

Town of Bedford

Zoning Board of Adjustment Minutes

September 19, 2023

A regular meeting of the Bedford Zoning Board was held on Tuesday, September 19, 2023, at the Town Meeting Room at BCTV, at 10 Meetinghouse Road. Present were John Morin (Chair), Neal Casale (Vice Chair), Sue Thomas (alternate), Alex Kellermann (member), Dave Gilbert (member), Bob MacPherson (member), Kathleen Ports (Conservation Planner). Absent: Daniel Heath (alternate).

I. Call to Order and Roll Call

Chair Morin called the meeting to order at 7 pm and introduced the members of the Board and stated the following:

Rules of Procedure: We'll have a presentation by the applicants, public input for those in favor and in opposition of the applications. We'll have no debate between the parties. All testimony will be presented to the Board. If the applicant likes, they could do a summation after all that is done. Our schedule runs, all applicants are heard in order of notice. If we need to take a recess, we will by vote. We will go into a nonpublic input session to deliberate and vote after each application. You can wait for the vote tonight or call the Planning Office after 8:30 tomorrow morning. I'll ask that everyone please silence your cell phone so that's not interrupting us during the meeting.

For a rehearing, any party has 30 days to request a rehearing from a decision of this Board. The Board has 30 days in which to respond to such requests, per RSA 677:3, tomorrow being day one. All requests must be in writing and must contain new evidence. You must point out any errors you believe the Board has made in its decision. For the variances this evening, I'm not going to go through the five criteria. We ask that each applicant go through their application and address the five criteria as part of their presentation. For a motion to pass, it must get three affirmative votes. For the folks out in the audience here, I'll ask you to stand up to be sworn in for this evening. If you could, please raise your right hand. Do you swear that the testimony you're going to give this evening is the truth, the whole truth, and nothing but the truth? Thank you.

Chair Morin made notice Item Number 6 on the Agenda this evening, which was Graham Cullen and Rachel Epstein, has been postponed to the October 17th meeting.

II. Approval of Minutes: August 15, 2023

Vice Chair Casale made the following change to the Minutes of August 15, 2023:

~~Vice Chair Casale~~ Chair Morin called the meeting to order at 7 pm, introduced members of the Board.

MOTION to approve the minutes for the August 15, 2023 meeting was made by Mr. Gilbert. Mr. MacPherson duly seconded the motion. Vote was taken - all in favor. Motion carries.

III. Old Business & Continued Hearings: None

IV. New Business

1. **McCarthy Family Revocable Trust / Shaun Oparowski and Molly Ann McCarthy Trustees** – Request for a variance from Article IV, Section 275-28A, to allow a 12- by 30-foot in-ground pool at 29 feet from the edge of wetland where 50 feet is required at 59 Whippoorwill Lane, Lot 1-75-15, zoned R&A.
2. **McCarthy Family Revocable Trust / Shaun Oparowski and Molly Ann McCarthy Trustees** – Request for an equitable waiver for construction of a home addition 38 feet from the edge of wetland where 41.5 feet was approved by the Zoning Board in 2011 and a deck constructed 28 feet from the edge of wetland where 39 feet was approved by the Zoning Board in 2011 at 59 Whippoorwill Lane, Lot 1-75-15, zoned R&A.
3. **Matthew and Debra McLaughlin** – Request for a variance from Article IV, Section 275-28A, to allow the conversion of an existing portico measuring 25 feet in length and 6 feet in depth into a carport measuring 25 feet in length and 20 feet in depth at 34 feet from the edge of wetland where 50 feet is required at 12 Briar Road, Lot 20-91-05, zoned R&A.
4. **Wesley and Patricia Rice** – Request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to convert a carport into a garage at 33 feet from the side property line abutting a street where 35 feet is required at 2 Southgate Drive, Lot 25-92-02, zoned R&A.
5. **Greg Brown and Claire Worth** – Request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow the construction of a 14- by 28-foot shed at 11 feet of the side property line where 25 feet is required at 310 North Amherst Road, Lot 29-15-01, zoned R&A.
6. **Graham Cullen and Rachel Epstein** - Request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow the construction of a 24-by 24-foot garage at 15feet from the side property line where 25 feet is required at 77 Horizon Drive, Lot 38-04-12, zoned R&A. *Postponed to October 17, 2023 Meeting at the Request of the Applicant.*

III. Old Business & Continued Hearings: None

IV. New Business:

1. **McCarthy Family Revocable Trust / Shaun Oparowski and Molly Ann McCarthy Trustees** – Request for a variance from Article IV, Section 275-28A, to allow a 12-by 30-foot in-ground pool at 29 feet from the edge of wetland where 50 feet is required at 59 Whippoorwill Lane, Lot 1-75-15, zoned R&A.

Mr. Shaun Oparowski presented: Good evening. I'm Shawn Oparowski, 59 Whippoorwill Lane and we would like to install an in-ground pool in the backyard. It can only go in the spot that we've chosen because

that's the only usable part of the backyard. To the sides of either side of the house, there's not enough room to install or use as another option.

Chair Morin said you have two items on the agenda. The second item is an equitable waiver for construction of a home addition 38 feet from the edge of a wetland, where 41.5 feet was approved by the Zoning Board in 2011, and a deck constructed 28 feet from the edge of the wetland where 39 feet was approved by the Zoning Board in 2011 at the same address. As requested by Chair Morin, Mr. Oparowski presented the pool variance request first.

Mr. Oparowski stated we'd like to install, as we spoke at the Environmental Committee, an in-ground pool 12' by 30'. It's within the setbacks. Again, the usual portion of our yard is, the biggest section of it is in the backyard, and it is the only place where the pool could go. The wetlands—there is an abrupt drop off where the regular grass-maintained yard is, and then drops into what is called the wetland area.

Ms. Ports suggested if you go all the way to the end, you can show them an overview, or even that one would show, I think, what you're talking about. Mr. Oparowski replied it's kind of hard to see on the picture, but you can see in the backyard there from the corner, if you're looking at it on the left-hand side of the house towards the shed, it would go in that area between that corner of the house—actually back closer to the deck towards the shed. And then we had Keyland Enterprises come out and do the wetland survey for the setbacks, and you can see where he has put in the pool. Ms. Ports said that's actually the old plan. Sorry. Go all the way down. Mr. Oparowski said sorry, there's a lot of pages here. From those photos there you can see where—the yellow cones represent the size of the pool and where the four corners would be of the actual pool itself. And as you can see from the second picture, the lawn ends right there and then it goes into the wetland area. So the setback is roughly cutting through the corner of the pool there. And there is no other feasible place on the property to install a pool.

As requested by Chair Morin, Mr. Oparowski presented his application for the variance for a pool.

Mr. Oparowski said so we'd like to install an in-ground pool in the backyard.

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:

No. The pool is located in the backyard. Every one of our neighbors has a pool in the neighborhood.

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

No, it would meet all safety codes. The fence would be installed, and it would be built to the Town's criteria.

2. The spirit of the ordinance is observed because:

By installing, we would install French drains for lowering the pool levels as requested by the Conservation Committee. In achieving 29-foot to help, because we can't achieve the 29-foot setback.

3. Granting the variance would do substantial justice because:

It's a reasonable request for a pool.

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

I don't think adding a pool to someone's backyard is going to bring down the value of any land. And, again, all our neighbors have them.

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:

Yes, because of the wetland setbacks around three sides of the property, it would be appropriate. It wouldn't be appropriate to put the pool in the front yard. That's also where our septic system and leach field is up in the front yard.

(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:

We feel it's a reasonable request for a pool. Again, not to keep saying it, but they are just about in every yard in our neighborhood.

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

Family recreation.

(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:

Again, a majority of the usable land, a majority of our property, is in the wetlands setback. So other areas would interfere. Like I said, the septic system in the front yard is really the only other place where it's not encroaching on any wetland on our property for the setbacks.

Ms. Ports said Mr. Chairman, I apologize. It doesn't appear that the site plan is in this document, but you guys all should have gotten a hard copy in your packets. Chair Morin said yes, we all did so we should be fine. On this application, are there any questions from the Board? There were no questions.

As requested by Chair Morin, Mr. Oparowski presented his application for the equitable waiver.

- 2. McCarthy Family Revocable Trust / Shaun Oparowski and Molly Ann McCarthy Trustees –** Request for an equitable waiver for construction of a home addition 38 feet from the edge of wetland where 41.5 feet was approved by the Zoning Board in 2011 and a deck constructed 28 feet from the edge of wetland where 39 feet was approved by the Zoning Board in 2011 at 59 Whippoorwill Lane, Lot 1-75-15, zoned R&A.

An equitable waiver of a physical layout or dimensional requirement of Article III, Section 275-22 of the Zoning Ordinance has occurred as follows: The house is set back 38 feet instead of 41.5, and the deck is 28 feet instead of 41 feet.

Please explain how the application meets each criteria:

- a) The violation was not discovered by any owner, former owner, owner's agent or municipal official until after the structure had been substantially completed:**

The infraction was noticed when application for the pool was submitted. The addition for the house was done: first plans came to the Board, I think, in 2011. And then the addition was finished sometime in 2012. I don't have the exact date but as we were building, the building committee was out there back then. The two inspectors were there pretty much on a regular basis. You could almost count on them coming by every other day just to check on the construction and make sure things were going along where they were supposed to and being built according to plans. At that time no one ever mentioned anything that it was not where it was supposed to be.

- b) The violation was not caused by ignorance of the law, misrepresentation or bad faith, but was instead a good faith error in measurement:**

Again, the work was inspected at many different stages by Town officials, and the issue was never brought up. So, I don't know how it could have varied from the distance. The only thing I can speculate is maybe when they were digging or putting in the foundation, they hit ledge or something and just moved it so they could get it. It's hard to speak for someone 12 years ago what they did.

- c) The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property:**

No, it does not.

- d) Due to the degree of past construction or investment made, the cost of the correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected:**

Yes, the house has been there now, that addition, for 12 years. We'd have to tear everything down and move it. And there still is 31 feet if I remember correctly, from the corner to the wetland setback.

- e) Or in lieu of findings (a) and (b) above, the owner may demonstrate that the violation has existed for 10 years or more, and that no enforcement action has been commenced against the violation by the municipality or any person directly affected:**

Again, the construction was completed in 2012, and until we came for the pool application, it's never been brought up as a concern.

There were no questions from the Board and no one spoke in favor or in opposition.

Mr. Oparowski said just one question. Does that cover the corner of the garage and the deck, what we just discussed? OK, I did find the original drawings that were submitted to the Town and the building department that show that the deck was part of the original plans that were submitted. So I do have a copy if you'd like to see it or not. It's here if you'd like to. Chair Morin replied no, I think we're good with what we have. Thank you. Mr. Oparowski said OK, thank you for your time.

MOTION by Vice Chair Casale to move to nonpublic input for deliberation. Mr. Gilbert duly seconded the motion. Vote taken – all in favor. Unanimous. Motion carries.

Chair Morin said first we'll do the variance for the pool.

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:

Vice Chair Casale said no. Mr. Gilbert said I see no evidence of that.

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

Board agrees, no.

2. The spirit of the ordinance is observed because:

Mr. Gilbert said I believe so. Mr. MacPherson agrees, yes. Chair Morin added and looking at the drawing and seeing the size of the pool, that's pretty reasonable for the area. A 12-foot-wide pool is basically a lane. Vice Chair Casale said it's a mid-range, average size pool. It's not out of control. The Board agrees.

3. Granting the variance would do substantial justice because:

Chair Morin said it would give them the opportunity, yes. The Board agrees.

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

The Board agrees there is no evidence to this.

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

Vice Chair Casale said yes, they're surrounded by wetland setbacks and as he said, well, first of all, you don't want a pool in the front of your house, even if he didn't have a septic system there. Secondly, he has a septic system there. It's the only place to put it. And again, this pool is not unnecessarily unreasonable in size. It's a mid-range pool, so I think it's perfectly acceptable.

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

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

Chair Morin said everything you've [Vice Chair Casale] said so far.

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

The Board agrees, yes.

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

Criteria not applicable, addressed in subparagraph (A).

Mr. Kellermann said I just have one question. The Conservation Committee had recommendations to go with the approval. Vice Chair Casale said yes, they'll be part of the motion.

MOTION Vice Chair Casale moves that the Board approve the request for a variance from Article IV, Section 275-28A, to construct a 12-by 30-foot in-ground pool with a 3-foot patio and 2-foot infiltration trench within 29 feet of the edge of a wetland where 50 feet is required at 59 Whippoorwill Lane, Lot 1-75-15, with the following conditions:

1. Contractor will install and maintain erosion and sedimentation controls during construction. Erosion control plan to be submitted to and approved by staff.
2. For winterization, the pool must be drained into a newly constructed French drain specific to the pool. However, if the pool needs to be completely emptied for repair or more than one third of the pool water must be removed, all water shall be pumped into a tanker truck and disposed offsite.

The Motion is supported by the following findings of facts:

1. **The variance request satisfies all five criteria for granting relief from the Zoning Ordinance.**
2. **The Board includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into this decision.**

Mr. Gilbert duly seconded the motion. Vote taken – all in favor. Unanimous. Motion carries. The application is APPROVED 5-0.

Chair Morin said now let's go into the equitable waiver. For this one, they need to meet a different criteria. I'm going to skip to e) first, the last item, where it says in lieu of finding of a) and b), if the owner has demonstrated the violation exists for 10 years or more, which it has been shown that it has: then a) & b) don't matter, and we can go straight to c).

- c) **The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.**

The Board agrees this is not an issue.

- d) Due to the degree of past construction or investment made, the cost of the correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected.**

Vice Chair Casale said yes.

MOTION Mr. Gilbert moves the Board grant the request for an equitable waiver to allow a home addition 38 feet from the edge of the wetland where 41.5 feet was approved by the Zoning Board and construction of a deck 28 feet from the edge of the wetland where 39 feet was approved by the Zoning Board, at 59 Whipoorwill Lane, Lot 1-75-15, with the following conditions:

1. The applicant will seek corrected building permits for the addition and deck and after-the-fact permits for the deck, if required, from the Building Department for the addition and the associated deck.

The motion is supported by the following findings of facts:

1. The variance request satisfies all criteria for granting the equitable waiver.
2. The Board includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into this decision.

Vice Chair Casale duly seconded the motion. Vote taken – all in favor. Unanimous. Motion carries. The application is APPROVED 5-0.

MOTION by Vice Chair Casale to go back into public input. Mr. Gilbert duly seconded the motion. Vote taken – All in favor. Motion Carries.

Chair Morin said you're all set. Thank you, Sir. Mr. Oparowski said thank you for your time.

3. **Matthew and Debra McLaughlin** – Request for a variance from Article IV, Section 275-28A, to allow the conversion of an existing portico measuring 25 feet in length and 6 feet in depth into a carport measuring 25 feet in length and 20 feet in depth at 34 feet from the edge of wetland where 50 feet is required at 12 Briar Road, Lot 20-91-05, zoned R&A.

Mr. Matthew McLaughlin presented: Matthew McLaughlin, 12 Briar Road here in Bedford. Just scrolling down to find the start of the application, but really all I want to do is, there's a good photograph in here, but I have a portico that abuts my garage to cover a walkway into the side door to my garage. You can see where I always park my truck. It's right there next to where the portico is. I've been parking my truck there for years. I just want to build a carport to cover the truck. So I'm going to tear the portico down and build a carport. The portico right now is I think 20' by 7' And the carport is going to be a little longer, 25' by 20'.

At the request of Chair Morin, Mr. McLaughlin went over 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:**

This would not be contrary to the public interest. I already park my truck in this location, and no one can see it from the road.

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

There would be no effect on public health, safety or welfare.

2. The spirit of the ordinance is observed because:

It is a minor encroachment on the wetland setback and staying in the footprint of my current backyard. By that I meant I'm not asking to go through the wetland with a driveway or anything like that. I'm just going to be getting close to it.

3. Granting the variance would do substantial justice because:

It would allow me to place a carport where I currently park my truck.

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

There would be no change in the value of any surrounding property. I just don't think it would happen.

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:

I don't think there is anything that distinguishes my property from anybody else's, but I put in here if I cannot encroach on the setback, I will not be able to construct this carport. So, I don't know if I answered that correctly with what you're looking for, but if not, you can always ask me.

(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:

if denied, I would not be able to construct the carport.

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

It would allow me to cover my truck in order to make it last longer.

(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:

The property cannot be used in strict conformance because there is not enough room to build the carport. There's a drawing of what it will look like on the plot plan.

Chair Morin said good. Are there any questions from the Board?

Mr. Kellerman asked just quickly, how did you come to the 20' by 25'? Mr. McLaughlin replied I parked my truck there and just measured around it, so it was random. There were no further questions from the Board. Chair Morin enquired of the public. There were no questions or comments from the public. Chair Morin asked is there anything else you would like to add? Mr. McLaughlin replied I think it's a pretty straightforward, simple application so I'll just leave it at that. Chair Morin said all right. Thank you.

MOTION by Mr. MacPherson to move to nonpublic input for deliberation. Mr. Kellermann duly seconded the motion. Vote taken – all in favor. Unanimous. Motion carries.

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:

The Board agrees no, it would not. Chair Morin said it's making what's kind of there a little bigger, but other than that, it's not going to change much.

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

The Board agrees, no.

2. The spirit of the ordinance is observed because:

Chair Morin said it would be giving him the opportunity to be able to cover his vehicle with a carport. There's a slight setback. Chair Casale said well, yeah, and the spirit is to protect the wetlands, but the Conservation Commission is asking for the gutters and the downspout, which should be a condition of approval if it is approved.

3. Granting the variance would do substantial justice because:

Mr. Gilbert said yes. Chair Morin said again, it gives him the opportunity for the carport.

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

The Board agrees there is no evidence to this.

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

Chair Morin said again, looking at the plan, too, really, there's barely enough room on the other side. Plus it probably wouldn't look proper on the other side. Vice Chair Casale said yes, that was my only concern. I was almost going to ask that. Ms. Thomas said, I think it's a very unique lot. Vice Chair Casale said yes, but there is an area on the left side that you could avoid it. I don't know that it would encroach on the side setback at all, but it wasn't entertained. Chair Morin said it's tiered on the other side too, with the stairway coming down, so that would block things there. Vice Chair Casale said oh yeah. OK. Thanks. I forgot about that picture.

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

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

Chair Morin said again, it's pretty minor for what the change is going to be and it's pretty reasonable with the things that the Conservation Commission has asked to be put in to mitigate some of the issues.

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

Chair Morin said it seems to be. Vice Chair Casale said yes, for your truck in the winter.

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

Criteria not applicable, addressed in subparagraph (A).

MOTION Mr. MacPherson moves that the Board grant the variance from Article IV, Section 275-28A, to allow the conversion of an existing portico into a carport measuring 25 feet in length and 20 feet in depth at 34 feet from the edge of a wetland where 50 feet is required, at 12 Briar Road, Lot 20-91-05, with the following conditions:

1. The carport will include gutters and a downspout discharging to a bio retention area or other similar feature with the final plan for discharge to be approved by planning staff.

The motion is supported by the following findings of facts:

1. The variance request satisfies all five criteria for granting relief from the Zoning Ordinance.
2. The Board includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into this decision.

Mr. Kellermann duly seconded the motion. Vote taken – all in favor. Unanimous. Motion carries. The application is APPROVED 5-0.

MOTION by Vice Chair Casale to move back to public input. Mr. Kellermann seconded the motion. Vote taken – all in favor. Unanimous. Motion carries.

Chair Morin said you're all set. Thank you. Mr. McLaughlin said thank you very much for your help.

4. **Wesley and Patricia Rice** – Request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to convert a carport into a garage at 33 feet from the side property line abutting a street where 35 feet is required at 2 Southgate Drive, Lot 25-92-02, zoned R&A.

Mr. Wesley Rice presented: Wes Rice, 2 Southgate Drive. What we're proposing is to take our current carport and enclosing it into a garage. And if you look at the satellite picture, the house and the carport sit right on the corner of our lot between Back River Road and Southgate Drive. The issue came up when

we applied for a building permit to enclose, so we had to have a survey plot plan. This corner right here is 33 feet to the line, which is 2 feet short. Chair Morin said it's amazing how that line has that curve to it. Mr. Rice said I kept measuring and I swear that's more than 35 feet. I took three pics. So the first picture is the picture of standing on Southgate Drive, looking at the end of the carport towards the house. The next picture is standing on Back River Road looking the side view of the carport. And then the other picture is standing in the backyard looking at the other side view of the carport. At the request of Chair Morin, Mr. Rice presented his application.

We're requesting a variance to enclose the existing carport into a garage.

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:

The proposed project involves enclosing the existing designed carport using materials and finishes that will match the existing aesthetics of our home and the neighborhood.

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

Enclosing of the carport, which includes the replacement of the gravel stone surface with a cement concrete slab, will not result in any change of use for the property.

2. The spirit of the ordinance is observed because:

The proposed project has been respectively designed to match the essential character and aesthetic of the neighborhood and will not have any negative impacts on public health, safety or welfare.

3. Granting the variance would do substantial justice because:

This project will not result in any harm to the general public.

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

The proposed project will enclose an existing carport, shielding the view of the typical storage and motor vehicle related items commonly found in a garage. This will be an improvement for surrounding properties. The carport will also be enclosed with materials and finishes to match our existing home.

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:

The beautiful, constructed carport, which is integral to the house, was built within the setback prior to our purchasing of the home. This was only discovered when the permit was sought to enclose the carport. This, in a sense, is a pre-existing non-conforming structure that we are trying to renovate and improve. The special conditions of this property are that is a corner lot, resulting in the front yard setback wrapping around two sides of the property. In addition, with the original location of the house and the curb cut to the South Gate Drive, it is the radius at the northeast corner of the property that makes this situation different from surrounding properties. So while the carport was constructed greater than 35 feet from Southgate Drive and 45 feet from Back River Road, the radius between the two streets pulls the setback in closer on that one corner of 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:**

The specific application of this provision to this property would not serve the purpose of this provision as relates to the general public, as the structure has already existed in harmony with the character of the neighborhood, with no detrimental effects of public health, safety and welfare.

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

We feel that the desire to enclose the carport is reasonable, especially for the wintertime.

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

Criteria not applicable, addressed in subparagraph (A).

Vice Chair Casale said it's not clear. Is the footprint exactly the same? Mr. Rice replied yes. Vice Chair Casale said you're not extending it any—not by 1 inch. Mr. Rice said no we're not extending it. We're just actually going to put a concrete slab and then... Vice Chair Casale said just to close the sides. OK. Thank you. There were no further questions from the Board. There were no questions or comments from the public. Chair Morin asked do you have anything else for us? Mr. Rice replied no, that's all I have.

MOTION by Mr. Mr. Gilbert to move to nonpublic input for deliberation. Vice Chair Casale duly seconded the motion. Vote taken – all in favor. Unanimous. Motion carries.

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:**

The Board agrees no, not at all.

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

The Board agrees no.

2. The spirit of the ordinance is observed because:

The Board agrees yes. Vice Chair Casale said it's for overcrowding and it's not going to be any more overcrowded than it already is anyway, just by enclosing the sides. Chair Morin added and I find it interesting, too, because we've done a lot of corner lots and that type of thing, and this is the first rounded lot line I've ever noticed on a plan. I don't know how that ends up that way. Because if it was squared off then there wouldn't be any... Mr. Gilbert said there wouldn't be any discussion. Vice Chair Casale said and it's already existing and he's not asking for an inch more. All he's doing is enclosing it. Mr. MacPherson said I think will be an improvement. Vice Chair Casale said well, it already looks good. For a carport, this is like a Class A carport here. Chair Morin said there's been a lot of work done on the house. I've been watching it.

3. Granting the variance would do substantial justice because:

Vice Chair Casale said yes. The Board is in agreement.

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

Vice Chair Casale said no, increased probably.

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

Chair Morin said well, it's hard to tell by the plan, but just seeing that curved... Vice Chair Casale said yes, and it already exists, and he just wishes to enclose it like most other people have with their garages.

(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:**

Vice Chair Casale said so again, the purpose of the ordinance is for overcrowding. This doesn't add anything that would be against that ordinance.

- (ii) The proposed use is a reasonable one because:**
The Board agrees, yes, absolutely.

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

Criteria not applicable, addressed in subparagraph (A).

MOTION Mr. Kellermann moves that the Board grant the variance from Article 3, section 275-22A, Table 1, Table of Dimensional Regulations to convert carport into a garage at 33 feet from the property line abutting a street where 35 feet is required at 2 Southgate Drive, Lot 25-92-02. The motion is supported by the following findings of fact:

- 1. The variance request satisfies all five criteria for granting relief from the Zoning Ordinance.**
- 2. The Board includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into this decision.**

Vice Chair Casale duly seconded the motion. Vote taken – all in favor. Unanimous. Motion carries. The application is APPROVED 5-0.

MOTION by Vice Chair Casale to move back to public input. Mr. Kellermann seconded the motion. Vote taken – all in favor. Unanimous. Motion carries.

Chair Morin said you're all set. Thank you. Mr. Rice said OK. Thank you.

5. **Greg Brown and Claire Worth** – Request for a variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow the construction of a 14- by 28-foot shed at 11 feet of the side property line where 25 feet is required at 310 North Amherst Road, Lot 29-15-01, zoned R&A.

Mr. Greg Brown presented: Good evening all and thank you for your time. My name is Greg Brown at 310 N Amherst Road. We are requesting a 14 by 28 foot shed on the westerly property line. The reason that we're mainly asking for this is we have a fair amount of topography issues on the property which I'll showcase through this application. To the easterly side of the property, there is a culvert, vernal pool, which I assume you guys own. And a majority of our property basically feeds that. We also bought an old 1830s, 1840s house about 2014. So, a lot of the current infrastructure that we have is inadequate and actually some of it is beyond repair. It needs to be raised and rebuilt, which we'll also review amongst this application. But this first one is an aerial view of our property down. The next one is closer up, right where the mouse is right here, the line that we just had surveyed is actually right here. And this dirt spot right here is flat and adequate to fit the size that we need without any excavation or retaining walls and whatnot. To the left of that, we have an arena here that drops about 10-12 feet down from the line. So this is the high point of the property and then it drops farther down from there. Here we have somewhat of a total...

Vice Chair Casale said Mr. Brown, excuse me, could you go back to that? Maybe it's just the mouse kind of moving around, but the mouse is going to the right, at least my right, your left. You're saying it drops down and it was heading this way, the opposite way for you. Mr. Brown said it drops... Vice Chair Casale said it drops towards that arena, but does it go drop the other way as well? Mr. Brown replied absolutely. Vice Chair Casale said oh, all right.

Mr. Brown continued, so that's the highest point which we'll show in this map right here. So what I was showing there, that's this right here. OK? And I will go through my 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:**

This shed will enhance the character of locality, increase the value of our property, and mimic the look of our house.

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

There's no threat to public health, safety and welfare.

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

The shed is sited at the same distance to property line as neighbors' fence. Abutter supports the request. We meet all other setbacks and sited the shed near the westerly setback, only to avoid the sloped yard.

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

We lack adequate storage, and we have no place to put our vehicles. The shed also allows us to store our outdoor equipment house materials when the time comes to demolish the existing barn.

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

The new shed will be built by Reed's Ferry and mimic the look of our house. We enclosed letters of support from our abutting neighbors.

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:

Our property lies on a hill and the desired location is flat, which can accommodate the size shed we need. We also cannot increase the size of our current barn because it is surrounded by our septic system and is the only access into our 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:

The location of the proposed shed does not affect light, air or value to the public or wildlife.

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

We do not have adequate storage. It will increase the value of our home and provide a slightly storage structure. It will also allow us to use the barn as a 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:

Because our property lies on the hill and we cannot increase the size of our barn, the proposed location is a perfect flat spot, and we have our neighbors' support of this location.

So here's my supporting evidence. So this is looking towards the house, and to my left you'll see that single tree. That is towards the easterly line, and that is where our property starts to drop and feed that culvert in there. Directly behind that single tree right here is this spot right here, which is where our new existing leach field is that they installed in 2021. Here is a back portion of the barn. You can see my truck right here. As you can see, it's in somewhat disarray. I've outlined—you can't really see it up here, but you might be able to see it in your notes—where the drainage pipe goes. I also have a, I believe, accompanied with this is the actual map from the septic company that outlines where all this pipe work is.

Mr. MacPherson said just a quick question. So you're going to raze that barn and have a brand-new barn? Mr. Brown replied yes. As you can see, this is the inside of the barn. We're just showcasing that it's full. The size of the barn that we're requesting is essentially the same size of what this barn is. However, we would have wanted it a little bit wider, but Reeds Ferry only goes up to 14 feet. Anything past 14 feet, the price pretty much doubles or triples. And that is basically what we have up there.

Here's a picture of the flat area on top of the hill. I did kind of draw in the elevation line that you can see at the bottom of the wood pile. And our fencing is hidden from where the slope starts to go down towards the culvert. This is just kind of a back point of where they put our new property line. Here's our neighbor's

fence, and this basically her arena right here, right at our line drops about 10-12 feet. Here is basically an outline of the shed. There is a raised landscape right here, 2-3 feet but this layout basically allows me to basically get a tractor all the way around it and also allows me to access the tractor into it without being kind of put on a slope to tow stuff into it.

This is basically the corner of where the proposed shed would be, and this is where that raised bed structure is. This is how the extension of the ramp, which is an extension of the shed, and this is basically just an access point for us to get equipment around. This right here, this black ladder right here basically showcases the top of that point where we'd like to put it, and then you can see as the property starts to slope down. Here as well, the ladder is right up top here and then it slopes down to the pile there. This is basically the proposed shed that we have inquired about from Reeds Ferry, so we'll basically mimic our house. And we presented this to our neighbors just so they know what the structure was going to look like. It will be visibly present. And right here in the corner, this is the plot plan where we put the shed. This is a letter of support. Would you like me to read the letter of support?

Chair Morin asked has everyone read them? We have it in the file.

Mr. Brown continued, these three are our neighbors across the street that we have a very good relationship. We basically expressed everything, our concerns. They viewed the topography of our property. They found that our request was reasonable, and they didn't think that what we were asking would be obscene or hurt any value to their property. And 314, Celia, this is the only abutting neighbor that this shed affects. She is the one that owns the horse arena. And we had her review the property. She went over it. Her only concern was she had this recently dug out I believe in 2015. She just didn't want runoff from the roof of the shed to affect her arena, because there's no retaining wall within her arena. So we offered to put in a gutter to divert the water back down the hill of our property. And she said that covers all of her concerns.

Chair Morin said OK. Are there any questions from the Board?

Vice Chair Casale said two. One, minor. Can you explain in Number 2, under the spirit of the ordinance, I do not understand what you mean. The shed is sited at same distance to property line as neighbors' fence. Can you show me exactly what you mean in a picture? Mr. Brown replied yes. So this was the back portion of the house. You have this orange post right here. So that orange line there is where the new property line is—the corner of the fence is our neighbor's fence. Vice Chair Casale asked what do you mean, new property line? Mr. Brown replied that they just did. We had to get it resurveyed. Vice Chair Casale said OK, not new. It's just that's where it was surveyed. OK, that's the property line. Not new. OK. Mr. Brown said sorry. Vice Chair Casale said so that's the corner of her lot and your lot. Or it's the line dividing her lot and your lot. Mr. Brown said yes, this orange stake. Yes, Sir. Vice Chair Casale said OK. So you're saying that the distance between the post of her fence is the same distance that your shed will be from that same stake. Mr. Brown replied it just ended up being that distance. Just to basically fit the 14-foot width. Plus the extension of the ramps before the slope started. So that 11-foot distance is the same distance. Vice Chair Casale said OK. Of course, the only difference is that that's a fence, and yours is a building. Mr. Brown answered absolutely, yeah.

Vice Chair Casale continued so, second, speaking of building: Can you clarify, because it's been a little bit of a variation on what this large shed is for, and this hints at, to me, kind of the necessity for this need for a variance? You're pointing to the need for the shed, almost as a temporary need, because you're going to at some point tear down the barn and you need a spot for this stuff to go. Mr. Brown said no. We

would like a garage. Vice Chair Casale said OK. So, in the application though, that was a spot for this stuff to go. Mr. Brown said absolutely. Vice Chair Casale continued, so what you're saying is though that you want to, in addition to having a place for the things that are in the garage currently or in the barn, you're going to keep that stuff in this shed then repurpose the barn to just use that as a garage. Mr. Brown said yes, Sir. Vice Chair Casale said so you intend on using the shed, not just as a temporary storage. That's what it's going to be used for permanently. Mr. Brown said absolutely. Vice Chair Casale said sounds good. Thank you.

Chair Morin said yes, I had that little bit, too. And then I went through, and I kept reading and I'm like, OK, now I'm getting... Vice Chair that's what I needed, again, just to clarify, because otherwise if it's temporary, less of a need for a variance, at least in my mind. That's why I asked. Thank you. Chair Morin said all right. Any more questions?

Mr. Gilbert said I just want to ask something to clarify because I think I got it. I just want to make sure. So on your plot plan where the shed is here, are you saying that if you moved it inside here, it's sloped? Mr. Brown said it starts right there. Mr. Gilbert said so this is the flat area here, and that's sloped. That's why you put it there. Mr. Brown said yes, Sir. Mr. Gilbert said thank you. That's all I want to know. Chair Morin said I'm guessing from what I've heard, it's probably barely over 14 feet of flood area. Chair Morin said it goes down on both sides. Mr. Gilbert said no, I just want to make sure because that makes sense to me. But I just wanted to hear it. Thank you. Mr. Kellermann said I have a question. On that on that same document, there's a 9.75'? You see that? I'm not sure what that signifies. That's not 9.75' to the property line, is it? Mr. Brown said no. OK, so I think you're talking about the stone marker. Basically when I was communicating with Promised Land, after they had all this stuff in, I basically got this, but they didn't put the proposed shed in for you guys. So he's like, where do you want me to put it? We have a very old granite stone marker that is basically right where he has it. It's like right within the middle of the property line. And he used that 9.75' as a marker of where the front of the shed will start. Ms. Thomas said it's the horizontal line that 9.75' which this little, tiny plan doesn't... Mr. Gilbert said oh, so you're going from the front of the shed to the marker and that's the 9.75'. [crosstalk] Gotcha. It's not the other way. Got it. Chair Morin asked OK. There's two lines. Yeah, yeah. There were no further questions from the Board and no one spoke in favor or in opposition. There were no rebuttals.

MOTION by Vice Chair Casale to move to nonpublic input for deliberation. Mr. Gilbert duly seconded the motion. Vote taken – all in favor. Unanimous. Motion carries.

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:

The Board agrees, no.

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

The Board agrees, no.

2. The spirit of the ordinance is observed because:

Mr. Gilbert said I believe so. Intended use as Neil pointed out, it is not temporary. Vice Chair Casale said and to alleviate overcrowding and... Chair Morin said and the neighbor is happy with it. Vice Chair Casale said people in the area are not complaining about that.

3. Granting the variance would do substantial justice because:

Chair Morin said gives them an opportunity to have a storage shed and take the barn once it's redone and make it a garage. The Board agrees.

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

The Board agrees there is no evidence of this.

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

Chair Morin said well, the interesting part with this one is he's got one flat spot. Vice Chair Casale said yeah, and it's a large shed. And so in order to... it would, it would be pretty costly to get a flat area elsewhere it appears anyway and put it somewhere else. Chair Morin said right.

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

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

Chair Morin said again, he's kind of tied where it's going to go and with the neighbor next door happy with it, we should be fine.

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

The Board agrees it is reasonable.

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

Criteria not applicable, addressed in subparagraph (A).

Chair Morin said my question before we go into a motion is should we look at a possible condition of what the neighbor is requesting? Vice Chair Casale said yes. The Board agrees. Ms. Thomas said that was a very thoughtful letter, I thought. Chair Morin said it was very good. Vice Chair Casale said yes, she's directly affected, and she was very clear in her two requests. My opinion is we should honor those and add those as conditions.

MOTION Vice Chair Casale moves that the Zoning Board grant the variance from Article III, Section 275-22A, Table 1, Table of Dimensional Regulations, to allow the construction of a 14-by 28-foot shed at 11 feet of the side property line where 25 feet is required at 310 North Amherst Road, Lot 29-15-01. The motion is supported by the following findings of facts:

- 1. The variance request satisfies all five criteria for granting relief from the Zoning Ordinance.**
- 2. The Board includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into this decision.**

The Motion is subject to the following condition:

1. The applicant agrees to install a gutter and divert all runoff from the shed away from the property at 314 North Amherst Road, onto their own property.

Mr. Kellermann duly seconded the motion. Vote taken – all in favor. Unanimous. Motion carries. The application is APPROVED 5-0.

MOTION by Mr. Gilbert to move back to public input. Vice Chair Casale seconded the motion. Vote taken – all in favor. Unanimous. Motion carries.

Chair Morin said you're all set. Thank you. Mr. Brown said thank you. I appreciate it.

V. Adjournment:

MOTION: Vice Chair Casale moves to adjourn the meeting. Mr. MacPherson seconded the motion. Vote – all in favor. Unanimous. Motion carried.

Meeting adjourned at 8:06 pm.

The next meeting will take place on October 17, 2023.

Respectfully submitted,
Sue Forcier