfare.

(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. Hamel said the unique location of the wetlands and the wetland setback (as mentioned, is a “V” shape and shown on the plot plan) prevents any major

improvements to the property that would not encroach upon the 50-foot wetland setback. The use is a reasonable request based upon the unique property setting and for the intended use.

Chairman Duhaime opened the floor for questions from the board.

Q: Mr. Casale noted that Mr. Hamel stated that the rain gardens could not be delineated particularly. Why is that? If we know the dimensions of the pool and the exact measurements from the wetlands, is it because they don't know exactly what they are doing with the fill? Why can't that be exactly determined?

A: Mr. Hamel said there isn't a caveat because you want to position the rain garden at the optimum location to be able to channel any water in a downward slope and to channel it into the rain gardens. Until the pool has been installed and the landscaping is done he doesn't know what the topography of the land is going to be to be able to give an exact location.

Mr. Green, Ms. Jude, and Chairman Duhaime had no questions.

Chairman Duhaime opened the floor for any questions or comments from the public.

Mark and Patty McKeon of 197 Campbell Road, Bedford NH are next door neighbors to Mr. Hamel. Mr. McKeon said that they want to support his proposal. The McKeon's are probably the most affected neighbor, and they have a pool in their own backyard and the abutter to the rear of both the McKeon's and Mr. Hamel's property has a swimming pool. It is certainly not uncharacteristic of the neighborhood. Mr. McKeon said he has no objections and would ask the board to vote in favor.

There were no other questions or comments from the public and no emails were received.

MOTION by Mr. Casale to move into deliberations on this variance application. Mr. Green duly seconded the motion. Roll call vote taken – all in favor. Motion carried 4-0.

**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 Duhaime doesn't see where a pool would affect that.

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

Mr. Green said there doesn't appear to be any.

2. The spirit of the ordinance is observed because:

Chairman Duhaime thinks the spirit of the ordinance is not to build too close to the wetlands. The applicant has done an admirable job sticking with it, pushing the pool closer to the house, adding the rain gardens and doing his best given the layout of his land, and Chairman Duhaime thinks it is meeting the spirit. Mr. Green thinks he has been very consistent and has done everything we've asked.

3. Granting the variance would do substantial justice because:

Chairman Duhaime thinks it allows the applicant to use the property in the manner they want to. A pool is a reasonable use. The applicant has put measures in place to make this a reasonable project.

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

Mr. Green said that no evidence had been submitted to that regard and one of their neighbors testified on behalf of the project.

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 Duhaime said the applicant had pointed out when you look at the plot plans the wetland "V's" on their property, so if you took literal enforcement that would pretty much mean he could never have a pool in his backyard.

(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 Duhaime said in this case he doesn't see that there is a huge public gain by not allowing the pool. It seems like a reasonable use.

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

Mr. Green doesn't think there is any question that having a pool is reasonable. Of course where they get the water is another issue. "That is true," Chairman Duhaime replied. Mr. Green noted that Mr. Hamel said it would be a saltwater pool, so it wouldn't affect the groundwater.

(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. Green think he has gone through a lot of reasons why he couldn't strictly comply. Chairman Duhaime said he would agree with that.

MOTION by Mr. Casale that the Zoning Board of Adjustment grant the request for a variance from Article IV, Section 275-28 in order to construct an in-ground pool 41.8 feet from the edge of a wetland where 50-feet is required at 201 Campbell Road, Lot 16-8-7, Zoned R&A. per our deliberations. Mr. Green duly seconded the motion. Roll call vote taken - all in favor. Motion carried 4-0.

MOTION by Mr. Casale to move out of deliberations on this variance application. Mr. Green duly seconded the motion. Roll call vote taken – all in favor. Motion carried 4-0.

IV. New Business:

- 2.) Lisa & John King** – Request for a variance from Article III, Section 275-22.A and Table 1, in order to construct a garage 21 feet from the front property boundary where 35 feet is required at 1 Circle Drive, Lot 14-69-4, Zoned R&A.

Lisa King explained that they are requesting a variance for construction of a detached 2-car garage. She presented 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:

Ms. King noted that Circle Drive is a very short street so their property takes up the entire side of the street. As seen in photos their property is kind of like an island surrounded by streets. The entire home has a front yard. The existing house is in violation of the setback but the variance would not alter the essential character of this established residential neighborhood

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

Ms. King stated that granting the variance would not threaten public health, safety or welfare.

2. The spirit of the ordinance is observed because:

Ms. King said the proposed project is in keeping with the character of the existing neighborhood.

3. Granting the variance would do substantial justice because:

Ms. King said granting the variance would do justice because it would allow the owners to build the garage in a logical and functional relationship to the existing house.

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

Ms. King said this project will improve the value of this property and elevate, rather than diminish, the values of surrounding properties.

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:

Ms. King said every yard on this property is essentially a front yard because it's in an island.

(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:**

Ms. King said the hardship is the unique conditions of this property

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

Ms. King said the proposed use is a reasonable one because it is consistent with the residential single -family use of the neighborhood. In regard to alternate placements: The north side of the property may have room to meet the ordinance, but it's on the opposite side of the house from where the driveway is and where arrival is, so it would make no functional sense.

(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:

In closing, Ms. King said that they intend never to move with their expanding family; and with the kids taking over the house, it just provides another functional area for our living quarters and space that would make sense to their family.

Chairman Duhaime opened the floor for questions from the board.

Q: Mr. Casale asked what is happening to the old garage? Is it being turned into a room, or will it be a third garage?

A: Ms. King said that right now it is an oversized garage so they are going to make it into a single bay and that space will be more of an activity room. Instead of one big, oversized garage door, they will make it one smaller bay and essentially an activity room, mud room and gym. That existing structure will stay and the 2-car garage will tie into it aesthetically. It will not go away, but their living quarters will essentially expand for the gym and mudroom.

Q: Mr. Casale asked given what Ms. King just said, if it is not going to be able to put 3 cars in 3 separate garages? The garage that you are abandoning - you can't use that at all for a car, or are you going to?

A: Ms. King said potentially...because they are not going to move and her children who are 8 and 9 years-old now will eventually have cars when they get older; so if needed, we could potentially put a car there. That is why we want to keep 1-bay on the existing garage and just make it a bit smaller so that we can put in a door to enter the house. The 2-car garage will be the one for all of their tools, her husbands' car, and her car right now.

Mr. Green, Ms. Jude, and Chairman Duhaime had no further questions.

Chairman Duhaime opened the floor for questions and comments from the public. There was no one on the phone, and no emails had been received, and no one else was there to join the meeting.

In closing Ms. King said to Mr. Casale's earlier question - there was a picture submitted with the application that the architect drew up that shows the original structure with the 1-bay. The group viewed it on the screen and Ms. King indicated that the original structure is on the left and has a small bay, and the proposed structure has a 2-car garage in the front. It would be more pleasing to the eye and a better entrance because right now their main way into the house is by opening the garage and walking into a mess of clutter (which she calls all of her children's toys). Mr. Casale indicated that he had seen this, but he had just been unclear of what the intent was – whether it was for basically a 3-car garage all the way across.

Q: Mr. Casale said if he is reading the picture/plan correctly, it looks like there is maybe 6-feet between the back of the proposed garage and what looks to be a patio area. There is some kind of space there, and he can't tell whether it is 6-feet or not. He asked if Ms. King could tell him why the proposal cannot go back to what looks like the patio?

A: Ms. King said that was a great question. She explained that they wanted a clearance to come out of the house and enter the backyard rather than coming all the way out in front of the garage to enter it, so that shaded-in area in front of the screened-in porch is kind of like a slab area where they have their grill, and her children are always playing in the backyard and they just wanted the access into the backyard without having to come out around all the cars.

Q: Mr. Casale asked where the entry into the house back there is. Is it where the screen porch is? Is the screen porch above-ground level?

A: Ms. King said the screen porch is above-ground level and it is on a slab. It is one step up. There is an entry into the garage on the side of the screen porch and then the main entrance into the house is through the existing garage.

Q: Mr. Casale asked her to show where the doors in the back are.

A: On the plans projected on the screen, Ms. King indicated where the doors were located including the door with access from the screen porch into the old garage.

Ms. Elmer indicated what she thinks Ms. King is trying to do by not bringing it all the way up to the house is that if they did – the kids would have to walk all the way around towards the road, in front of the proposed new garage; and she is trying to avoid having her kids do this. She wants them contained.

Q: Mr. Casale understands that, but if the garage can go back 6-feet and there is a door nearby it concerns him, because what is the need of this door there? He understands about having to walk around, but his question is, "Why can't the door at the porch be used?"

A: Ms. King said they didn't want the detached garage to be right up against the screen porch either – it would seem too crowded. They spend a lot of time on the screen porch.

Having access through the yard, where they also have their grill is why they didn't want it super-close to that structure.

MOTION by Mr. Green to move into deliberations on this variance application. Ms. Jude duly seconded the motion. Roll call vote taken – all in favor. Motion carried 4-0.

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 Duhaime doesn't feel that given the shape of the property, and with it being surrounded on all 4-sides by the road, and the use as a garage would alter the essential character of the location.

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

Mr. Green said there is no evidence of that. Chairman Duhaime agreed.

2. The spirit of the ordinance is observed because:

Chairman Duhaime said in this case, the spirit of the ordinance is to prevent overcrowding and having a lot of structures close to the front street, where in this case, their entire property is the restriction. In his mind, this is a reasonable use and it meets the spirit. Ms. Jude also doesn't know where else they could put it – they can't put it on the north of the house either, so it wouldn't make any sense given the location of the current garage. Chairman Duhaime said that was a good point.

3. Granting the variance would do substantial justice because:

Chairman Duhaime thinks it allows the applicant to get a garage and use their house with the new flow to their current needs.

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

Mr. Green said no evidence has been given that there would be any diminution, and none of the neighbors are here to raise any issues. Chairman Duhaime would agree.

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 Duhaime said, as discussed, the property is surrounded by 4 streets. The applicant mentioned it is kind of like an island. Literal enforcement in this case would not allow them to put a garage where an existing one is, and it is probably impractical to relocate the garage anywhere else on the property.

- (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. Green said that they only have front yards, and you don't want to put a garage too far from the house. Lugging groceries in the winter is not a fun thing.

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

Mr. Green said it seems reasonable to put your car in a garage. Chairman Duhaime would agree.

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

MOTION by Mr. Green that the request of Lisa and John King for a variance from Article III, Section 275-22.A and Table 1, in order to construct a garage 21-feet from the front property boundary where 35-feet is required at 1 Circle Drive, Lot 14-69-4, Zoned R&A. in accordance with these deliberations be approved. Mr. Casale duly seconded the motion. Roll call vote taken - all in favor. Motion carried 4-0.

MOTION by Ms. Jude to move out of deliberations on this variance application. Mr. Green duly seconded the motion. Roll call vote taken – all in favor. Motion carried 4-0.

The next meeting will take place on October 20, 2020.

V. Adjournment

Motion by Mr. Casale to adjourn the meeting at 7:56 p.m. Mr. Green duly seconded the motion. Roll call vote taken – all in favor. Motion carried.

Respectfully submitted,
Tiffany Lewis