

Town of Bedford
Zoning Board of Adjustment Minutes
December 21, 2021

A regular meeting of the Bedford Zoning Board was held on Tuesday, December 21, 2021, at the Town Meeting Room at BCTV, at 10 Meetinghouse Road.

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

Absent: Bob MacPherson (alternate member).

Call to Order and Roll Call

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

Old Business & Continued Hearings None

New Business

Rules of Procedure Chair Morin said what we will do is we will have each applicant make a presentation. We will have public input from those in favor and opposed to the application. I'll ask that there be no debate allowed between the parties. All testimony comes to the Board please. If you have questions, come through the Board and we'll work through those questions. At the end of the presentation and all questions being asked, we will give the applicant an opportunity for a summation if they would like. All applicants will be heard in order of notice. If we need to take a recess, we will. We will go into non-public input to deliberate and vote after each application. You can wait for the vote tonight or call the Planning Office after 8:30 tomorrow. I'm going to ask everyone to please silence your cell phones. It just gets a little distracting if we have phones going off. Notice of Rehearing: 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 such requests per RSA 677:3, tomorrow being day one. All requests must be in writing and must contain new evidence. Please point out any errors you believe the Board has made in its decision. For the criteria for a variance, I will not go through them at this time. We will have each applicant go through the 5 criteria right off their application so it will be in the public record. Also, for a motion to pass this Board, we must have three affirmative votes of that motion. If we don't get three, it doesn't pass. I'll ask anyone who's going to testify this evening to please stand and be sworn in. Honorable Counsel is exempt. Even if you're thinking of speaking tonight, you have to be sworn in, so I'll ask you to please stand. If you don't, we have to stop, then it's just going to take more time. So, if we get it all done at once, we'll be great.

Raise your right hand please. Do you swear and affirm the testimony you're going to give tonight is the truth, the whole truth and nothing but the truth? Crowd standing affirms. Chair Morin says thank you.

Our first item will be approval of our last minutes of the November 16 meeting. Did any Board members have any changes, additions, anything to add? Nothing.

Approval of Minutes November 16, 2021

MOTION by was made by Ms. Thomas to approve the minutes of the November 16th, 2021 meeting. Mr. Gilbert duly seconded the motion. Roll call vote was taken - ALL IN FAVOR – unanimous. MOTION carries.

New Business:

Agenda Item Number 1 - Mr. Raymond Arner – Request for a variance from Article IV, Section 275-28, to permit the construction of an in-ground swimming pool within 30.3 feet of a wetland where 50 feet is required, at 77 Oriole Drive, Lot 7-14-57, Zoned R&A.

Mr. Raymond Arner Testimony: Raymond Arner – I'm the resident at 77 Oriole Drive and as you indicated, am requesting a variance from the wetlands setback of 50 feet to construct an in-ground swimming pool in the backyard of our property. If I understood correctly, you want me to go through the 5 points? Chair Morin answered yes, please. Mr. Arner continued even though that application has been submitted? Chair Morin said right, but we'd like to get them spoken so they're on our official record. Just so folks know, too, you've amended your application. Is that correct? On that distance? Mr. Arner said pardon me? Chair Morin said you've amended your application for the distance from the wetland from 30.8 to 35? Mr. Arner said yes, I have. That's not within the 5 points, but yes. Chair Morin added I just want to get that on record so that way everybody knows. Mr. Arner said yes. In fact, can I start there? This is the amended plan here. Going through the 5 points:

Variance is not Contrary to Public Interest.

Granting the variance isn't contrary to the public interest in our view. The pool is an in-ground pool. It's not obtrusive. There's very little grade change. [Mr. Green requests Mr. Arner to speak louder] I have a difficulty because I have 2 cochlear implants, and I'm virtually deaf. It's hard to adjust my voice. Tell me if it's not working properly. [Board assures Mr. Arner with the mic he is being heard]. The pool is an in-ground pool. It's not obtrusive. There's very little grade change that would be required. The backyard in which we're proposing to put the pool had been filled many years ago—probably over 40 years ago. It's not the original forest footprint if you will. It would have minimal impact on the abutting lot or abutting lots. Our application showed that we considered why we could not put it in alternate locations. On the one alternate location, 1 was the side of the house. There's ledge there. There's propane storage tanks, and there's a neighbor whose house is situated very close to the property line. So, it's really not a very suitable place. The other alternate location would be deep into the woods, quite a distance from the house to the point where it wouldn't be a workable proposition. We hired Mr. Earl Sanford to survey the lot and identify for us the wetlands and the location of the pool, and to assist with identifying an area where we could put the pool but still have to require a variance. The pool is as close as we could put it to the house at this point. We presented to the Conservation Commission on November 23 I think it was. We had a discussion about the location of the pool. At the conclusion of that meeting, it was suggested that it would be desirable to try to move the pool 5 feet closer to the house so that the minimum setback, if you will, from the wetlands would be 35 feet or more. We submitted this plan that's on the screen up here, which was the original submission but redrawn to move the pool 5 feet closer. One of the corners is now 35 feet 3 inches from what's denominated to be wetland/upland dividing mark, which is a sunken depression from the back lawn and adjacent to a very large oak tree.

The other thing I should say about the location is it doesn't require removal of any trees or regrading of the property. So, there's minimal disruption and no disruption actually to what's denominated to be the wetlands.

The Spirit of the Ordinance.

I think the spirit of the ordinance – it's placed close to the house and as far away from the wetlands as we can place it and in a manner that protects the environment and the wetlands.

Granting the Variance Would Do Substantial Justice.

On the third point, granting of the variance would do substantial justice – it's located, the plan is, located in the most feasible environmentally friendly area in a manner that would avoid regrading the natural forested land and/or the removal of any trees.

Values of Surrounding Properties Would Not be Diminished.

The fourth point, the values of the surrounding properties will not be diminished. The immediately adjacent property has an in-ground pool, and I would think it's not objectionable that we would desire one as well. It would have minimal visibility from the road.

Denial of the Variance Would Result in an Unnecessary Hardship.

The fifth point is the literal enforcement of the provisions of the ordinance would result in unnecessary hardship. Indeed, if not granted, the variance – we would be required to either try to construct a pool virtually on the side of the property or near the front of the property and have to deal with a considerable amount of ledge and we would have to remove many large trees. If we were to put the pool further back on the property, it would require the removal of densely forested area, and it would be a considerable distance from the house such that it's unlikely we would even consider doing that.

The Proposed Use is Reasonable.

The proposed use is a reasonable one because it's a modest sized pool, 14 by 34, and like I said there's really no visibility from the street because it would be immediately behind the house. With the apron around the pool moved very close to our garden area and very close to the house, such that we can't envision going any closer to the house. The Conservation Committee was also concerned about runoff from the apron of the pool, and we had a discussion about constructing a rain garden to take the excess water that might run off the apron. So, what we envision is that the pitch of the apron would be such to channel the water, if there was overflow such that the pool filled all the way and started to overflow on the apron, that water would flow to that one corner than I mentioned that's 35 feet from the wetlands. We would construct a rain garden there, such that the water could be filtered before it migrates down to the wetland/upland area. The reason it's wetlands is because of just the nature of the plants growing there and the soil conditions, but the fact is the actual occasional stream is on our neighbor's property and doesn't cross our property until it's well back in the woods in an area where we wouldn't consider constructing anything anyway. So, we believe we reacted to the suggestions of the Conservation Committee to move the pool as close as possible to create as much distance as possible from the wetlands and also to deal with the question of runoff. That's how this plan here is drawn up now for which we are seeking approval.

Chair Moran said thank you. Board members – any questions? [No questions from the Board]. I have no questions. Is there anyone from the public who would like to speak for or against this application? Nobody's jumping up. Any last comments before we go into deliberation?

Mr. Arner said no, no last comments. But did I ... one question. Did I understand you'll do deliberation at the end of the meeting? Chair Moran said no, we're going to do it right after we're done talking to you right now. Mr. Arner said okay. Thank you.

MOTION: Mr. Green moves the Zoning Board go into non-public input for deliberation. Ms. Jude duly seconded the motion. Roll call vote taken – all in favor – unanimous. Motion carries.

Non-Public Deliberation.

Chair Morin continued alright, let's go through the criteria.

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

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

Board agrees there's no concern there. Chair Morin said I don't see the changing of the neighborhood due to this pool – especially being right behind the house.

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

Consensus of the Board is there is no evidence of this.

2. The spirit of the ordinance is observed because:

Board agrees, yes. Chair Morin added they've listened to the Conservation Commission. They utilized what they had, and they were able to actually bring it back, which is very helpful for all.

3. Granting the variance would do substantial justice because:

Mr. Casale said he's limited in where he can put the pool. He didn't go to town with making an extra-large pool. It is an average sized pool. I think he did the most he could with what he had.

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

Board agrees there's no evidence of this.

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

Chair Morin said looking at how he has everything set up and the length of this property, everything pretty much needs to stay right around the house. It's pretty busy – where everything's laid out. Mr. Casale added, and the other area way out back is unreasonable. Board agrees.

(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 worked to do his best to get it in the least intrusive area, listening to the Conservation Commission, which is very good, bringing us a plan that will work. Board agrees.

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

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

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

Criteria not applicable, addressed in subparagraph (A).

MOTION: Mr. Casale moves that the Zoning Board grant the request for a variance from Article IV, Section 275-28, to permit the construction of an in-ground swimming pool within 35.3 feet of a wetland where 50 feet is required, at 77 Oriole Drive, Lot 7-14-57, Zoned R&A per our deliberations. Mr. Green duly seconded the motion. Roll call vote taken – all in favor - unanimous. Motion carried 5-0.

MOTION: Mr. Casale moves to go back into public input. Mr. Gilbert duly seconds the motion. Roll call vote taken – all in favor – unanimous. Motion carries.

Chair Morin says alright we are back in public input. Sir, you are all set. Mr. Arner replied well thank you very much. Thanks to the Board.

Agenda Item Number 2 - Bedford Historical Society - Application for a variance from Article III, Section 275-21, Attachment 2, Table 2, Table of Uses, to allow the operation of a Community Center within the R&A district where such use is not allowed, at 18 N. Amherst Road, Lot 20-46, Zoned R&A. Please introduce yourselves and go right ahead.

Mr. Paul Kfoury, Sr. Testimony: Good evening. I'm Paul Kfoury, Sr. I serve as general counsel to the Bedford Historical Society. We are here, as this Board knows, this building, the historic Stevens-Buswell building is owned by the town. We are negotiating and we will have a 50 -year lease with the Town of Bedford, and one option to renew for an additional 50 years. I think everyone on the Board is familiar with this building. I'd like to, at this point, turn it over to Rich Moore, one of our Board members who will go through, Mr. Chairman, the 5 criteria.

Mr. Rich Moore Testimony: (Background) I would like to give some background first. I think that the background would help address my answers—help explain, make it more efficient in answering the five questions - to give background first, including the location, brief history of the building leading up to our efforts to make it a Community Center, brief project description, and the reason for the variance. The Stevens-Buswell building, which a lot of you are familiar with, but in case you're not, it's right near the Town Office Buildings. It's right within the Historic District. This dotted line shows the edge of the Historic District, which is within the residential agricultural zone. It's an overprint. This is zooming in on that. It's 18 North Amherst Road, which is originally a single lot associated with the school, but basically operates it in combination with the Town Office Building lot with a shared parking lot right now. The Stevens-Buswell building was built in 1921 shown here right after it was built. It was Bedford's first two-room schoolhouse. There were single-roomed schoolhouses in Bedford since the late 1700's, but this was the very first two-room schoolhouse. It was when the population got up to a whopping 1,100

people. It's now 23,000. It was named just after World War I, and it was named after Willis Stevens and Frank Buswell, who died during the World War I effort. It was actually doubled in size. On the previous picture of it, in 1921, you only saw this front half of the building. Now it's doubled in size. It goes out so instead of just 2 rooms, there's 4 rooms. There's no front door. This is where the front door is that you're used to seeing. But there's a girls' entrance, which is this side, and then the boys' entrance on the opposite side. It served as a school from 1921 until 1967. There are a lot of people still remaining in Bedford who are alumni of Stevens-Buswell. This group here are people from the 1940's—several of whom I know. I should say that they've been very—a number of them have been very supportive in their time and their money in contributing to our efforts. It continued as a public building until 1994. From 1967, when the school moved out, to 1987, the Town Offices were there. From 1969 – 1994, the Police Station was there, and at times, the Municipal Court was held there too. From 1999 to 2007, the Town rented it out. But basically, the building fell into disrepair and there was talk of tearing it down in 2009. In 2010, the Bedford Historical Society stepped in and leased the building in a short-term lease and stabilized it and began to rehabilitate it. Many contributions and gifts have been received toward the goal of continuing its use to serve the public. This time only as a Community Center. We've had fundraising efforts, lots of publicity and events. We've applied for grants and so forth, and a lot of people have donated time. This is from – these nice, handmade rails at the entrance, were contributed by a former alumni who is good with metal working, and he made these new rails for us – including a special emblem there built into it for Stevens-Buswell. We've been using contributions to install new wallboard on the main floor. We've done that throughout the main floor. Two-thirds – we've refurbished the floors. They look beautiful. The big room still needs to be done. In places, replaced – here, it's replaced – the wainscoting, which was throughout the school. In other places, it's been very nicely restored. What I'm going to do is just end with –in terms of what we're doing—looking at 2 rooms. This is the reception room as the studs are going in. Here it is before the walls –there's been some painting of the walls and refurbishing of the floors. This is only in progress here. Then we've got some artists' renderings, which is now done on the computer—how it would be envisioned. The bathroom is off to the side, and it's basically a reception area. That's one room that's envisioned. Then the other is this great big room, which was the addition, and it's composed of the two-rooms—2 classrooms. There was originally a partition, and it can be enlarged into one or divided into two. This is the artists' rendition and here it is as one big room. Here it is showing how the partition would close.

So, why do we need a variance? We've been making these efforts. We're finding the short-term lease is not really viable for long-term fund-raising because the contributors want to know that there's longevity in their investment. So, we've sought a long-term commitment from the Town, and they're willing to do it. In order to do it, with us taking more ownership, it was felt that we needed to get the variance. That's that. These are the five criteria for the variance. What I've done is I've highlighted the main items.

Variance is not Contrary to Public Interest.

Criteria one is that the variance would not be contrary to the public interest. My answer is granting the variance would not be contrary to the public interest, rather granting of the variance would be in the public interest by rehabilitating and maintaining the historic Stevens-Buswell School, as a much-needed Community Center that will open the building once again for public use. In the building's 100 years of existence, it has served as a school, the Town Offices, the Police Station, and home for the Municipal Court. The Community Center use is consistent with these past uses of the building. Granting the variance would not threaten public health, safety, nor welfare. The building will continue to be restored according to safety codes and standards, and the Community Center will be operated with safety in mind, including the scheduling of events.

The Spirit of the Ordinance.

The spirit of the ordinance is observed because the primary purpose of the ordinances are fulfilled. The purpose of the residential/agricultural zone is to preserve the town's rural character. Additionally, the purpose of the Historic District, a zoning overlay over the residential agricultural zone, is to preserve, protect, and enhance the historic and aesthetic character of Bedford's Town Center and surrounding residential areas. More specifically, item 3 of the Historic District, is to foster public appreciation of and civic pride in the beauty of the Town of Bedford and the accomplishments of its' past. And item 6, to promote the private and public use of the structures and areas within the Historic District of the Town of Bedford for the education, pleasure, prosperity and general welfare of the community. Basically, it's hard to imagine a better way to meet these intended purposes, than to reestablish for public use Bedford's first 2-room schoolhouse (later enlarged to 4 rooms) while maintaining the historic character of this 100-year-old building.

Granting the Variance Would Do Substantial Justice.

Criteria 3 – granting of the variance would do substantial justice. Granting the variance would do substantial justice by permitting the Bedford Historical Society and the Bedford Community as a whole, to continue with the effort to rehabilitate the building and provide a reasonable use as a Community Center. Much effort has already gone into the project. Hundreds of thousands of dollars and countless volunteer hours have been invested in the building's rehabilitation, while primary control of the property was under the Town of Bedford government. Bedford Historical Society was only being offered a short-term lease. What is needed now to make the project more viable is a long-term lease, likely 50 years and renewable, so that donors can feel more comfortable with the longevity of their investment. It is for this long-term commitment to a Community Center, that the variance is viewed as necessary. Substantial justice would be served by the restoration and continued public use as one of the historical and municipal institutional buildings located in our Historic District. Additionally, reopening this centrally located historic building for public use will enhance the character of Bedford both visually and by increasing a town-wide sense of community.

Values of Surrounding Properties Would Not be Diminished.

Criteria 4 – the values of the surrounding properties will not be diminished for the following reasons. The Stevens-Buswell School is an existing building located on an existing town parcel. Two former lots of record treated as one that already includes the Town Office Buildings and 3 Bedford Historical Society buildings, plus associated parking. The use of Stevens-Buswell as a Community Center is limited to uses that are contained within the existing building. The size is limited. Therefore, the occupancy would be limited. The renovation and use of the Stevens-Buswell School as a Community Center is not introducing any true, new use of the site, and is thus not going to impact materially or adversely the values of the few neighboring properties. In addition, the renovation and proposed use of the Stevens-Buswell School as a Community Center has been a matter of public knowledge for years now. Thus, any impact it might have on the surrounding property values has presumably already been anticipated by the market. The value of the surrounding properties should at least be maintained or as we believe, enhanced by the rehabilitating and maintaining the historic schoolhouse and promoting its public use in a manner fitting for its 100-year history as a community resource.

Denial of the Variance Would Result in an Unnecessary Hardship.

Criteria 5 – the literal enforcement would result in an unnecessary hardship. We feel that special considerations of the property distinguish it from other properties in the area. Denial of the variance would result in unnecessary hardship. Certainly, the property is very small size—whether defined by the

zero lot line that's being proposed for the lease or even the whole area from the school down to the point of land, is very small. It really precludes its use for meaningful agricultural land. It's less than an acre, and most of it either occupied by the building itself or the parking area. As for residential purposes, the design and layout of the building are simply not reasonably suitable for a residence. It was built as a public school. Moreover, as a separate lot, again, whether viewed as a narrow parcel that we'd be leasing, or the entire parcel, we assume that we'd not satisfy the zoning for a residence. The ordinance minimum lot size for a single-family dwelling really doesn't map—much less the requirements for a multi-family residence.

The Proposed Use is Reasonable.

Continuing, the purpose is a reasonable use because, a Community Center would be similar to 2 accepted uses within the residential agricultural zoning district. Educational institutions and churches are permitted within the district. A Community Center opened to all of Bedford's residents would hold similar roles, including educational and social programs, as compared to these accepted institutions. Although neither of these are what we could classically define as residential or agricultural uses, the point is that they are permitted by the ordinance. They are effectively defined for purposes of Bedford zoning ordinance as residential agricultural uses. Although use as a Community Center is not strictly an educational use, or a religious one, it is about as close as you can get by allowing any Bedford resident to take advantage of the programs and meeting space that the Town Community Center would have to offer in the Historic Bedford Center. The residential and agricultural zoning does not provide for new construction of Community Centers, but Stevens-Buswell School has a historical institution use, and a Community Center is consistent with past uses of the building and other nearby municipal and institutional buildings located in Bedford's Historical Center. In addition to the hardship resulting from the unique character of the property itself, denial of the variance would result in unnecessary hardship because its use as a Community Center is in the public interest. The proposed use is reasonable. The proposed use is aligned with the purpose of Bedford's residential agricultural zoning, with its Historic District overlay. The use of this historic structure as a Town Community Center promotes the education, pleasure, prosperity and general welfare of the community as described in the purpose of the Historic District overlay and it preserve the town's rural character as described in the purpose of the residential agricultural zone. That concludes my arguments.

Chair Morin said thank you. Questions from the Board? Mr. Casale questioned, Mr. Moore, what does the Bedford Historical Society envision for who and what you will be allowing for people to sublease this building? The reason I ask is for 2 reasons. One is noise emanating from the building at maybe unusual hours. It may not be good for the neighbors. Second, parking restrictions. There's no parking on the roads there and is the parking that's currently there—looks adequate, but I don't know as far as what your occupancy is going to be for the building. Again, what you envision. So, could you discuss that?

Mr. Moore answered. We're planning to schedule events basically, around the parking lot—the main parking lot is shared with the Town Office Buildings, so a lot of the larger events, we envision as being scheduled for when the Town Office is not being used and the parking lot is available. There's quite a few spaces there. There's between the two, including the strip along the back side, there are about 80 spaces right on the 2 lots. So, that's considerable. We also envision that there might be, if there's reasons for overspill—in our short-term lease, the Town agreed that we could probably coordinate with the Parks and Rec and maybe shuttle people over from the lot that's for the Town Commons. There's a lot for that. We're not planning on any unusual hours, too. We can be restrictive in that. Mr. Casale asked and how about events? So, currently the Old Town Hall hosts birthday parties, I don't know what else goes in there, but there's a neighborhood there. I would be concerned about particularly noise, so is

this something where if it's for the townspeople, do you envision allowing people to have a wedding reception there? That's a big enough room, and that could present a problem. Parking, you said, shouldn't be an issue, but I would be concerned about noise. Mr. Moore answered these are issues that we really feel that we can work with the Town and keep that under control, basically. Mr. Casale said so that's a possibility, though, that you would host weddings there? Mr. Moore said pardon? Mr. Casale repeated is it a possibility that you would host things such as weddings or dances there?

Ms. Susan Tufts Moore testimony: Hi. I'm Susan Tufts Moore and we do anticipate having weddings and receptions and things along those lines because the Community Center will be run by a non-profit organization without Town tax dollars at all, so we will have to have multiple sources of income in order to run the Community Center. So, we do anticipate having events. However, we're also planning to pretty much follow the model of the Bedford Town Hall with the way they run it and have events. Unlike the Town Hall, of course you can have events without being charged, and we will have to have events that are charging in order to sustain our Community Center. As for hours, for example, we have not finalized that. We'll be working on this as we go along. But we definitely want to have it open later—it's open in the evening for meetings, which will probably be on a planned basis. If the Men's Club, for example, wants to have a meeting on a Thursday night, they'll sign up for it, and we're not going to shoo people out at 8:30 as the library does. But we'll probably have an end time. Those meetings will be small, so I don't think the noise will be an issue. There's a huge need for meeting space in town, for organizations largely, which I anticipate will be a lot of the use of the building. Mr. Casale said okay, thank you.

Chair Morin asks anybody else have questions? Mr. Green added I would just say as to noise, it was a school. You had noise with kids having recess. So, having noise by the building is not anything new. At night, I know I remember being schooled by the presiding judge of the Bedford District Court who would hold his courtroom at night. It was a pretty-well attended public meeting dispensing justice. He schooled many a young attorney in how to properly handle a case. Chair Morin said alright, so no more questions from the Board, I will open it up to the public. Is there anyone who would like to speak either in favor or opposed to this item? Sir, go to the microphone. Please introduce yourself--name and address. Go ahead.

Mr. Dave Michaels testimony: My name is Dave Michaels. I'm a 25-year-resident of Bedford at 30 Maple Drive. I'd just like to speak in favor of this. We've been involved in a peripheral way both with contributions and early planning for this facility. We feel very strongly that Bedford really needs a Community Center to serve all of the public, especially old folks with snow on top like me. So, I'd just like to go on record as being completely in favor of this variance. Thank you.

Mr. Greg Zimmerman testimony: Greg Zimmerman, 86 Bedford Center Road. I live 2 doors down from the structure. I'm in complete favor of this variance and the use of the building. I'll also say that since the Historical Society has started their renovations and such on the building, it has improved visually significantly from what it was when we moved into town. So, I think it's been an improvement to the neighborhood and shouldn't detract from what was there previously. I'm in full favor of this, and I don't see the noise issue or anything being a problem. It's a pretty big space. It's an old building. It's fairly solid. I think that wouldn't be an issue with what's there. Thank you.

Chair Morin asks anybody else? Seeing none, any last comments before we go into deliberation?

Mr. Moore said submitted. Chair Morin said thank you.

MOTION: Mr. Gilbert moves the Zoning Board go into non-public input for deliberation. Mr. Green duly seconded the motion. Roll call vote taken – all in favor – unanimous. Motion carries.

Non-Public Deliberation.

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

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

Chair Morin said I think that building has been there longer than most of the houses around it. I think the houses altered the essential character, but, no I don't see this happening at all. I remember working in that building part time for a while so, very interesting. Board is in agreement.

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

Consensus of the Board is there is no evidence of this.

2. The spirit of the ordinance is observed because:

Chair Morin said I think it's being observed by the fact of, as they testified, number one being in the Historical District and trying to preserve a building, they've worked very hard in trying to preserve it as by the testimony and going by it. It looks like they've done a great job so far and hopefully keep it going. I think it definitely meets the spirit.

3. Granting the variance would do substantial justice because:

Mr. Green said it keeps a well-respected building going, and improvement in the future.

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

Board agrees there's no evidence of this.

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

Chair Morin said the big distinguishing piece is that it is Town property that will be leased out to a private organization, but it's still going to be used for basically helping the town. Board agrees.

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

(iii) 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 we've spoken of so far.

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

Chair Morin said I think it's very reasonable. Agreement from the Board.

(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. Gilbert moves that the Zoning Board of Adjustment grant a variance from Article III, Section 275-21, Attachment 2, Table 2, Table of Uses, to allow the operation of a Community Center within the R&A district where such is not allowed, location would be 18 N. Amherst Road, Lot 20-46, Zoned R&A per our deliberations. Ms. Jude duly seconded the motion. Roll call vote taken – all in favor - unanimous. Motion carried 5-0.

MOTION: Mr. Gilbert moves to go back into public input. Mr. Casale duly seconds the motion. Roll call vote taken – all in favor – unanimous. Motion carries.

Chair Morin says alright that is approved, gentlemen. All set. Mr. Moore and Mr. Kfoury say thank you.

Agenda Item Number 3 – New Hope Christian Fellowship – Application for Appeal from Administrative Decision of the Building Code Official to issue a Cease and Desist Order on October 15, 2021, for hosting gatherings prior to the issuance of a Certificate of Occupancy, in violation of the Town of Bedford Building Construction Ordinance Section 92-10 and the International Building Code Section 111.1, at 445 Rte 101, Lot 31-44-1, Zoned R&A.

Recusals - Mr. Gilbert said Mr. Chairman I'd like to recuse myself from the next item on the Agenda due to my involvement with the Town Council. Chair Morin said okay, thank you. Ms. Thomas said Mr. Chairman, I'd like to recuse myself from the next item on the Agenda due to my participation on the Town Council. Chair Morin said thank you. Alright, so we will have four Board members for this next item.

Chair Morin said what I'm going to do in this hearing is we're going to switch things up a little bit. Before I have the applicant speak, I'm going to have the Town Building Inspector speak to the Cease and Desist Order so we know what it is, and his testimony in that, and then we will have you guys—that way we have that in our mind and wknow what's going on and then you guys can come in with the appeal after.

Mr. Green said Mr. Chairman, I think there's another issue which is percolating which some people know about. The only thing I know about it is what I read in the Union Leader and that is this other action involving the same litigants against the same Town—different procedure. I would like to know why everything wasn't consolidated with the action in Superior Court. I understand the appeal procedure is to get a speedy hearing, speedier here than in Court. But if they are already in Superior Court, why was it not joined? Why is this not a forum non-convenience and should have been heard at the same time as the other items rather than having 2 strands? There are Constitutional issues that were raised. We have absolutely no authority on ruling on Constitutional issues. That is a matter that's exclusively in the Constitutional Court, the Superior Court. So, all of these issues are there and why wasn't it in one issue, in one case, before the Superior Court? That confuses me. Before we go there, I would like some explanation. Chair Morin said sure.

Attorney Autumn Kish of Wadleigh, Starr and Peters testimony: I'm Autumn Kish from Wadleigh, Starr and Peters for New Hope Christian Fellowship. In order to preserve our appeal, we had to file within 30 days, and according to statute, this is the procedure that we'd go through.

Mr. Green said no, I was asking—you're already in Superior Court—why wasn't it joined at that point? Atty. Kish answered we have to do it through the ZBA through the statute for an Administrative Appeal. So, based on the statute, we have the separate Superior Court case, but in order to preserve our appeal... Mr. Green asked, what is the Superior Court case? Atty. Kish answered well it's not relevant to what we're here tonight. Mr. Green said it's relevant to me, and if I don't know about it, then I don't like being confused. Chair Morin said let me ask a simple question. Just for relevance-wise. There's probably a whole bunch of things involved, but is this specific Cease and Desist issue part of that? Atty. Kish asked is part of the other case? Chair Morin answered yes, in Court. Atty. Kish answered yes. Chair Morin said so, I'm a little confused now, because, and my confusion is so the appeal process is through us, but you went to the Court with it. So, you bypassed us to go to the Court first, and now you're coming to us now after the fact? Atty. Kish said well, first there are other tax issues that were raised that were... Chair Morin said the other pieces are separate. I asked specifically to this piece. Atty. Kish said we're going for the appeal of an administrative officer, and according to statute, we go to the ZBA for the interpretation of that. We also, in a separate realm, have that Court case. Mr. Green said but not if this body is deemed to be a non-convenient forum. If this issue is already there, you could simply have asked that, because anything we decide can be appealed right to the Superior Court. So, why wasn't their joinder of all the issues so in the sense of judicial economy, you only have one hearing—not multiple hearings and maybe 2 Superior Court hearings on the same issue. Which, to me, seems like a real waste of time.

Attorney Michael Tierney testimony: Michael Tierney, I'm a partner here with Autumn Kish. I think the misunderstanding here, Mr. Green, is that there's 2 issues going on which are intertwined. One is - what the meaning of church is under the Bedford Zoning Ordinance, and whether the Town has interpreted that meaning of church in an unconstitutional fashion. The Zoning Board can't interpret church in an unconstitutional fashion, and the Court can decree that the Town violated the church's constitutional rights by doing so. But this Board right here has the responsibility and the opportunity to decide what the meaning is in the Bedford Zoning Ordinance of certain terms. In this particular case, the issue is - what is the meaning of church. Does that answer your question?

Mr. Green said once you say, what is the meaning of church, you're getting into an issue that we have no authority over. Chair Morin said I'm going to jump right into that too. We're here--everything I have is a Cease and Desist Order. Atty. Tierney said correct. Chair Morin continued; I still want to get the Town Representative up here to give us specifically what their information is on this. But that I can tell, there's nothing in here concerning a church. It's concerning occupancy. Atty. Tierney said so, if you'd allow Atty. Kish to make her presentation, we'd start with the Occupancy Permit that was granted to this particular property in 1994. Chair Morin said I don't want to start the—you're bringing up a specific church issue. Atty. Tierney said that is the entire issue for the Cease and Desist Order. The Town ordered the church not to have assembly because it only had an Occupancy Permit for residential use—not religious use. Chair Morin said okay. Atty. Tierney said so that is the issue. Chair Morin said we're going to follow through with this. Because it's just going to keep going back and forth and tied up, so let's just jump into it so we can get the 2 different sides and then we'll make that decision of whichever way it goes. So, first we're going to have the Town Representative step up and speak to us on the Order that was presented.

Matthew Lavoie, Code Officer for the Town of Bedford testimony: My name is Matthew Lavoie. I'm the Code Official for the Town of Bedford. I assume everybody at the Board level has a copy of the Cease and Desist letter? Board affirms. Mr. Lavoie continues Cease and Desist letter was issued in

October of this year after it was found out that Mr. Goedecke was using and occupying the existing structure, the dwelling if you will, without a certificate of occupancy. As you can see from the Cease and Desist, the building ordinance 92-10, no person shall use or permit the use for any purpose of any building, structure or premise or part thereof hereafter erected, relocated, altered, repaired, converted or extended until a Certificate of Occupancy or a building final has been issued by the building official or his designee. The key word in that definition is converted. You're converting an existing dwelling to a non-residential use. For the building code side of things, it's the same, sort-of definition, use and occupancy. A building and structure shall not be used or occupied and a change in the existing use or occupancy classification of a building or structure or portion thereof shall not be made until the building official has issued a Certificate of Occupancy therefore as provided therein. Issuance of a Certificate of Occupancy shall not be construed as an approval of a violation of the provisions of this code or any other ordinances of the jurisdiction. So, in a nutshell, the existing dwelling, you know, it may have an existing Occupancy Permit for its residential use, but at this time, and under its planning approval, there is no more residential use for that property. It's completely different set of rules. It's completely different building code. Residentially to commercially—the use that was applied for is what we call in the building code an A3—assembly use, A3, it's a place of worship. That's how the building code defines it. Regardless of the number of people inside, the complete building, including the existing dwelling, needs to be converted for that commercial use. Which means exit signs, emergency lights, proper amount of exit doors, a path to the right of way, included in that is the site plan construction, which means the parking lot has to be completed—streetlights, parking lights, whatever they are, stripes—to allow emergency personnel to get to that building in case of an emergency. Regardless of the addition, the addition may seem separate because you'll see in their application as they present, that the addition is separate to the dwelling. They tore down a garage, which has a separation wall to the existing dwelling, to install this 470 square foot place of assembly, let's say, or worship. Anyway, it is separate, but it shares entrances. The accessible entrance will be through this new building, this new part of the building, let's say. That means that, at this time, there is no accessible entrance to the existing dwelling, which would be required under Federal Law for any kind of use such as this. Does anybody have any questions for me?

Ms. Hebert said Matt, the plans are on the open folder there if you want to open them up.

Mr. Casale said Mr. Lavoie, a couple things, number one: as far as you're aware, maybe this is for Planning, there's no religious exemption for the codes—whether it be State of New Hampshire or Federal? Mr. Lavoie said no. Mr. Casale continued, can you refer to your summary, I'll call it a rebuttal letter, on December 10? Do you have that with you? Mr. Lavoie said yes. Mr. Casale said, it states the Planning approval did also did not allow for occupancy prior to construction of the site plan. What are you referring to in that sentence? Mr. Lavoie said so, occupancy is not permitted until the site plan is constructed. So, the site plan is constructed, accepted by the Town. Landscape bonds are in place prior to a certificate of occupancy. Mr. Casale said okay. Can you also—just above that paragraph is a little confusing to me. Mr. Lavoie said which one's that? I'm sorry. Mr. Casale answered right above the, oh, I'm sorry. I thought I referred to the particular sentence in what I was just talking about. So, if you go down that first paragraph and there's an indentation on the right where it says was constructed. Then after that, Mr. Goedecke met with the —can you look through that and kinda dumb that down for me? I couldn't understand that. Mr. Lavoie said so, right, Mr. Goedecke, he originally applied for 2 permits. Phase I and a Phase II. I think he started talking to me about this in maybe February or January of this year. He assumed that he could get occupancy of the existing dwelling prior to construction of the sanctuary. But the Planning approval did not allow that. It did not allow for a phased approval, right? So, a phased approval being occupancy of the existing dwelling while the site and the sanctuary is

constructed. And, at the time, you know, talking about accessible entrances and that sort of thing, accessible rest rooms, those items would have to be constructed inside that existing dwelling. Mr. Goedecke decided not to do that because he'd be essentially doing it twice with the addition. With the sanctuary being constructed, that's going to take care of all his ADA access issues. So, I mean, it made sense to him, I guess, to not pursue that any further, and never pursued that with the Planning Department, I don't believe. He obtained his permit in August of this year.

Chair Morin [after confirming there were no further questions with the Board] said thank you. Alright, folks. Go ahead.

Attorney Kish testimony: I'm first going to read the narrative that we submitted so it's in the record. The Cease and Desist Order is invalid and does not comply with RSA 676:17a1. The Order does not state the facts constituting the violation, including the date of any inspection from which these facts were ascertained. The order, additionally, does not state the corrective action required, including a reasonable time within which such action shall be taken to bring the property into compliance. Further, requiring a church to obtain approvals based on the religious nature of the gathering, is a violation of the First Amendment of the Federal Constitution, Part 1, Article 5 of the New Hampshire Constitution, 42 U.S.C, 2000cc, the Equal Protection Guarantee of the New Hampshire Constitution and other laws. The Town has imposed burdens prohibiting the use of the living room in the preexisting building for Bible Studies and Religious gatherings. This Order unlawfully prohibits 10 people from gathering in the living room in the preexisting building for Bible Study and Religious Services. When 10 people could gather in any other living room across the town for non-religious purposes. Finally, pursuant to International Building Code 303.1.2, an assembly of fewer than 50 people is not classified as an assembly, so there is no change of use. Using a living room for 10 people for non-religious reasons, or 10 people for religious reasons, does not constitute a change of use requiring an Occupancy Permit. Therefore, the Town's unlawful Cease and Desist Order cannot be enforced. The Town Building Inspector unlawfully issued a Cease and Desist Order on the basis that the resident at 445 Route 101 does not have an Occupancy Permit, when it does have an Occupancy Permit and has had one since 1994. And here it is. We understand that the Building Inspector thinks that this is not a residence, but a church under the Bedford Zoning Ordinance. This leads to the question: What is a church under the Bedford Zoning Ordinance? Does it mean 2 people gathering to pray and worship? Ten people? Twenty people? The Town of Bedford does not define what a church is anywhere in the Zoning Ordinances. Bedford Ordinance 275:6 definition is silent. There is no definition for what a church is and nowhere else is a church defined. The word church can mean different things in different contexts. Tonight, we are concerned only with what church means in the context of the Bedford Zoning Ordinance. It is constitutionally impermissible to define what a church is based solely on the religious nature of the speech or the religious purpose of the gathering. The Town cannot regulate and shut down New Hope Christian Fellowship because 2 to 10 people gathering for a religious purpose is different than 2 to 10 people gathering for a residential purpose. Classifying a 2 to 10 Bible Study in a preexisting residence as a church leads to absurd results. Here is a picture of the preexisting living room. This is a residence. The only construction that has occurred is the cross set up in the middle of the room. This set up would be no different from a book club in a residence. A baby shower, a Lion's Club meeting, Cub Scouts, Political gatherings... recently I attended a Holiday party in Bedford that was 19 people. Family members can worship and pray in a residential building in Bedford, but here New Hope Christian Fellowship is prevented through the unlawful and unconstitutional Cease and Desist Order issued October 15, 2021. The Town's Cease and Desist Order determining 2 or more people cannot meet for religious services in the preexisting residential room, is impermissible and not a valid interpretation of the Bedford Zoning Ordinance. The Cease and Desist Order is solely based on the Town's assertion that the use of a

residence for Bible Study or worship implicates a change of use. A change of use may occur when 50 or more people gather onsite, but not when the gathering is for religious instead of residential purposes. We are not asserting that the Town cannot impose another constitutionally permissible way to define a church. The Town is able to define a church or assembly by the number of people gathering. This is a neutral and objective definition, however banning the use of a preexisting residence based on the religious purpose, is not a correct interpretation of the Bedford Zoning Ordinance. To define what a church is in Bedford, a correct interpretation is to look to the building code and state statute. That is a neutral and allowable definition of what a church is. Here, they're looking to the number of people. It would also be an allowable classification to look at square footage. Rather than the content of the speech or the religious purpose of the speech. IBC303.1.2 determines that fewer than 50 people is not an assembly. Therefore, no change of use is implicated here in the preexisting residence. Further, RSA 155:17 Definitions; Places of Assembly, determines that this number is 100. Here 2 to 10 people were meeting for Bible Study or worship in the preexisting residence. New Hope has filed the necessary permits to build the addition that can have 50 people. This is reflected in the filing and what the conditions apply to. That addition does not have an Occupancy Permit and will not be used until it does. According to the applicable ordinances, a church in Bedford is a gathering of 50 or more people. Any assertion that New Hope does not have a valid Occupancy Permit is incorrect. As you've seen before, it has had one since June 23, 1994. This is a residential single family Occupancy Permit showing that the property complied with all requirements of the Zoning Ordinance and Building Code. The Certificate of Occupancy reflects that the preexisting building is safe for use. This Occupancy Permit shows that the existing residence can be used and does not need site approval because the residence has it. There is no reason that the Town should be prohibiting the church from using the existing living room. This is an incorrect interpretation of the Bedford Zoning Ordinances. Further, New Hope has always planned to use the preexisting building for residential use. This was discussed multiple times, going back over a year. More recently as exhibited by New Hope's architect, Alan Yeadon, in an October 13th email to the Town Code Official. This email explains that the ultimate use for the existing residence would be for a Pastor's residence. Cease and Desist Orders are not issued when someone adds a garage, builds an addition to a commercial entity, or builds an in-law's apartment. None of these scenarios require a separate Certificate of Occupancy, or lead to a complete shutdown of the preexisting building under the Bedford Zoning Ordinances. Here the church is required to stop all use in the existing residence while a separate addition with separate exterior entrances is being built. To go to the point of the phases of the permit, Phase I was never discarded. It's still active as exhibited by the Town's own website that shows that the permit is pending and active. I have exhibits if anyone wants to see those of the active Phase I. The preexisting building is in the same condition since it received the Occupancy Permit. Any required codes have and will be complied with. The new addition has received the approved building permit and will comply with the required codes. There will be a new ramp, as you heard, on the new addition and an accessible bathroom, which will connect to the preexisting building. For the 50 people threshold, there will be a handicapped-accessible bathroom. The church's not aware of any legitimate concerns that would need to be addressed in the Cease and Desist Order. The Town cannot regulate based on the religious use of the property. The Town can regulate based on neutral requirements such as the number of people and size of the building. It cannot regulate based on religious content. I'm available for any questions or wait until the approaching members of the public.

Chair Morin said Len, do you have anything? Mr. Green said yes, I still have the problem... you talk about the church, and this is not the body that can determine whether there is any special exception for the church as you present it. You may have legitimate constitutional arguments, but those are not properly addressed to us. So, every time you raise the issue of church, it creates a problem that we're not the body where you have to get that litigated. That's Superior Court, and perhaps, ultimately, an

Appeal to the Supreme Court. We are only quasi-judicial. We are not judicial. We are not a constitutionally-created body, which would have the authority to listen to church/state arguments and restrictions. That's one problem. The other problem, I have a rollaway there, so I have a vested interest in is anything that's being built disabled and friendly? You never realize that until suddenly you need a rollaway or a wheelchair, a cane. But, from what I'm gathering from the testimony, at present, and in a private home you don't need to be ADA compliant. But if you're talking about a building that's going to be open to the public, for whatever meeting, don't you, by definition, have to be ADA compliant? You're telling me you're not until the new building is built, which creates a whole different argument on the Americans with Disabilities Act. Could you please help me out?

Atty. Tierney answered, I'll address both questions, if you don't mind. So, I'll start in the backwards order. Number one, there's nothing in the Cease and Desist Order about the church violating the ADA, and the church has not violated the ADA, not for meetings of 10 people. And it won't be violating the ADA when its new building is built, and it can have 50 people.

Mr. Green asked but what happens if 11 people show up? Atty. Tierney answered it doesn't matter if there's 49 people, which there have never been 49 people gathering there. But it does not matter. The church has always complied with the ADA. The ADA isn't cited as the basis for the Cease and Desist Order. The basis for the Cease and Desist Order is that the Town has interpreted this to be church use and not residential use.

Chair Morin said I'm going to ask you this question. Can you show me on the Cease and Desist Order where it says church use? Atty. Tierney said I can show you up on this ... Occupancy Permit, can you bring that up? The Occupancy Permit that was issued in June... Chair Morin said I'm asking you specifically on this form. Where does it say it? What you're saying. Atty. Tierney said there are no facts on the Cease and Desist Order, which is why it's unlawful under 676:17. It says that there... Chair Morin said well this is what we're talking about. And you just told me, or you told us, that it's a church issue, and that's what you're fighting. But I don't see that on here. Atty. Tierney said we already heard from Mr. Lavoie that the Town Building Inspector determined that this is a church use, which is an assembly use, and not a residential use. Chair Morin said okay. So, I'll ask you a quick ... I've got a couple quick questions. So, just to get it all on record, did the church go to the Town Planning Board for a change in use from a home to a church on this property? Atty. Tierney said it went to the Town Planning Board in October, I believe, of 2020, for the building of an addition. That the entire property would be used for church purposes, including the Pastor's residence and the addition that would have 50 people. Chair Morin asked so it was never brought up in the minutes of that hearing that this was all going to be part of a church? Or whatever the use was, change of use? Atty. Tierney said the property is being used by a church for church purposes, yes. Chair Morin asked who owns the property? Atty. Tierney answered the church, New Hope Christian Fellowship. Chair Morin said okay. Number two: did the church go to the Town for a permit to start construction for the church? Or reconstruction of this area? Atty. Tierney asked would you please define church for your question? Chair Morin asked, did the owner of the property go to the Town for a permit to start doing reconstruction of this property? Atty. Tierney answered yes. Chair Morin said okay. So, the church owns the property. The church got the permits for the work of the property, for the owner, so I'll just say owner. The Planning Board approved a change of use for the property. So, under what I can see here, for the pieces that the Town Inspector brought up, meets the criteria of these code issues. Atty. Tierney asked could you please tell me what code issues in the Cease and Desist Order you're saying are being alleged in the violation? Chair Morin answered you didn't have a certificate of occupancy for the church, the owners, the new owners of the property, to utilize that area, until construction was completed. Atty. Tierney asserted we have a Certificate of

Occupancy. It was granted on June 30, 1994. Chair Morin asked is that the church's name on it? No. Atty. Tierney said you don't need.... Chair Morin said right, but I just asked you 2 specific questions. You went for a change of use to the Planning Board. Then you got building permits as the owners to change the property per the plans that were submitted. Atty. Tierney said for the building of an addition. Chair Morin asked, does it just speak of the addition in the whole Planning Board thing, or does it speak of other things? Atty. Tierney said yes. The plans submitted with the Planning Board were the building of an addition. There was no submission to the Planning Board that a cross was going to be hung up in the existing living room. The existing living room is an existing living room that has been there for many years. Chair Morin said okay.

Mr. Casale asked, may I ask a question—follow up to that? Chair Morin said sure. Mr. Casale asked, attorney, do you have the Planning Board minutes with you? Atty. Tierney said yes. Mr. Casale said so if you could refer to those... I didn't put the exact page, but prior to page 9, Mr. Foisie makes a comment on Page 8, do you have that in front of you? Atty. Tierney said I'm looking at Page 8 now, yes. Mr. Casale continued, okay. So, about halfway down, Mr. Foisie blah blah blah, the New Hope Christian Fellowship is looking to change the use of an existing 2,500 square foot single-family dwelling unit to a place of worship. Can you tell me what in that would allow the Planning Board to think other than you want to change the use, and it is different from the prior home Occupancy Permit? Atty. Tierney said sure. So, in that 2,500 square feet, you have what was a preexisting two-car garage of approximately 400 square feet. When you add that with another 480 square feet, you have approximately 800 square feet, which is a new assembly building. It's a new assembly building that's going to be used to house up to 50 people. Therefore, pursuant to the IBC definition of an assembly, once you're bringing more than 50 people onto the site, it becomes a change of use. Mr. Casale said so different from the Town of Bedford granting a home Occupancy Permit for a single-family home, correct? It's different. Atty. Tierney said it's similar to when you put another unit onto a single family home such as an ADU. You can't start using the ADU until you get the Occupancy Permit for the ADU, but you're not prohibited from using the existing preexisting single family home. Mr. Casale said okay, thank you. I just wanted to refer to your question about whether it was mentioned. Chair Morin said okay. Elizabeth, do you have anything? Ms. Jude said I do have one question. When you speak to the 2-10 gathering that occurs in what you're claiming is now a single-family dwelling home, is there a collection of any monetary funds during those gatherings? Atty. Tierney answered I'm not sure how that actually happens or how that's relevant, frankly. Ms. Jude continued just because the only reason I'm asking is because you referred to it as something similar as to someone having a baby shower, or a holiday party. I wouldn't correlate that as a place where I would have monetary funds collected. Atty. Tierney said I have six brothers and sister and when we threw my mother a birthday party, I did have them chip in for funds, so I don't think that's entirely outside. Maybe I'm a little bit of a cheapskate, there, but, yah. Atty. Kish said you could also think of Tupperware parties and MLM's similar. Atty. Tierney said there's all sorts of uses in which one could be at a home and there might be a collection for something. The collection for something doesn't lead to the change of use. It's the number of people that leads to the change of use pursuant to both New Hampshire state statute at 100 or the IBC at 50. Whether the Town of Bedford defines church to be at 50 pursuant to the IBC or 100 pursuant to state statute, is your decision as the Zoning Board as to how to define an undefined term in the Zoning Ordinance.

Ms. Jude said I don't have any further questions. Chair Morin asked is there anything else from the Board? Mr. Casale said I have a number of them. Again, referring back to the Planning Board Minutes, October 12, 2020, this is a follow-up to Elizabeth's comments about the 10 people. So, the 10 people keeps getting thrown out, but some of the past testimony seems to be very inconsistent with that. So, referring to page 9, three paragraphs down, Mr. Carr, "continued with respect to the use of the

property, I think the church has used about 3 gallons per day per patron on a given day. And I think that they have about a maximum of 40 participants in the church right now.” Now this is October 12, 2020, “so we are well below the 600.” Two questions: one is, is he referring to the use of the property that we’re discussing right now, or the prior commercial property? Atty. Tierney said there is no commercial property. Mr. Casale said there was prior, though, correct? There was another church. Atty. Tierney said there was another church at 445 Route 101? Mr. Casale said I’m not sure the address, but it identified it as--it was located in commercial property, I think on 101. Chair Morin clarified he’s talking about the church prior there. Atty. Tierney said oh, renting a space. I’m sorry, okay, yup, yup. Mr. Casale said right. So, I don’t know whether this is talking about that or is it talking about the property that we’re presently speaking of, in which case you’re talking about 40 people and not 10. That’s one question. And if it was referring to the prior commercial property, the 10 persons figure is very suspect to me that you take a church that had maybe 40, 50 people and then all of a sudden say hey, sorry we can’t accommodate you. We can only accommodate 10. Can you address that? Atty. Tierney said sure. So, first, let me address that the 10 number was for a Bible Study which is not being allowed. The Sunday Services is a higher number. It has never exceeded 50. My understanding is that it has been in the 20’s on some occasions. And there’s a good 10 people or so, like in churches all across the state, that due to the pandemic, are watching from home. So, while, prior to the pandemic, there were 10 people who were there with 20 people or maybe 35 or 40 people. And 40 people was the maximum is what I understand from Mr. Carr’s comment. There has been a contingent of the church that has been participating remotely while others are participating in person. Whether people choose to participate in person or remotely, is a choice of the individual, not a choice of the government at this time. Though at some point there was a stay-at-home order, but right now it’s the choice of the individual. Mr. Casale said okay. And will you agree that our charge today is if this code has been incorrectly interpreted? That we are able to adjust that, amend it, you’ll agree to that, correct? Atty. Tierney answered correct. Mr. Casale said okay. Can you tell me what, and I don’t need to read it. Can you tell me what, in the Cease and Desist Order, which directly refers to 2 codes: one being the Bedford Town Code 92-10 and then I believe the Federal Code 111.1. Can you tell me what is not clear and concise about those 2 codes that, first of all, can you tell me where in there it says anything about a church? Second, do you find anything that’s not clear or very concise about those 2 regulations?

Atty. Tierney said so the cited regulations, okay, state that when you have a new use, or if you have new construction, you can’t use that new use or new construction until you have that Occupancy Permit. There’s no disagreement with that. The disagreement lies with that it doesn’t become a new use until it crosses the 50-person threshold. It doesn’t become a new use in a preexisting building. So, we can’t use it for more than 50. We can’t use the newly-constructed building. Mr. Casale continued but would you not agree that you’re going before the Planning Board and asking for a permit for, what you, an applicant, I think Mr. Goedecke, on August 18, 2021, Permit for a Remodel and Building an Addition. So, you would state basically well it’s just building an addition for the church. But particularly it states a remodel. So, can you tell me how those, going before the Planning Board and asking for a permit from the Town, does not indicate to everybody involved that this is a change of use? Otherwise, you wouldn’t have done it, right? What was the need for you? Atty. Tierney answered because we would be using 50 or more people on the site once that addition is completed. The addition, okay, does involve the demolition of a prior two-car garage. It does involve the taking out of that two-car garage and adding on another 400 square feet, you know, 800, 900 square feet for an assembly room capable of holding 50 people. Mr. Casale questioned so, getting back to the Town of Bedford Code and the International Code, is there anything in there that you see that is not clear, or something that this Board would have to, that we could state, well maybe the Code Enforcement Officer didn’t interpret this correctly... it seems very clear and concise to me. What part of that is not? Atty. Tierney

asked where did we change use, sir? That's what's not clear. Where did we change use? If the Town of Bedford is interpreting 2 people meeting for religious purposes to be a change of use or 10 people or even 20. Mr. Casale said I'm not so sure about that. Again, you applied to the Planning Board for a change of use, so how is that not a change of use? That was your request. Atty. Tierney continued a change of use with our addition to have 50 or more people. Mr. Casale said okay. Chair Morin said actually, let me read you exactly what the Motion was, and if you have the, you can read it right from page 12, the bottom section. Mr. Sawyer from the Planning Board granted the final approval on a site plan to convert a single-family residence to a church at 445 NH Route 101. Atty. Tierney asked what is your question? Chair Morin stated that's change of use. It's no longer, it's now a church. Atty. Tierney said and there is discussion throughout the Planning Board, okay, how there will be 50 people. Matter of fact the Planning Board puts in the specific condition that there will be not more than 50 people. There is construction to accommodate 50 people. If we were here... Chair Morin said and again, I'm looking at this, sir. It's pretty clear. I'm having a hard time understanding your, your, where you're going, because it's pretty clear in the motion what was approved by the Planning Board that it was a change of use from a house to a church, and. Atty. Tierney said your interpretation that we became a church, as defined under the Bedford Zoning Ordinance, on October 12, 2020, is an erroneous interpretation because you don't change to become an assembly until you have 50 or more people. And we are not at the point that we have 50 or more people. If you had a Cease and Desist Order saying I went by and I saw there were 75, 100, 150 people, what have you, okay, and that you can't have 100 people on the property until the new addition is complete and you have an Occupancy Permit for the new addition. We wouldn't be here. But what happened is that the Cease and Desist Order prevented, stopped all use of a preexisting residence for religious purposes, okay. There is... Chair Morin said I'm going to stop you on that one, because it doesn't say that. I'm going to look at it as, okay, it stopped the use of the property due to a lack of a Certificate of Occupancy, due to the fact that provisions of the codes and things were not all checked on and approved. That's what I'm seeing. Atty. Tierney asked and where are you seeing that there's any code other than change of use to a religious use? Chair Morin answered sir, I'm going by what I just said, the Cease and Desist Order. You read it one way. I read it one way. I'm guessing we're going to have to agree to disagree on how we interpret it. Mr. Green said let me understand. Is the practical matter, say for argument's sake, we turn you down. You then appeal to the Superior Court, correct? Atty. Tierney said we would have to move for rehearing before we could appeal to the Superior Court. Mr. Green said okay. You move for a rehearing. You appeal to the Superior Court, and it goes back to Judge Nicolosi, who's already hearing the Planning Board issue. That was my whole thing, is that this should've all been heard by her with all the ramifications in the first place. Atty. Tierney said respectfully the ZBA, okay, does have the ability to prevent the Town from continuing in an unconstitutional action. Mr. Green said stop you right there. We have no constitutional authority. And say, for example, you have a case that occurs on the Manchester/Auburn line. Both Hillsborough and Rockingham County have jurisdiction. One county will say it's the same issue, forum non-convenience, judges in Hillsborough handle it or judges in Rockingham handle it. So, you don't waste judicial time going up multiple sources when they can be all consolidated. Why is this not a perfect case for that? Atty. Tierney answered the ZBA, being a quasi-judicial body, or the Superior Court being a state judicial body, or a Federal Court being a federal judicial body, okay, they all have the obligation to apply what is before them in a constitutional manner. It does not matter. Mr. Green said but not constitutional matters. That we don't have the authority to decide. That's within the court system, not the Zoning Board. We are not a constitutional court. Atty. Tierney said incorrect if you're suggesting that you can interpret the Bedford Zoning Ordinance in an unconstitutional manner. You cannot interpret the Bedford Zoning Ordinance in an unconstitutional manner. Mr. Green said how would one of ...

Chair Morin said alright, I'm going to stop that because it's just going to go back and forth all night. We all have work to do tomorrow also in our private lives, so. Alright, any other questions up here before I open it up? Alright. So, I'm going to open it up to the public to give some feedback. I'm going to ask that you stay very specific to the Cease and Desist Order and the Appeal. I'm going to ask that if folks are going to speak, please, if you're going to come up, have different information. Telling us the same thing 20 times doesn't help. We will take your information. We're taking notes. We'll utilize it in deliberation. But, if 20 people are going to come up and say the same thing, that is taking time that we could be utilizing for deliberation also. So, now I'll open it up. If you could step to a microphone, introduce yourself, give us your address and go ahead with your comment.

Mr. Alan Goedecke testimony: My name is Alan Goedecke. I guess I'm the guy that got this mess going. But it doesn't need to be that way. I'd like to introduce my new Pastor, Will Fortier, another member of the community. He took over basically this week. Our former Pastor, Robert Kruger, who was a tireless worker on this project, had to move to North Carolina to take care of aging parents. It was a very sad weekend for us. The main thing that I see that you can rule on is the unequal treatment we've gotten. Because of our faith, and expression of it this church, we're not being treated like any other entity in this town. If you change the use of your residence by adding an in-law apartment, nobody throws you out of your house. If you build a commercial addition, perhaps a warehouse, nobody throws you out of the building and says you cannot operate your business while you're building the warehouse. We're building a sanctuary. It joins the old building with one door, which isn't quite wide enough to let a wheelchair go through. It's got to be altered. We know that. But you can't alter anything until you get a building permit, which we did. We had the site plan first. That is required. Because we need to have parking, if we're going to have a sanctuary that's bigger than what is there. So, we did all that. Spent \$40,000-- almost \$50,000 on site planning work. This is a congregation of about 12 to 14 families. Think of what that costs us. That's just the site planning—not building it. We spent \$120,000 building this parking lot that's very near completion at this point. All of a sudden, we're told we can't meet in our church anymore. Have there been any complaints of a backup of traffic on 101? Have there been any complaints from any of our neighbors that we made too much noise when we were doing our construction? There are no complaints. There are no safety issues. We have been very careful to have the church open and accessible. Granted, it's not a smooth path. You might have to step over a couple of rocks or maybe a little bit of a gully, but it's safe. And we've had people up in their 70's, I'm 77, go in there all the time. Plus, we've had 1,650 volunteer hours from our congregation and friends of the church. No one has had any accidents. Thank God. Because some of the work we did was pretty dangerous. But we don't have people around when there's construction equipment, like the backhoes and things like that, running. Just the workers that are very familiar with what's going on. So, we get all of this. We're just asking to be able to meet like we have been for a year and a half. The Town knew about it from day one, before we started any construction. I'd like to know when did our residential permit, that we were operating under, change? If we bought that building and rented it out, nobody would have to get a new residential permit. We didn't change anything. We just tried to decide how best we could develop the land to have a good church that could serve this community. And we get slapped in the face, for working our butts off trying to get this built so that we-- can have the handicapped access, the handicapped bathroom. We've done a lot. And I don't think that you're treating us equally. That's what the crux of this thing is about. We're not being treated equal. Everybody else can build and stay in their house or their business. Why are we different? Thank you.

Mr. David Riccard testimony: My name is David Riccard, 99 Liberty Hill Road. I think we're all here today because of something that I did. Back in the Spring, before all the town meetings and before the Planning Board, before anything. I'm a member of the church, and I said to Alan and Pastor and

everyone that it would be best to be up front with the Town of Bedford as to what the—I'll use the word—the church is doing. Now, Alan has a vision that the church is going to be a church, a huge church. We may get there someday, but right now, we're a tiny congregation. We're just trying to abide by the rules and get through the process to the point where we can sustain ourselves and serve the community at that location. Alan mentioned what has been spent on the church. In the meantime, he and I are on board at the New Hampshire—New England Center for Expository Preaching. In the past 2 years, we've given out \$50,000 in books, to pastors across New England. That, we're trying to contribute. We're trying to set up a system here which contributes to the Town of Bedford. I've said my 2 cents. Thank you.

Mr. Kevin Fortier testimony: Hi, my name is Kevin Fortier. I live at 3 Liberty Hill Road. And I am not a member of New Hope Christian Fellowship. I have, however, had the pleasure of visiting them for their services, including in the building in question. And I think as I listened, and I am not a lawyer, I don't even like watching them on TV. But as I listened back and forth, there were testimonies, there were some very specific legalese things that were given. What I heard here was very different from what I've experienced in visiting that address. What they have is a residence where a congregation meets for the purpose of worship and study. We have done that in our own home. We have had people come there and come for worship and study. And no one says boo. The difference is that they have this change of use. Now, I understand based on what you read. I probably would interpret things exactly the same way that you do. That this is a change of use for the entire property... for the entirety of this structure. The reality is that it is a change of use for the garage. Whereas the garage has been removed and this is being, this is being added on to what is an existing, unchanged residential structure. Which would...is... ideally suited for a small congregation. And, in the times that I have been there, I think this past weekend in the going away service for the previous Pastor, there were, there might have been 30 people there? That was with guests and friends coming to say hello to the Pastor and say goodbye. This was a—this was not at that building site. It was a group gathering together just to say goodbye. This is not a large congregation today. Their hope is to have an impact on Bedford that is positive. Have an impact on Bedford that is meaningful. But, right now, today, because of this Cease and Desist Order, and because of these contrasting interpretations and difficult to understand testimonies that I heard, I think that's being thwarted. So, I would actually ask the Board to consider looking at this from the standpoint of the garage is being, has been, being offered up for a new use. But that the residence is still standing and is an ideal place for a small group to come together. Thank you.

Pastor Will Fortier testimony: Alan introduced me earlier, but I'll say it again. My name's Will Fortier. I live at 21 Winchester Lane, Bedford, NH. And I am the Pastor of New Hope Christian Fellowship. At least I have been for the last week. What a joyous thing to begin my tenure. I actually will, I've written down my thoughts and I will surprise the members of my congregation here by being brief. Honestly, all I want to say is that I have nothing to add to what Atty. Tierney and Atty. Kish have said in the defense of our appeal. I wanted to, however, thank all of you on the Board who will be voting on this, first of all for your questions and your examination of our appeal. You are very clearly doing everything you can to get to the core of what's going on here. As is what you've been tasked to do on this Board. So, I thank you for that. I believe Atty. Tierney and Atty. Kish have spoken well on our appeal. And I believe that they are correct for the reasons they've said and the reasons that have been echoed from the others who have spoken. However, I'm not the one who has to cast the vote. That is for you guys to do. Our hope, as New Hope Christian Fellowship, first and foremost, is to serve God and to serve the Town of Bedford, where we live or where we operate and where we worship. Part of that service is rendering unto God what is God's and unto Caesar what is Caesar's, or in this case, unto Bedford what is Bedford's. And if this Board decides that our meeting on the property that has been discussed ad nauseum here, is

against the letter of the law—I'll say the spirit of the law of the Town of Bedford, then we render unto Caesar what is Caesar's. Regardless of your ruling today, let me say and speak for my congregation by saying that we look forward to working with the governing body that you are a part of in service of this Town of Bedford. I believe that our goals in that light are aligned, and I don't want this argument, and indeed it is an argument and it should be because there's conflicting viewpoints that we're trying to come to what the truth of the matter is. But I don't want this argument to come between us cooperating and participating to the service of the town in the future. So, I thank you, again, for your service of questioning and examination, and the unpleasant task that you now have to vote on the subject. Thank you.

Chair Morin asked, anybody else? [there are none] Any final statements prior to our deliberation?

Atty. Tierney stated before turning it over to Atty. Kish I just wanted to make clear, so that there wasn't any misunderstanding, that as soon as that Cease and Desist Order was received by New Hope, New Hope stopped having anything in the residence, anything in the preexisting building. They haven't done anything in the building, you know, other than come into the building in order to remove some books, which was approved by the Town Attorney. We had asked the Town Attorney if books could be removed and few could go, but there hasn't been any meeting or gathering. I just want to make sure that the Board understood that the Cease and Desist Order was complied with. Chair Morin said thank you. Atty. Kish stated the dispute today for zoning purposes is what is considered a church, and when does a church become a different zoning classification than a residence? Whether using a living room for 10 people for non-religious use, or 10 people for religious use—that use does not create a change of use requiring an Occupancy Permit for zoning purposes. Therefore, the Town's Cease and Desist Order is an erroneous interpretation of the Bedford Zoning Ordinance. The rational and legal way to define a church is based on the definition of public assembly. A church is not a different use for zoning purposes until there are 50 or more people, as with the new addition. However, 2 people in the preexisting residence living room is not a church according to Bedford Zoning Ordinance. And we rest. Chair Morin said thank you.

Mr. Matt Lavoie follow-up testimony: So, bonds are in place to change the use of the property. At that point, I would say that that point that starts the change of use. That allows construction equipment to be on-site, and to obviously construct the parking lot, everything else associated with the change in use. The applicant is correct that the occupancy under 50 is not an assembly. But under IBC, there is a section in there that says small occupancies are still a business use, which, again, is not a residential use. So, it's still a change of use. If you're just looking strictly at the use of the building, the existing building. It is no longer a home. There is no one living there. ADA requirements apply to all non-residential uses, regardless of their size. An addition on an existing building is allowed, and occupancy can be maintained, if that existing building has a constructed site plan that is approved by the Town. Does that make sense? Board affirms. Residentially, obviously, if you're adding a garage, you're allowed to stay in your house. So, if you have an approved site plan, you have accessible parking, you always maintain that accessible entrance, you are allowed to put an addition on for a commercial use, or a non-residential use. That is all I have. Chair Morin said thank you. Mr. Casale asked Mr. Lavoie, in your following up on this, do you feel that you've been treating them unequally? Mr. Lavoie answered no. Mr. Casale said okay. I'm glad you mentioned about the—clarified, because I had that question. In regards to them talking about they're treated unfairly, as opposed to what somebody would do if they were adding a garage, what I'm missing though, is you said as long as there is an approved plan, but does the house, does the house when it was built not have that? And, therefore, if we're adding a garage on... Mr. Lavoie answered alright, are we talking about this property? Or any property? Mr. Casale said no, we're talking about

this particular property. So how is that different from what you were saying? You were giving the example, because they brought it up. Why is it we're getting kicked out and we can't have any business there when Joe Schmo down the road can stay in his house and yet build a garage? How is this property different? Mr. Lavoie answered well, it is a non-residential use. Mr. Casale continued okay, so just by mere fact that they asked for a change of use, and they were using it differently, then they need an updated plan in order to add the garage, and therefore they cannot be in the home. Mr. Lavoie responded right, site plan approval. We have a whole different set of regulations for that. Site plan approval for non-residential uses, which has guidelines for the amount of parking spaces that are required in the Town of Bedford for this sort-of use. They have guidelines for drainage. All these things are looked at. When you dump a bunch of asphalt on the ground, you have to have that water go somewhere. Because it's not going to penetrate that. So, all these sort-of items are sorted out at the Planning Board level. At that point, once construction begins, it is no longer a residential use. You've converted that residential use to a non-residential use. Mr. Casale responded okay, thank you. Chair Morin said thank you.

Atty. Tierney said may I respond in 30 seconds or less? Chair Morin said you may. And I won't count. Atty. Tierney said thank you. As I believe the Board is aware, site plan approval is not required for single-family use. It is required once you get to multi-family and if you were to be putting additions on and changing something from being single family to being multi-family, it has never been the practice of the Town of Bedford to kick people out of the existing, approved while new additional units are being built. So, that is the comparison that I think is most apt. That you don't kick somebody out of an approved use until a new use is constructed. Chair Morin said thank you.

MOTION by was made by Mr. Green to go into non-public input for deliberation. Mr. Casale duly seconded the motion. Roll call vote was taken - all in favor. Motion carries.

Non-Public Deliberation.

Chair Morin continued alright, so the applicant is asking for us to reverse the Cease and Desist. I think our first thing is we've got the Cease and Desist Order in front of us. Personally, I think it's very clear on what the issue is. A lot of other things were brought up, but I'm looking at the Cease and Desist Order and it's pretty clear. The applicant did talk about the site plan and change of use and those types of things but looking at the minutes from the Planning Board from just over a year ago, it was very clear that when the presentation was made for the applicant, that they were looking for a change in use of the existing single-family home dwelling unit in addition to another building. Then in the Motion, again, it's final approval of a site plan to convert, which is a site plan, so now we've changed where it's going and what it's going to be. That was approved. Then, looking at the copy of the Code Enforcement piece we had, Application for Examination and Building Permit, it shows improvement types on the back page as an addition and alterations, so, again, we're changing that. And nowhere on here is it showing it's a residential unit. Mr. Casale added right, in fact this application is submitted handwritten by the person that applied, correct? This was not done by town officials? Ms. Hebert said that's correct. Mr. Casale continued so, what you're referring to, Mr. Chairman, was completed by Mr. Goedecke. And in addition to what you stated, which he checked off addition. He checked off alteration. He even added, unless the town did—which I find very unlikely—change of use, which was hand-written there. It looks consistent with the other handwriting, so I assume that it's his. Chair Morin said so, from my perspective anyway, because I've done most of the talking so far, is that I don't have an issue with the Cease and Desist Order. It meets the ordinances he brings up—that a certificate of occupancy is needed, which they don't have for this new use. That's my thoughts. Anybody have anything different? Mr. Casale said

well I'll just chime in and of course our charge is to determine what the true intent is, and if it's been incorrectly interpreted. And as I brought up, this is very clear. You can't cut this any other way. It's very clear. You don't occupy, use it until you get a permit. Done. Both of them. The International Code and the Bedford Code—very clear. Not until you get the Occupancy Permit. There's no indication that the Code Enforcement Officer—that this code was not fully applied or partially applied in an addition, was not done—we don't have any evidence that it was done unfairly or to their detriment as opposed to anyone else in this town. Chair Morin said correct.

MOTION: Mr. Casale moves that the Zoning Board deny the relief of an administrative decision of the Building Code Official. That administrative decision being a Cease and Desist Order, which was dated October 15, 2021 for hosting gatherings prior to the issuance of a Certificate of Occupancy in violation of the Town of Bedford Building Construction Ordinance Section 92-10 and the International Building Code Section 111.1 at 445 Route 101, Lot 31-44-1, zoned R&A, as per our deliberations. Mr. Green duly seconded the motion. Roll call vote taken – all in favor. Motion denied 4-0.

MOTION by Mr. Casale to move back to public input. Mr. Green duly seconded the motion. Roll call vote taken – all in favor. Motion carried.

Chair Morin asked Becky, do we have anything else for this evening? Ms. Hebert said we do not have any more communications for tonight.

MOTION: Mr. Green moves to adjourn the meeting. Ms. Jude duly seconded the motion. Roll call vote was taken – ALL IN FAVOR. Motion carried.

Meeting adjourned at 9:12 pm.

The next meeting will take place on January 18, 2022.

Respectfully submitted,

Sue Forcier