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Thomas P. Flannery, Chair
Bedford Zoning Board of Appeals
10 Mudge Way
Bedford, MA 01730

Re: 1 Railroad Avenue, Bedford, MA

Dear Mr. Flannery and members of the Board:

On behalf of One Bedford Railroad LLC ("Owner"), owner of the property located at 1 Railroad Avenue, please find our application for a variance pursuant to M.G.L. ch.40A §10 for relief from the Bedford Zoning By-Law §11.1(I)(1). Strict enforcement of the by-law would result in practical difficulty for Owner.

Chapter 40A requires the Board to weigh the benefits to Owner and to the public interest, including the interest in supporting the production of housing, against the detriment to the public health, safety, and welfare of the neighborhood.

We come now and request relief for the following reasons

1. Granting relief would benefit Owner and the Public by furthering the Town's goals of creating housing and positive commercial development;
2. The detriment of the project becoming cost-prohibitive heavily outweighs the detriment of the removing the affordable unit requirement;
3. The detriment of removing the requirement is balanced by the diverse housing being created;
4. There will be no visible change in the project on the ground; and
5. The subsequent creation of the Multi-Family Housing District (MFHOD) has rendered denial of relief unreasonable.

Owner has faced circumstances that are making it difficult to complete the project within a reasonable budget. Rising costs of materials, labor, changes to Code, modifications and delays have resulted in financial pressures on the project that would be intensified by strict enforcement of the affordability restriction in the by-laws. Granting relief from the above restriction would allow Owner additional financial options to achieve feasibility. (see Exhibit A)

The Bedford Planning Board granted a Special Permit in 2023 to allow the mixed-use development of the former parking lot. The project is in the public interest because it will add to Bedford's housing supply, will create diverse housing options, and will be an improvement to the aesthetics and condition of the property compared to its previous use.

Bedford's Guidelines for Commercial and Mixed-Use Development (Exhibit B) seek to Preserve New England Character, Promote attractive development, Facilitate walkability and integrate pedestrian needs, and Protect property value by improving appearance. The Planning Board approved this project unanimously and is the Owner will install a sidewalk in an area near the middle and high school desperately in need of a sidewalk.

When examining potential detriments, we suggest that granting relief from the affordability requirement for the Depot Overlay District creates no detriment to the public health, safety, and welfare of the neighborhood.

The recent changes to M.G.L. c. 40A §3A to enact to the Multi-Family Zoning Requirement for MBTA Communities contemplate and encourage the creation of housing, but do not comment on affordability. As an MBTA community Bedford placed One Railroad Avenue in its Multi-Family Housing Overlay District (MFHOD). §11.6(J) of the by-law places no affordability requirements in the MFHOD. The project on One Railroad Avenue will create more housing, in line with the state's goal and since Bedford is well above the minimum requirement for affordable units, removing the requirement is not detrimental to public health, safety, and welfare.

Furthermore, it is advisable to grant the requested relief because of the subsequent creation of the MFHOD. Were the project brought forward today under the MFHOD, it could exist in the same configuration but without any affordability requirements.

We trust you will agree that the requested relief would support the project at One Railroad Avenue and the Public's interest. We look forward to discussing the project at your next possible meeting.

Very Truly Yours,

John D. Hadden

Pamela J. Brown

1-3 Railroad Ave Variance Application



BACKGROUND & EXECUTIVE SUMMARY

Our project received a Special Permit in December 2023 under the Depot Area Mixed Use Overlay District zoning. The zoning overlay requires that 10% of the housing units in our project (in our case, 2 residential units) be designated Affordable to households at or below 80% of the median family income. We are seeking a variance to remove the requirement that two of our units be deed-restricted as affordable. The ZBA has the authority to grant the variance in accordance with the revised provisions of M.G.L. c. 40 A §10.

Variance

The Variance provisions of the Zoning Act (M.G.L. c. 40 A §10) were revised and immediately effective on July 9, 2026. Historically, Massachusetts Case Law had very restrictive provisions regarding variances, which were granted sparingly. **Now, the ZBAs must consider a "Practical Difficulty" standard.**

The statute directs boards to discard the rigid conjunctive checklist and instead perform a holistic balancing test, weighing **"...the benefits to the appellant or petitioner and to the public interest, including the interest in supporting the production of housing against the detriment to the public health, safety and welfare of the neighborhood..."**

For this application we will show fully that our project has sustained and continues to face substantial practical difficulties, and a variance to remove the requirement for affordable units will support our mission to make available lower-priced housing options, increase the vitality of Depot Park, and benefit the entire Town of Bedford.

PRACTICAL DIFFICULTIES

1. **New Energy Code**
   Voters in Bedford, Massachusetts, approved the adoption of the Massachusetts Opt-in Specialized Stretch Energy Code and the code officially took effect on July 1, 2024. This means that when we sought permits for our project in 2023, the energy code requirements were much less stringent. This change in the energy code required that:
   - Our "small building" (3 Railroad Ave), containing retail and 5 residential units, would need to achieve a HERS rating of 45.
   - Because it is over 12,000 square feet, our "large building" (1 Railroad Ave), containing parking, retail, and 16 residential units, would need to **be Passive-House Certifiable**.

   Achieving Passive House certification for a building of our size is a huge undertaking, and ours will be the first in Bedford. The Passive House approach creates durable, resilient buildings that slash heating energy use by as much as 90% and dramatically reduce operational carbon emissions. Passive House buildings create healthy, comfortable, and quiet interior environments, full of clean, filtered fresh air. PHIUS (Passive House Institute US) certification requires the following:

- **Superinsulation:** Walls, roofs, and foundations are required to have much thicker, continuous insulation with no thermal bridges (gaps where heat or cold can escape).
- **Extreme Airtightness:** The entire building is wrapped in a continuous air barrier tested with a blower door to stop drafty air leaks.
- **High-Performance Windows:** Triple-paned, insulated, low-emissivity windows block heat transfer and keep inside glass surfaces warm even in freezing weather.
- **Balanced Ventilation (HRV/ERV):** A Heat Recovery Ventilator (HRV) or Energy Recovery Ventilator (ERV) constantly supplies fresh, filtered outdoor air while reclaiming heat from outgoing stale air without losing room temperature.
- **No Traditional Furnace or Boiler:** All electric, extremely high efficiency heating & cooling system requires specialized equipment and skilled installer
- **Detailed Pre Construction Design reviews required by PHIUS:** All construction documents must be submitted to PHIUS for review and approval by a Passive House Design Consultant. This process of submission, feedback, comments, review and approval took over 12 months.
- **Rigorous Testing and Verification:** All Passive House elements must be inspected and approved by a 3rd Party Passive House Verification Consultant to ensure all insulation, air & vapor barriers, thermal bridging, air balancing, and heating / cooling equipment meets the high standards required and approved in the construction plans

Our additional costs incurred in order to achieve Passive House certification for 1 Railroad Ave total **$350,000**:

- $200,000 in design consultant costs, including Code consultants, Passive House Design Consultants, Passive House Verifiers, and Building Envelope Consultants,
- $150,000 in increased material, equipment, and installation costs, including specialty windows and doors, continuous insulation, specialized HVAC systems, and energy efficient appliances and lighting.
- These costs are likely to increase as we strive to achieve PHIUS verification & certification.

2. **Soil Remediation**

Our site was delivered with a clean Phase I environmental assessment, and pre-construction soil borings and test pits revealed only "clean" soils. However, coal ash contamination was discovered during excavations required for foundation and stormwater management installation. The contamination was due to the historical use of our site as a coal & lumber yard that was adjacent to a railroad station. A Licensed Site Professional (LSP) was engaged, Mass DEP was notified, and in total, 600 tons of contaminated soil had to be removed from the site. The total cost of hiring the LSP, removing the contaminated soil, and bringing in clean fill was **$110,000**.

3. **Overlay District Tradeoffs**

In 2024, Bedford voted to approve the Multifamily Housing Overlay District, which the site at 1-3 Railroad is a part of.

	Depot Area Mixed Use Overlay District	**Multifamily Housing Overlay District**
Affordable Housing	10% Affordable housing requirement	No affordable housing requirement
1st Floor Allowable Uses	Retail, restaurant, bank, personal service shop, and office	Residential allowed, some mixed use permitted
Open Space	10% of site must be open and available to the public	No public open space required

Other recent developments that are completed or ongoing in Bedford that were permitted under the Multifamily Housing Overlay District and have no affordable component include:

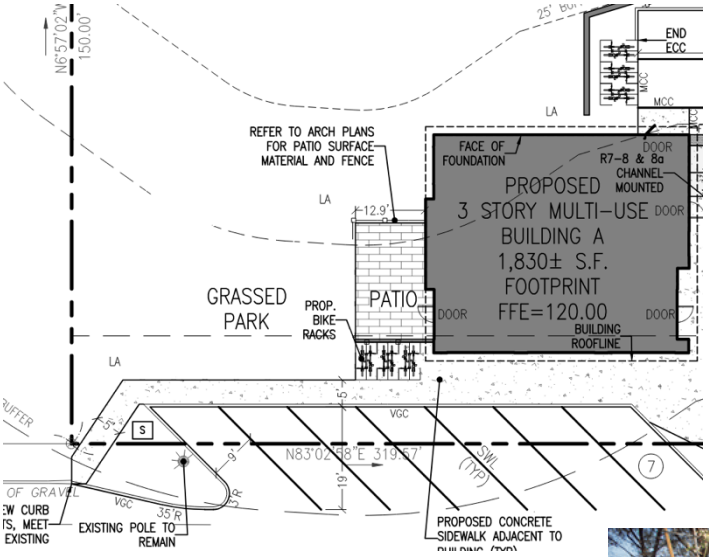
- Revolution Row (214 Great Rd): 10 condos priced between $1.55-$1.625M
- The Residences at Liberty Square (36 Loomis St): 14 townhomes with sale prices between $1.3-$1.4M
- 10 Webber Ave: 4 townhomes priced between $1.05 - $1.3M
- Majestic Elm Brook: 38 condos
- 18 Loomis St: 4 townhomes

It would certainly have been easier and less expensive to develop the site as townhouses under the multifamily housing overlay district for the above mentioned reasons. However, **we are Bedford residents living less than a mile from the site and are not simply trying to turn a profit on this project; we want to kickstart the revitalization of this part of Bedford by bringing businesses and life to this area.**

Open Space

Our project will incorporate a pocket park on the west side of the site, adjacent to a retail space with a patio. We are working with New England Nurseries to develop a visually pleasing landscaping plan for this area that will incorporate native species.

If our budget allows, we are also in talks with M. O'Brien & Sons to turn a piece of this park into a play space for the children of Bedford with several pieces of playground equipment.









First Floor Retail

Our project will have 3 distinct street level retail spaces available for rent or purchase. Traditionally, some retail spaces have struggled in Bedford due to high rents, high commercial tax rate, and low inventory of newer, rentable spaces among other factors. We have been approached by several interested parties for our retail spaces, and would be especially excited to put food uses in the spaces. Food uses would be a welcome addition to Depot Square, with all the pedestrian and bike activity in this area that currently have no food options. However, quality food

tenants require landlords to give healthy tenant improvement (TI) budgets to fund the buildout of their restaurants. For example, one interested party has a successful restaurant in Billerica where their landlord gave them $500,000 in TI for their buildout. If we are to bring food uses to our space, it will be costly. Buildouts for restaurants are generally 3-4x higher than those for office space, for example.



In summary, choosing retail tenants and making design choices for the open space could be done two ways: (1) check the boxes, and provide token retail spaces and a grassed area, or (2) spend more money on tenant buildouts to bring in exciting tenants, and have a professionally designed park with play equipment and usable, enjoyable, beautiful space. Approving this variance will free up the capital we need to fund the investment required to make 1-3 Railroad Ave a vibrant community asset.

4. **Miscellaneous**
    a. Wetlands on the site limited development footprint and necessitated a robust storm water management system
    b. Infrastructure improvements to sidewalks and public utility connections were required for permit approval
    c. Historic aesthetics and height restrictions are at odds with the new building code. Passive House buildings are intended to be shaped like a box for ease of implementing required insulation. Building a small 3 story building with a sloped roof and architectural details as required by the zoning was very difficult to design within these standards and is not economical. We are one of the first passive house projects in the country to feature a mansard roof and were required to create the construction details without thermal bridging from scratch!

d. Interest rates have risen nearly 30% since we obtained our financing for the project (an increase in the 10-year US Treasury from ~4% to ~5.3%). Additionally, economic uncertainty is rampant right now due to the War in Iran, skyrocketing fuel prices, tariffs, and increased material costs.

PROJECT BENEFITS TO THE TOWN OF BEDFORD

- Installing 300 feet of new public sidewalks where there are currently none. Currently bikers and pedestrians must walk or ride on Railroad Ave to connect from the Minuteman Bikeway to the Reformatory Trail and to reach Depot Square from the Middle Schol, High School and Town Campus.
- 1,341 Square foot easement gifted to the town to accommodate pedestrians and parking for village atmosphere
- 3 new small businesses
- Potential food use to enliven Depot Square and create a walkable village atmosphere
- Pocket Park / Open Space accessible to the public
- Isolation valves installed under Railroad Ave at water connection
- Storm water management & retention system installed to improve flood management along Railroad Ave
- Smaller units and lower-priced new construction residential units (pro-forma prices ½ to 1/3 of most new construction projects delivered in past 10 years) to increase housing options for Bedford Residents
- Climate friendly all-electric, energy efficient, Passive House Construction

FINANCIAL SUMMARY

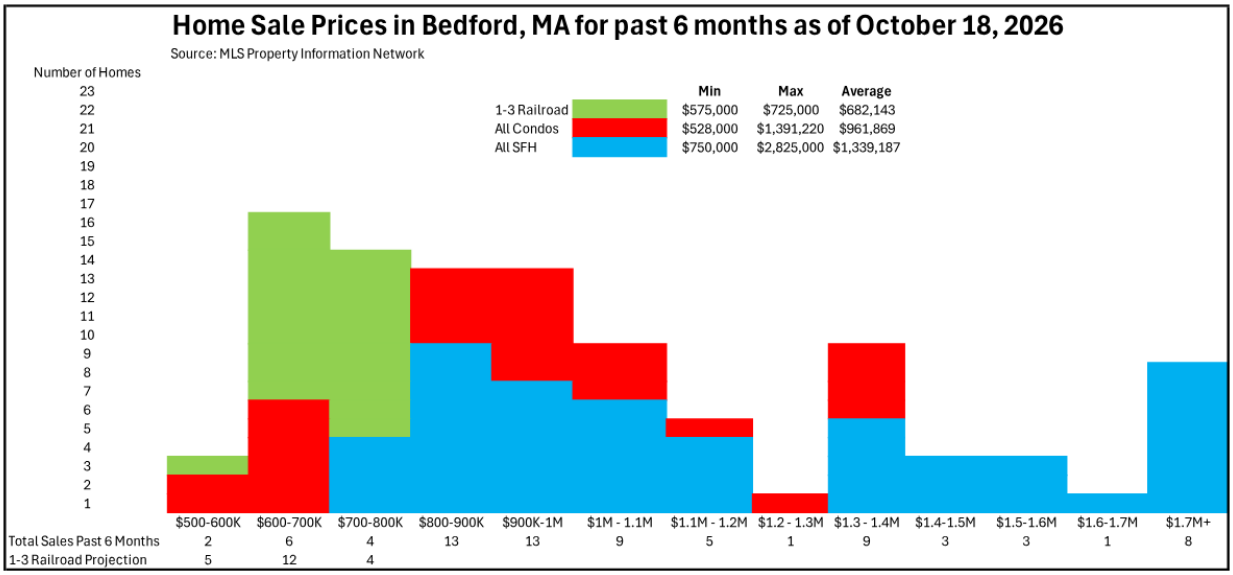
- The project cost to build each of the 21 residential units on average is $525,000.
- Our project has a mix of (14) 2-bedroom units and (7) 1-bedroom units.
- Market-rate 2-bedroom units are projected to be priced in the $600 and $700 thousands. Market-rate 1-bedroom units are projected to be priced in the $500 and $600 thousands.
- The deed-restricted affordable units would have a maximum sale price $217,500 for a 1-bedroom unit, and $240,300 for a 2-bedroom unit. This results in an *actual loss* of **$592,200**, but an *economic loss* of approximately **$867,000**.
- It should be noted that we applied for funds and lines of credit available to developers of affordable housing through the Mass Housing Partnership, but were denied because of the small size of our project and lack of past project experience building institutional affordable housing.
- The financial benefits to the town would be an increased tax base on the same physical asset. For example, a market rate 1 & 2 Bed units sell for $650,00 and $725,000 = $1,375,000 Assessed Value, vs $217,500 + $240,300K = $457,800 Deed Restricted Value. The Town of Bedford picks up $912,200 in taxable value per year with increases marked to market value. Based on today's tax rate of $12.49 per thousand, Bedford would benefit from an extra $11,485 per year to spend on services for residents.

A common misconception is that you could, as a developer, recoup this loss by dividing it equally among the remaining 19 units and adding it to their sale prices- in our case, adding $45,000 to the cost of each of the market rate units. In reality, the sale price of market rate units will be determined by the market; i.e. one would expect that new construction units will already be sold for the maximum sale price that the market will support. We can't expect a buyer to pay $45,000 more for a unit simply because we are trying to make up for losses from building affordable units in the same building. In fact, home sales are down across the board, as climbing interest rates discourage buyers from overextending themselves and decrease confidence in resale value.

Another critical headwind has been the cuts to federal funding for science and research which our local economy relies so heavily upon. With life science jobs either being cut or frozen, we expect to have both fewer buyers and buyers who are able to pay less for new unit in Bedford.

The below chart shows how the projected sale prices of the units in our project compare to the historic sale prices of condos and single family homes in Bedford over

the past 6 months. It should be noted that this chart does not just capture new construction homes, but homes of all ages. Our units will be unequivocally lower-priced than typical product and especially new construction product in Bedford, opening up the path to home ownership to many folks who would otherwise be priced out of our town.



SOURCES

- Building Code Consultant: Pracademic Solutions
- Legal Counsel: Brown & Brown PC
- Affordable Housing: Regional Housing Services Offices
- Bedford Home Sale Prices: MLS Property Information Network
- Massachusetts General Laws:
    - https://malegislature.gov/Laws/SessionLaws/Acts/2026/Chapter137
    - https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A/Section10
- Periodical: South Shore News
    - The Zoning Revolution Buried in the State Budget, How Massachusetts Quietly Rewrote Fifty Years of Land-Use Law, written by Justin Evans, August 1, 2026