APPROVED

TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
April 14, 2014

The Chairman David Hennessey called the meeting to order at approximately 7:00 pm.

The Secretary Chris LaFrance called roll:

PRESENT: David Hennessey, Svetlana Paliy (left at 7:30pm for a personal commitment), Peter McNamara, Chris LaFrance, Mr. Bill Kearney, Alternate Darlene Culbert, Alternate Pauline Guay, Planning Director/Zoning Administrator Jeff Gowan

ABSENT: Alternate Lance Ouellette, Alternate Kevin O'Sullivan

ELECTION OF OFFICERS

Deferred to the next meeting.

HEARING(S):

Case #ZO2014-00003
MSA REALTY TRUST - 7 Main Street - Map 22 Lot 8-119 – Seeking a Variance concerning Article III, Sections 307-12 & Table I to permit a proposed post and beam barn/garage building to be constructed 10feet from the rear and side lot line with 15feet required on a substandard lot in the Town of Pelham Residential Zone.

Mr. LaFrance read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Mr. LaFrance stepped down. Ms. Culbert was appointed to vote.

Mr. Joseph Maynard of Benchmark Engineering, representing the applicant, came forward to discuss the requested variance. The property is located in the center of Town and contains 0.67 acres. There is an older structure on the property that by variance is allowed to have a hair salon and two apartments. The owner will be moving into one of the apartments and as part of that would like to construct a post and beam barn-type structure on the lot for their own residential use as storage and garage space.

Mr. Hennessey noted that the member packets contained a form allowing Mr. Maynard to represent the owners of MSA Realty Trust; however he noted that the form had not been signed. Mr. Maynard replied that his client was present and he would provide a signed form before he left the meeting.

Mr. Maynard said for the proposed post and beam structure to fit on the property, they were seeking a variance for both the rear and side setbacks. The side setback would be 10ft. to the church property and a 10ft. setback to the rear of the property. The primary reason they are

seeking relief of the setbacks is because of an existing paved parking area. If they were to meet the setbacks it would push the proposed structure up to/into that parking area. By allowing them to be approximately 5ft. from the parking area they will be able to put the footings in for the structure without undermining the paved area. The reason for the setback to the church is due to an existing septic system on the property.

Mr. Hennessey commented that the Board required the parking lot as part of the variance when the usage was expanded. Mr. Maynard said that was correct.

Ms. Guay wanted to know if they would keep fifteen parking spaces after the garage was installed. Mr. Maynard answered the intent was to maintain the parking spaces. They were thinking of striping one of the spaces so it could be used as access to the rear driveway. He said being that the property would be utilized by the apartment space (that would be owner occupied) the owners would have one or two of the vehicles remaining on site. Ms. Guay asked if the structure would be a three-stall garage. Mr. Maynard said the appearance would be a post and beam building, but it would have three bays. Ms. Guay questioned which of the bays would be a workshop. Mr. Maynard couldn't say; he didn't know if the owner had determined the layout of the structure. There is a loft area, which he understood would contain part of the workshop. The applicant felt a post and beam structure would fit into the character of what was currently in the area.

Ms. Paliy recalled that the property had been in front of the Board several times. She wished the background of the previous hearings was given to the Board with their meeting information. In her memory, she remembered the structure as having a storage space and garage. She said at some point it changed into storage space, then office space, then had a variance to change it to living space; she would have preferred to review all the notes. Ms. Paliy said it seemed there was a case in front of the Board virtually every year. She said it seemed they were putting an addition back that was previously removed. Mr. Maynard explained that the barn that was on the property was the rear portion of the existing structure. One of the previous variances allowed the conversion of that into one of the two apartments that are still on the property; the second apartment is on the second floor of the principle building portion and the salon occupies the first portion of the structure. He said they would like to add garage/storage space to the property.

Mr. Maynard read aloud the variance criteria as submitted with the application. He added that the applicants were excited about the project and building a post and beam structure. He said they could have built any type of garage, but wanted to build something very characteristic to the downtown area. He noted a lot of the structures in the vicinity had similar setbacks to what they were requesting. They felt the relief being sought was minor in nature for what the actual project would be.

Mr. McNamara confirmed the footprint of the building would be 42ft.x28ft. with a loft space. He wanted to know what square footage would be added to the existing 1176SF. Mr. Maynard discussed the structure as having a barn roof with eaves and dormers to break up the roofline. His guess was that the usable area on the second floor was approximately half of the first floor space. Mr. McNamara assumed it would have a total of roughly 2000SF. He felt it was a large building for the property. He questioned if they could make the structure smaller. Mr. Maynard replied that the post and beam structures had certain dimensions for the lumber they worked with. The dimension of the template is within the parameters for what is called for in the kits utilized. He noted that the size of the other structures in the general area were comparable. Mr.

McNamara recalled there being a number of variances on the property over the years and it seemed to keep expanding. He saw the applicant was going to be adding plumbing into the proposed structure. Mr. Maynard said it made sense to add plumbing (toilet and sink) because the area would be used as a workshop area. They were willing to add a stipulation that the proposed structure wouldn't ever be utilized for living space. He told the Board that the property was unique and a lot of the previous variances weren't dimensional relief, they were 'use' variances that lended to improving the property. Mr. McNamara reviewed the proposed parking for the structure and questioned if they would lose any of the existing parking spaces. Mr. Maynard said they might stripe one of the spaces, but the intention was the owner lived where they worked, so their vehicle would be out of the way for the patrons. But also, two of the spaces go along with the principle dwelling unit and another two go along with the accessory apartment. There will be eleven spaces associated with the existing salon. Mr. McNamara asked for the distance from the proposed barn to the church. Mr. Hennessey said the structure would be fairly close to the playground, not the church itself. Mr. McNamara understood that the structure would act as a buffer to the property. Mr. Maynard replied the property was currently wide open with no vegetation. The church property had a fence along the lot line.

PUBLIC INPUT

Mr. Gene Prudhomme said he would be moving into the back apartment and barn area. He said he was retired and would use the area for 'tinkering' with hobbies. He was proposing a post and beam structure because he wanted to build a nice place and improve the property. He told the Board they hadn't made the building larger or smaller, they had only redone the apartments within. Mr. McNamara asked what things would be done in the barn. Mr. Prudhomme said he was a carpenter by trade and also loved cars. Mr. McNamara questioned if there would be any hazardous materials or excess noise. Mr. Prudhomme answered no; he was very quiet. There would be no commercial use; it would only be personal use.

Mr. Gowan commented if the plan went in front of the Planning Board, the applicant would have been required to provide an architectural rendering. He said they have spoken about the building's construction, but hadn't heard comment about what the exterior would look like. Mr. Prudhomme said he would like to match the existing building with white siding, white trim and have black architectural shingles on the roof. Mr. Hennessey asked for a motion to stipulate what the applicant had agreed to.

MOTION: (McNamara/Culbert) To stipulate that the exterior of the proposed structure will match the existing structure. It will have vinyl siding to look just like the other building; it will be white, with white trim and have black architectural shingles on the roof.

VOTE: (5-0-0) The motion carried.

Mr. Hennessey spoke about the application. He said the location of the structure was in the middle of the rezoned part of Pelham that was calling for mixed use. He appreciated the fact that the members pointed out the Board had allowed variances for mixed use, which was precisely what the rezoning was. He said the requested variance would preserve the mixed use variances that had already been allowed.

BALLOT VOTE Mr. Hennessey – Yes to all criteria

#ZO2014-00003: Ms. Paliy – Yes to all criteria
Mr. McNamara – Yes to all criteria
Mr. Kearney – Yes to all criteria
Ms. Culbert – Yes to all criteria

VOTE: (5-0-0) The motion carried.

VARIANCE GRANTED

Ms. Paliy left the meeting due to a personal commitment.

Mr. LaFrance returned to the Board.

Case #ZO2014-00002
HARRIS, George III & John - Off Shelly Drive - Map 3 Lot 5-174 - Seeking a Variance concerning Article III, Sections 307-7, 307-12 & 307-14 to permit construction of a single family or duplex home on a lot containing approximately 7.5 acres but having less than 200 feet of frontage of a Town Road.

Mr. Hennessey stated the Board received a request to postpone the hearing until their next meeting. He asked that the abutter's list be read aloud so the applicant wouldn't have to re-post the hearing. The hearing was date specified to the May 12, 2014 board meeting.

Mr. LaFrance read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Attorney David Groff, representing the applicant, came forward to confirm their request to put the hearing off to the Board's next meeting in May. The request was granted unanimously by the Board.

Case #ZO2014-00004
DHB HOMES - 4 Harmony Lane - Map 4 Lot 9-138-1 – Seeking a Special Exception concerning Article XII, Section 307-74 to permit an accessory dwelling unit to be part of the dwelling unit.

Ms. Guay was appointed to vote.

Mr. LaFrance read the list of abutters aloud. There were no persons present who asserted standing in the case. There were two abutters on Harmony Lane who told the Board they had not received notification. Mr. Hennessey asked if there was an error in notification. Mr. Gowan questioned if the two people were owners of record. He said the applicant was legally bound to notify owners of record based on the Assessor's records. He also noted that notification had to be sent to people within 200ft. of the property. Mr. Hennessey asked if the people who spoke were within 200ft. One person was across the street, the other was a house away. Given the addresses, Mr. Maynard believed the abutter's houses to be right around the 200ft. mark. Mr. Hennessey stated the people who spoke up were entitled to participate; he wanted to ensure the process was alright. He said they would continue with the hearing.

Mr. Hennessey pointed out for a Special Exceptions to be granted an applicant had to show that they meet the criteria. He said if the criteria were met, the Board would have to approve the Special Exception. He told the public they would have plenty of time to ask questions and provide comments.

Mr. Joseph Maynard of Benchmark Engineering , representing the applicant, came forward to discuss the requested Special Exception. His client had a buyer for the home on the property who would like to put in an accessory unit within the structure for their disabled daughter. He provided the Board with a sketch of the unit. The home contains three bedrooms; a septic design has been approved by the State for 4.5 bedrooms. Mr. Maynard felt they met all the criteria that were part of the Zoning Ordinance requirement.

Mr. Gowan had reviewed the application and felt it met all the criteria including the 750SF dimensional requirement.

Mr. McNamara saw that the access to the unit came in through a shared bath. Mr. Maynard believed the community laundry would be within the bathroom; this was the most practical location for the connection. Mr. McNamara questioned if there was exterior access. Mr. Maynard said there was access from the garage off the driveway. Mr. McNamara asked if the applicant's daughter was able to physically move down to the second floor. Mr. Maynard understood she was able. Mr. McNamara confirmed that the applicant was aware that the unit couldn't be rented out. Mr. Maynard said it was a family member that would utilize the unit.

Ms. Guay asked what was currently in the location on the second floor. Mr. Maynard said it was rough framed out for the specific layout proposed. Originally the applicant wasn't going to put the kitchen in, but they are trying to give their daughter some independence.

PUBLIC INPUT

Mr. Andre Poblos, 3 Harmony Lane wanted to know what would happen when the owner sold the house or moved out, given that the space would basically be set up like an apartment. Mr. Hennessey said the unit could not be rented out. Generally speaking on mortgages, an appraiser will often require that the kitchen be disabled or taken out, unless there's a permit for an apartment. Mr. Poblos said if the owner was to move out, there would be no oversight. Mr. Hennessey said neighbors could keep an eye out to make sure there were no advertisements, or rental signs. He said for accessory apartments it was almost dependent on people to make sure it didn't get transformed into a rental unit.

Mr. Todd Kerrigan, 8 Harmony Lane asked how many people were allowed to occupy the dwelling. He said he recently moved up from Lowell and knew of situations where a family would buy a multi-unit and then move their entire families in. Mr. Hennessey reiterated the accessory unit was not being turned into a rental unit; it was only for use by family members or caregivers. He said the number of people that could occupy the unit was determined by the health department and Selectmen. Mr. Gowan added that they won't allow a separate meter to be placed on an in-law unit. It would become a Code Enforcement responsibility through the Planning Department. He said typically an in-law apartment housed one to two people. He said it could be an adult child, caregiver, in-law or in-laws. There is no ability to begin to rent a unit at a market rate. Mr. Kerrigan asked if there was a written ordinance that limited the number of people that could live in the dwelling. Mr. Gowan said the ordinance didn't limit the amount of

people, but it made the intent clear enough for him to believe he had the authority to engage in Code Enforcement. He reiterated that an in-law apartment didn't mean it could be a market rental. He said Zoning didn't restrict the number of people in a normal household. A dwelling needed a septic design that accommodated the number of bedrooms in a home. Mr. Gowan said the purpose of in-law apartments was to try and accommodate those in need without violating the concept of a single family home. Mr. Kerrigan said the neighbors weren't concerned about the present owner, they were concerned about future owners.

BALLOT VOTE #ZO2014-00004:
Mr. Hennessey – Yes
Ms. Paliy – Yes
Mr. McNamara – Yes
Mr. Kearney – Yes
Ms. Guay – Yes

VOTE: (5-0-0) The motion carried.

SPECIAL EXCEPTION GRANTED

Case #ZO2014-00005

MCCANN, Keith - 24 Woekel Circle - Map 31 Lot 11-285 – Seeking a Variance concerning Article III, Sections 307-12 & Table I to permit an existing shed (that is currently over the lot line by approximately 2ft) to be relocated so that it is completely on the subject property.

Mr. LaFrance read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Mr. LaFrance stepped down. Ms. Culbert and Ms. Guay were appointed to vote.

Mr. Gowan noted that photographs were included in the member packet that had been submitted by an abutter.

Mr. Joseph Maynard of Benchmark Engineering, representing the applicant, came forward to discuss the requested variance. He noted that the property was approximately a 5,000SF lot that contained an existing home. The applicant was working with Town Deputy Health Officer Paul Zarnowski on putting in a new State approved septic system. In order for the new septic system to go in, the grade would be raised in the location of an existing shed. Mr. Maynard explained when the neighboring property was sold it became apparent that the shed was over the lot line by approximately 2feet. Subsequently, the neighbor wants the shed moved and to proceed with the construction of the septic system they need to shift the back corner of the shed that's over the lot line. He said they were looking to move the shed just over the line by approximately one inch. He said if they were to shift it further off the line, it would protrude over the edge of the wall and into the driveway area that is the primary access down to the dwelling. Mr. Maynard said there was an existing wall, but in order for the septic system to be constructed and to allow for a flat grade in the location of where the shed would be placed, they would need to raise the existing grade. In summary they were looking to move the shed off the neighbor's lot back onto the applicant's property.

Mr. Hennessey saw that the abutter was looking for the shed to be moved two feet. Mr. Maynard hadn't spoken to the abutter. He told the Board he would have a difficult time moving the shed more than a few inches without it exerting past the existing wall. He said they would have to re-notify for any additional moving because the requested variance left him tight to the lot line. Therefore, two additional feet would require re-noticing for a different variance request. Also, doing so would impair the applicant's ability to get up and down their driveway.

Mr. Gowan stated if the applicant were to choose to amend the application to move the shed further from the lot line, wouldn't require re-notification. Mr. Maynard noted if they moved the shed further, the setback on the opposite side would be reduced; this would require re-notification. Mr. Gowan withdrew his observation. Mr. Maynard said the lake lots were unique and his client's lot was almost pie shaped; it was his understanding that the intention was simply to move the shed off the neighboring lot. He said it was a vinyl sided structure that wouldn't need service or repair. If it did need to be serviced, the intention would be to move it down with equipment and then replace in the same location.

Mr. Maynard read aloud the variance criteria as submitted with the variance application.

Mr. McNamara asked if the shed had been in existence for over thirty years. Mr. Gowan didn't know the answer to the question, but knew it has been quite some time. Mr. McNamara asked if an equitable waiver wasn't requested because the structure was over the property line. Mr. Maynard said that was correct. Mr. Gowan commented that the Board couldn't grant variance relief onto someone else's property. Mr. McNamara asked if there was any other location on the property for the shed. Mr. Maynard answered no.

Mr. Kearney asked about the size of the shed. Mr. Maynard said the shed was 10ft.x20ft. Mr. Kearney questioned how wide the property was at that location. Mr. Maynard said it was approximately 20ft. wide at that location. Mr. Kearney asked for the width of the driveway. Mr. Maynard said the drive went to the primary dwelling and a boat ramp. The drive was roughly 10ft. wide, and was paved at the lot line by the owner and the neighbor. After the shed is moved, one corner of it will be on the edge of the drive.

Ms. Guay asked when the shed was replaced last. Mr. Maynard didn't have an answer; he offered that his client had been in the home since the 1980's and prior to that the home was their grandparent's.

PUBLIC INPUT

Mr. Richard Koebrick, the abutting neighbor to the applicant, told the Board he had been next door for fifty-four years. He recalled the shed being in the same location for over forty years and commented that it hadn't been rebuilt or expanded in that time. Mr. Koebrick answered no.

Mr. Ken Cooley, 29 Woekel Circle came forward representing himself, as well as his in-laws the Ratcliffes. He submitted photographs to the Board for review. He explained they were requesting the shed be moved two feet off the property line was because they would like to extend their fence and it was difficult to do so given the location of the shed. He noted digging in that area was horrendous and if they hit a rock would need a bit of wiggle room. Mr. Cooley said they had no objection to having the shed moved, they were simply asking for it to move two feet off the property line.

Mr. McNamara asked if an agreement could be reached between the two property owners such that access would be allowed to that area. He said it seemed the only opposition was the abutter wanted to have access to the area with a fence. Mr. Hennessey said that request was beyond the purview of the Board.

Mr. Hennessey suggested the Board conduct a site walk.

Mr. Cooley believed the existing wall would have to be removed for the septic system. He said there was plenty of room to move it. Mr. Maynard said the wall would stay, they received waivers from the State for the grading. They needed the wall on the lot line in order to raise the grade so the shed didn't sit on an awkward slope; it was shown on the plans and had been part of the approval process through the State.

Ms. Guay reviewed the photographs submitted with the application and questioned who owned the fence shown in those photos. Mr. Cooley said the fence belonged to the Ratcliffes, his in-laws. He said they brought the fence as far as they could until they realized the shed was in the way. If the shed gets moved, it would be their opportunity to extend the fence. Ms. Guay confirmed that there had been no opposition to where they believed the lot line to be. Mr. Cooley answered no; it was at the time they had a survey done that they discovered the shed was on their property.

MOTION: (Guay/McNamara) To conduct a site walk.

VOTE: (5-0-0) The motion carried.

A site walk was scheduled for April 19, 2014 beginning at 8:30am.

The case was date specified to the May 12, 2014 meeting.

Case #ZO2014-00006

CONSTANT, Daniel & Debra - 2 Springdale Lane - Map 30 Lot 11-335 – Seeking a Variance concerning Article III, Sections 307-12 & Table I to permit construction of a single family dwelling on a lot having no frontage on a Town Road and less than the required 1 acre.

Mr. Hennessey said this case and the one after were conjoined; the abutters list applied to both and would be read once.

Ms. Guay was appointed to vote.

Case #ZO2014-00007

CONSTANT, Daniel & Debra – Springdale Lane – Map 23 Lot 11-352 - Seeking a Variance concerning Article III, Sections 307-12 & Table I to permit construction of a single family dwelling on a lot having no frontage on a Town Road.

Mr. LaFrance read the list of abutters aloud. There were no persons present who asserted standing in the case. Ms. Marjorie Hegarty told the Board that the property at 6 Springdale Road was in a Trust to her and Charles Body, Jr. (her brother). Mr. Hennessey asked if the notice was

sent or given to the Trust. Ms. Hegarty said nothing was received by either of them for the first meeting and they came to the Town to sort out the situation. Mr. Hennessey asked if she was saying she received no notice in reference to the Planning Board meeting. He questioned if Ms. Hegarty had received notice of the Zoning Board Case. Ms. Hegarty said they received notice of the present hearing once they went to the Town and informed that they had not received a prior notice. Mr. Hennessey confirmed that Ms. Hegarty received notification of the present Zoning Board meeting. Ms. Hegarty answered yes, they received notification.

Mr. Joseph Maynard of Benchmark Engineering, representing the applicants in both applications, came forward to address the requests. He told the Board that both properties were owned by Mr. & Mrs. Constant; one is just over two acres in size, and the other (after a recent lot line adjustment) is at 0.82 acres in size and contains an existing structure, an out building (shed) and has access through Springdale Lane (a private road from Webster Avenue). His client would like to construct a new single family dwelling on the .8 acre lot, which will be outside of all building setbacks. The principle access will remain as it currently was through Springdale Lane and over a gravel area. The other lot (containing 2.2 acres) would have access coming in from Springdale Lane; also any construction would be outside of any setbacks. There won't be any requests for encroachments or waivers. He said they had been on site several times and hadn't noticed any wetlands.

Mr. Maynard said they were seeking to construct a new dwelling on the smaller lot, which didn't have the required 200ft. of frontage on a Town road and the lot didn't contain one acre. In regard to the larger property, they were looking to construct a dwelling; it had the required acreage, but didn't have the required 200ft. of frontage on a Town road.

Mr. Hennessey asked if any of the lots had frontage. Mr. Maynard replied none of the lots did, the access was off of a paper street known as Gage Road. He noted there were a number of homes (seasonal or not) located off the bottom of Springdale Lane. Mr. Hennessey questioned who maintained the roadway. It was Mr. Maynard's understanding that the neighbors get together to do any maintenance on the road and the area. Mr. Hennessey asked if there was access for public safety vehicles. Mr. Maynard believed the Fire Department could access the area. He noted there was almost a hammer head at the end of Springdale Lane that they could turn around in; although it might be difficult with larger apparatus. He hadn't heard of any problems. He further noted that the area Springdale Lane led to had been in place since the 1920's.

Mr. Maynard read aloud the variance criteria as submitted with the application for Case#Z02014-00006 – Map 30 Lot 11-335 (the smaller lot).

Mr. Hennessey asked Mr. Maynard to explain the different between the two lots. Mr. Maynard stated Lot 11-352 was still a two acre piece of land and remained a viable building lot, except for having the property frontage on a Town owned and maintained road. The access for the lot was not as far down Springdale Lane as was the case to access the other structure. Mr. Hennessey asked if the lots were joined. Mr. Maynard said the lots were abutting, but were separate including the deeds. Mr. Hennessey questioned why there was a request for an undersized lot if there was an abutting two acre lot. Mr. Maynard explained when the process began, the smaller lot was increased in size to be able to fit the structure and meet setbacks. His client had already taken land from the larger parcel, but would like to retain it as a two acre lot. Mr. Hennessey said under the variance criteria, there is a question of having available land. Mr. Maynard

replied they had already obtained additional land to bring the lot up to the size it presently was. He said there wasn't available land in order to bring the lot in as a Town road. The manner Springdale Lane comes in through the property, it meanders through a number of different lots. There isn't proper right-of-way to achieve building a road to Town standard. Mr. Hennessey asked if there was any reason, other than the wishes of the owner, that land couldn't be taken from the larger lot into the smaller lot to make the size conforming. Mr. Maynard said probably not; but that wasn't the argument being discussed. He pointed out that part of the criteria shows the proposed lot was bigger than many of the other lots that were directly adjacent to it. He wasn't arguing that there was no additional land to make the lot more conforming. He said they had already increased the lot more than fourfold to bring it to the lot size it was brought to.

PUBLIC INPUT

Attorney George LaBonte, representing Dave and Lynne Hegarty of 11 Springdale Lane, brought forward questions. He first commented that the road width was currently 10ft-15ft. wide, which may be difficult for fire apparatus to access. He requested that the Board conduct a site review of the property and said residents were concerned that the owners had stripped the land of all the trees. Based on the hilly topography of the parcel residents were concerned with runoff from the property going into the lake. Attorney LaBonte personally reviewed the site and didn't observe any preventative measures to take care of any runoff. He reiterated that the lot appeared to have been recently logged and was in disarray. His clients were also concerned about the maintenance of the road and the type of activity it would endure with heavy construction vehicles. They questioned who would be responsible if potholes developed or repair work was needed. Attorney LaBonte stated the abutters had concern for runoff possibly reaching the lake. He questioned how the utilities would be brought down to the new structures and whether or not new poles would need be put in. He told the Board he shared their question of if a lot line adjustment could be done to make the proposed lot conforming. According to the applicant's plans, he believed land may be available to achieve conformance. He said the neighbors would like to see where the proposed structures would be located.

Mr. Hennessey spoke with Mr. Maynard and confirmed that the abutter list was the same for both cases. Mr. Maynard said it was. Mr. Hennessey asked if there was any difference in the variance criteria, other than the size of the lot. Mr. Maynard replied it was basically the same; the only argument was that the length of access to travel down Springdale was much shorter than if it came around the other side. Mr. Hennessey wanted to know if Mr. Maynard would allow the abutter's comments to apply to both cases. Mr. Maynard said for the most part he would.

Attorney LaBonte believed it was important to point out that the character of the properties in the area were all seasonal, except for possibly a couple. There was concern for what would occur if there were seasonal homes. He noted that parts of the road weren't plowed in the winter, which could cause problems.

Mr. Gowan stated that the Board is often concerned about the style and size of structures being built; he encouraged that additional information (i.e. footprint, number of stories) to come in. Mr. Maynard didn't bring the building information, but knew his client had such information for the existing dwelling lot, which will be a ranch style dwelling. Mr. Hennessey questioned if the two lots were staked out. Mr. Maynard answered no, but felt it was apparent where the lot lines were located. Mr. Hennessey asked if there were some sort of markings where the properties

were going to be built. Mr. Maynard told the Board they could stake it out or show the Board where the area would be.

Mr. Hennessey stated he would keep public input open to allow people to come forward, but suspected the Board would be conducting a site walk.

Ms. Marjorie Hegarty of 6 Springdale Lane (and resided in Andover, MA) came forward to address the Board. She heard discussion about moving lot lines, but didn't have a visual for what it meant. She was most concerned with her deeded right-of-way through a pathway that cut through a triangular piece of their property. She didn't know where the lot line would now be situated, where the homes would be constructed and what impact it would have to that deeded right-of-way. Mr. Hennessey asked Mr. Maynard if he had seen the deed being referenced. Mr. Maynard told the Board he researched it and they wouldn't be impeding on the right-of-way in any way; it was the deeded right-of-way to a number of homes. He said the language was vague and written 'as the road exists'. Mr. Hennessey wanted to know if the right-of-way was Springdale Lane itself. Mr. Maynard said that was correct. Ms. Hegarty said she wasn't referring to Springdale Lane. She told the Board there was a pathway/dirt road off Springdale Lane that segments a piece of the applicant's land into a triangular fashion. At this point she was unsure if the road still existed; she believed some of it may have been destroyed. Mr. Hennessey asked Mr. Maynard if he had seen the deed Ms. Hegarty referenced. Mr. Maynard answered no; he wasn't clear as to what she spoke of. He had done the boundary survey on the parcel approximately three years ago for the two brothers who originally owned it. He said they gave him everything they had. He told the Board they found everything they could at the Registry of Deeds. They identified Springdale Lane and Gage Road as the two primary access as part of that deed. Mr. Hennessey asked Ms. Hegarty if she had a copy of the deed to either drop it off or fax it to the Planning Department. He suspected the Board would conduct a site walk and told Ms. Hegarty they would be interested in seeing the road's location.

Ms. Hegarty was also concerned about the road being private and creating precedence if additional homes were allowed to be built without frontage. Doing so would disturb the tranquility that had existed at Little Island Pond since the inception of the camps.

Mr. Mark Danisewicz, 68 Webster Avenue told the Board he abutted the larger two acre parcel and provided (before and after) photographs of how the land had drastically changed over the past couple years. He described the photographs as showing how the land was prior to logging and how it now was after the land was cleared. Mr. Hennessey asked who did the change of the terrain. Mr. Danisewicz said the owners cleared the land. The cleared area was located directly behind his home. He was concerned about the possible effects his property would endure from the clearing and how it might affect his property value.

Mr. Hennessey questioned how close the clearing was to the water and if was within the 50-foot Shore Land Protection. Mr. Maynard responded that the clearing was outside the 50-foot setback. He stated they got all the proper permits for the logging operations.

Ms. Guay understood there was an existing structure on the small lot that would be moved. She wanted to know where it would be moved to. Mr. Maynard said they weren't sure yet. It may be moved in the interim to the rear lot and utilized as a storage structure. He said the intent was for it not to be in the same location. Ms. Guay questioned if there were plans to subdivide the larger lot at some time in the future. Mr. Maynard answered no; there were no plans at this point in

time other than to bring it forward so it could obtain a building permit in case they wanted to move the existing structure. Ms. Guay wanted to know if an easement had been provided for the small lot to go through the big lot. Mr. Maynard replied the small lot technically had the right to pass and re-pass along Springdale Lane. There is currently a gravel drive that acts as the primary access; this will continue to be access. The lot line has been adjusted for the access to stay within the property. Ms. Guay questioned how many other owners had to go through Lot 352 to get to their property. Mr. Maynard answered there were a number of lots that came off Springdale Lane.

MOTION: (McNamara/Kearney) To conduct a site walk.

VOTE: (5-0-0) The motion carried.

A site walk was scheduled for April 19, 2014 at 9am.

The cases were continued to the May 12, 2014 meeting.

Case #ZO2014-00009

DGRAZIA, Kenneth & OLIVEIRA, Anderson & Jodey – 13 Bearhill Road - Map 20 Lot 3-130-17 - Seeking a Special Exception concerning Article XII, Sections 307-73 & 307-74 to permit an accessory dwelling unit.

Ms. Culbert was appointed to vote.

Mr. LaFrance read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Attorney David Groff, representing the applicants, came forward to discuss the requested Special Exception. He explained at the time his client purchased their home the appraiser missed the fact that the in-law unit didn't have a permit, although it was constructed with permits. He noted that the previous owner had their parents living in the unit. The present situation came to light when the current owners went to refinance; the second appraiser caught the fact that there wasn't a permit for an in-law. Attorney Groff told the Board the unit met all the criteria. A depiction of the home was provided to the Board which showed the location of the unit and its dimensions. He noted that the septic was redesigned to meet the 4.5 bedroom criteria. He said Mr. Digrazia and his wife resided in the in-law apartment; his daughter and her family lived in the main part of the house.

Mr. Hennessey questioned how the situation occurred. Mr. Gowan didn't know how it happened. He asked when the house was constructed. Attorney Groff believed the house was built in 2000 and later there was an addition specifically for the previous owner's parents. Mr. Hennessey asked if the unit met all the criteria. Mr. Gowan answered yes; he reviewed it with the Building inspector and concurred that the unit met all the criteria including the common wall. He felt it would be important for the record to describe how the unit would be used in conformance with the in-law. Attorney Groff told the Board that Mr. Digrazia and his wife planned to live in the unit and his daughter with her family would lie in the main part of the house. It was not a rental situation; they purchased the house specifically because they wanted to live in the same dwelling.

Mr. Hennessey confirmed that the applicant understood that upon further sale of the dwelling that the unit could not be used as a market apartment. The applicant was present for the meeting. Attorney Groff confirmed with them that they understood; they answered yes.

The case was open to public input. No one came forward to offer comment, or had any questions.

BALLOT VOTE #ZO2014-00009:
Mr. Hennessey – Yes
Mr. LaFrance – Yes
Mr. McNamara – Yes
Mr. Kearney – Yes
Ms. Culbert – Yes

VOTE: (5-0-0) The motion carried.

SPECIAL EXCEPTION GRANTED

Case #ZO2014-00008

LEBEL BROTHERS REALTY TRUST - 42-44 Nashua Road - Map 21 Lot 3-59 - Seeking a Variance concerning Articles XII & III, Sections 307-74, 307-12 & Table I to permit an additional dwelling unit (with 3 bedrooms) to remain in addition to the existing duplex located at 42-44 Nashua Road & to allow the existing (3 bedroom) accessory dwelling to remain as it exists today (larger than 750SF).

Ms. Guay was appointed to vote.

Mr. LaFrance read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Mr. Joseph Maynard of Benchmark Engineering, representing the applicant, came forward to discuss the requested variance. He provided the Board with a brief history of the property. He was unsure if there were any records that indicated when the original construction occurred. That original structure was built as a duplex and sometime around 1975 an addition was put onto the home that was built just like a third unit. In the 1990's the Town cited the property for a violation of having a third unit. The property owner at that time came to the Zoning Board and applied for a variance, which they lost. The owner appealed and lost. The owner put the case through the courts and also lost. Mr. Maynard said from that point there was no action by the Town and believed it got lost by the wayside from 1992 until the present. He explained at present the Lebel brothers purchased the property around 2010. The real estate documents the present owners received from the advertisement and closing of the property say it's a three-family. The Lebel brothers have lived a couple houses away from the property for approximately twenty years and didn't know of any issues with the property during that time.

Mr. Maynard told the Board that one of the applicant's daughter came to the Board to request an in-home occupation for a daycare. In her write up, she spelled out that it was a duplex dwelling. In 2014 there was a fire/ambulance call to an illegal apartment within the basement of the dwelling. Subsequently the owners have worked with Mr. Gowan to remove that apartment and

the kitchen associated with it. He believed that was how the equation came in that it was a three-family dwelling and being used as such. In speaking to Mr. Gowan the owner decided to come forward with a new variance application to try and allow the existing third unit and make the building a three-family dwelling. Mr. Maynard said the variance criteria standards since the 1990's have changed and become a little more homeowner friendly. He then described the layout of the structure; each until contained approximately 1400SF-1500SF and basically had the same floor plan. The third unit has two kitchens; one on the first floor and one upstairs. The daycare unit is approximately 2200SF (between the first and second floor there is 1400SF-1500SF) as well as a full finished walk out basement. Each dwelling has a separate entrance.

Mr. Maynard discussed the character of the neighborhood. He said Nashua Road itself was a busy connector road that had a mixture of uses. The property is located across from Woody's Towing. Diagonally across from the dwelling is the pre-existing, non-conforming use of the Zelonis family for their garage. The general area has many duplexes. Travelling toward the center of Town there is a larger multi-family dwelling which is also a pre-existing, non-conforming structure. Mr. Maynard told the Board that his client had visited the neighbors that directly about the lot and received letters of support from four of them. The abutters all understand that the owner is trying to make the dwelling a legal three family building. Mr. Maynard pointed out that the lot itself was a little over three acres in size. Another plus was Pennichuck Water serviced the area and the site was connected to it. The property has a newer septic system; however, it was designed as a duplex system. If they were allowed to move forward, Mr. Maynard said they would be willing to show a design that could support the nine bedrooms within the dwelling. He felt this wouldn't be difficult given the approximate three acres the parcel contained.

Mr. Hennessey asked for the square footage of the accessory unit. Mr. Maynard said it was 1400SF and contained three bedrooms. He stated there would be no new construction. The building, as it was currently situated, was broken up into three separate units. Two of the units have no real basements; the unit on the left of the structure has a full basement with a walk out. Mr. Hennessey questioned if any of the units would qualify as an accessory apartment within the size limitations. Mr. Maynard said if they were broken up into an upstairs and downstairs unit then each one would qualify for a 750SF accessory unit. To correct the problem he originally thought to argue that, but the accessory unit isn't allowed on a duplex. He stated it was a unique circumstance. It had been in place for a long time, it got caught and went through the courts; it then got lost, new owners come along that are trying to correct the situation. Based on the character of the location, Mr. Maynard didn't think it was a stretch for the dwelling to be utilized as a three family.

Ms. Guay noted she was on the Board when the request for the daycare was brought forward. She suspected those living in the dwelling had no difficulty in knowing the structure was not a duplex. Mr. Maynard couldn't answer; he was trying to resolve what the structure was at this point. He believed the applicant's daughter did the variance application herself for the daycare. It was his understanding if the requested variance was granted, a new variance would be necessary for the daycare to remain because it had been allowed within a duplex structure. Ms. Guay noted that the information provided to the Board at the time the daycare was granted specifically said 'duplex'. She said it seemed there had been some misrepresentation to the Board. She also saw in court decision documents that at the time the building permit was obtained from the Town the owner (at the time) proposed an addition that would be used as a family room and play room.

Mr. McNamara said the denial of the variance and subsequent court action was obviously still a matter of record. He asked if the applicant was asking the Board to change that decision because circumstances had changed. Mr. Maynard believed the whole character of the neighborhood had changed since the 1970's and early 1990's. He felt based on the location of the lot, where it sat in Town and what had grown up around it, it wouldn't be a stretch to say that part of Town was unique. And also what they were trying to achieve was not out of character from what was currently in the area today and what that area could support. Mr. McNamara said it seemed bad behavior would be awarded. Mr. Maynard replied they were trying to correct the situation and fix the problems that existed with the structure. He offered to walk the site with the Board and show how the property and structure was situated. He said in viewing the dwelling it was obviously built to be a separate unit with its own entrance.

Mr. Hennessey opened the discussion for public input. Mr. Maynard reiterated he had letters from four abutters that could be submitted for the record. No one came forward from the public.

Mr. Hennessey asked if the third unit met health and safety code. Mr. Gowan told the Board that both the Building and Fire Inspector visited the site and saw there were five units. The current applicants were instructed to remove the fifth and sixth units within thirty days. Those units were removed and an inspection has been done to verify their removal. Mr. Gowan discussed the options. He said if a variance is granted, the applicants will have to do a number of things, such as have a new septic design done to accommodate the actual number of bedrooms within the home. Radical changes to the structure would need to be done to make it meet multi-family, National Fire Protection Association ('NFPA') building code regulations. The applicant's daughter would need to come back to the Board to request that the daycare be allowed to operate within a three-unit structure. Alternatively, if the Board denies the variance, the applicants will have to remove all but two kitchens and divide/rearrange the structure into two living areas. The septic will still need to be increased to meet the number of bedrooms for the two-family home. He said if the structure becomes a duplex, the variance already granted for the daycare would stand. He stated his goal was to bring people into compliance; he was not in the punishment business.

Mr. Maynard concurred with Mr. Gowan. He told the Board his client was trying to bring the property into some form of compliance. If the variance is granted, they were willing to meet the conditions put on them. They understood a multi-family dwelling would be forced to meet NFPA and the septic would need increasing. Mr. Maynard felt confident that the lot could support the total of nine bedrooms that were within the structure. He reiterated they were trying to correct a problem that appeared to have been a long-standing problem with the property.

Mr. Hennessey said he had a number of questions, aside from the fact that historically the Town had been misled, He believed everyone had to understand that the property had to have been inspected; the owners must have walked through and seen the units. He said if the property disclosure stated there were three units, the owner's may have a case with their real estate agent. He said the Board had already addressed the property in the past and felt the Board was lied to last year when they were told the structure was a duplex.

Mr. Hennessey was trying to view the application as if it came to the Board de novo; having no history. He couldn't imagine the Board approving the requested variance for a two-family building coming in for a three-bedroom accessory unit containing 1400SF.

Mr. LaFrance wanted to know how Mr. Hennessey was viewing de novo; either new to the Town, or new to be built. Mr. Hennessey said if it were making the request as new to be built. Mr. LaFrance said given the circumstances, he could see the Board saying no for a unit to be built. But pre-existing, minus the past history, Mr. LaFrance said the Board would have to consider how to vote because it would then be a misunderstanding that was not caught. Mr. Hennessey said the Board had cases of misunderstandings; but in this instance, there was no misunderstanding with the previous owner. He said the previous owner lying on the property disclosure about three units was one thing; however, the present owner either bought the property and had two more units put in, or bought it with the additional two units. He felt their eyes were wide open when they took the property. He was trying to be overly fair and view it as if they didn't lie and it was in front of the Board as a blank sheet. Mr. LaFrance agreed.

Mr. McNamara reviewed the variance criteria submitted and saw references to their being a history of property utilization. He said the problem was the property was being used illegally. He said it seemed almost like a bootstrap argument; the property was there years ago, it got denied, the Supreme Court denied it, and it continued to be used illegally. He didn't see how that use could be used to satisfy the criteria. Mr. Maynard commented that the previous case in front of the Board was for an existing structure that contained an accessory unit that had been utilized, but didn't have a permit. That case was for a Special Exception because the unit met the criteria. He explained he was requesting a variance to make the structure a three-family building because of the character of the location and unusual aspects of it. He said the building was constructed as three separate living areas that has a history that went on and on for a lot of years. Mr. Hennessey said there was a denied variance and a recent variance approved for a daycare in a duplex, that didn't have just two units, but actually had five units at the time. Mr. Maynard said they were trying to correct a long standing issue. Taking aside the history, Mr. Hennessey said the Board was looking at a duplex with a request for a 1500SF unit containing three bedrooms. He said he's seen the property.

Mr. McNamara said he had also driven past the property and didn't know that a site walk would provide further light on the situation.

Ms. Guay said even with working to try and correct the situation, the applicant indicates the third unit contains approximately 1450SF. Mr. Maynard said the 1450SF was the combined square feet between the first and second floor. Ms. Guay questioned if there were kitchen facilities in both units. Mr. Maynard said the owner was currently working with Mr. Gowan to bring the unit into compliance. He said there was one entrance that accessed both units. Ms. Guay asked if there was a kitchen facility on the second floor. Mr. Maynard answered yes and explained it was more of a kitchenette. He believed it was where two of the units were located that Mr. Gowan referenced.

Mr. McNamara took issue with the comment that the nature of properties on Nashua Road had changed drastically. He said the area had traditionally been single family; there were several duplexes. He said Woody's had been there for quite a long time. Mr. Maynard noted in the past there were private wells, but municipal water had come through and the area grew.

Mr. Kearney agreed that the Board didn't need to be punitive, but should review the entirety of what's happened in the past and what would happen going forward. He said if the application came to the Board as new construction he would have a difficult time approving it. He stated

knowing the history, he had more difficulty accepting and wanting to grant an approval. Mr. Kearney believed a portion of the Board's responsibility was to judge and lay out what's expected by the Town's people. He said the applicants had come in front of the Board and were denied. There was neglect in following the rule. He said for the Board to be fair and equitable to everyone, they couldn't approve the requested variance.

Mr. LaFrance noted that the parcel contained three acres. He reviewed the Town's requirements for a multi-family dwelling and questioned if the building would meet them. Mr. Maynard replied they hadn't surveyed the property and wasn't clear if it would. He heard from the Board that the third unit didn't sound like a viable request. Mr. Hennessey said the Board would have to vote on the request. Mr. Maynard contemplated polling the Board to find a reasonable approach to submit a request. Mr. Hennessey said the Board couldn't do that; they had to deal with what is presented and can't give alternatives. Mr. Maynard understood.

Mr. Guay asked if the lot had 200ft. of frontage. Mr. Maynard answered yes. He had a septic design and in reviewing it believed the building may meet the 30ft. side setbacks and 40ft. front setback. Ms. Guay said a difficulty was that the applicant was never transparent from the beginning. Mr. Hennessey believed the Board agreed that they were looking at the application de novo and weren't trying to be punitive. Ms. Guay agreed.

Mr. McNamara said the situation could also be viewed as a self-created/self-imposed hardship when the property was purchased in 2010. Even if the property was advertised as three-units, he felt any reasonable person should know, and is assumed to know that there was a court case the building was not in a zoning area that allows three units. Mr. Hennessey agreed. He said under the criteria he saw no way of approving the variance.

BALLOT VOTE #ZO2014-00008:
Mr. Hennessey – 1) No 2) No 3) No 4) Yes 5a) No
Mr. LaFrance – 1) No 2) No 3) No 4) Yes 5a) No
Mr. McNamara – No to all criteria
Mr. Kearney – 1) No 2) No 3) Yes 4) No 5a) No
Ms. Guay - 1) No 2) No 3) No 4) No 5a) No 5b) No

VOTE: (0-5-0) The motion failed.

VARIANCE DENIED

Mr. Gowan stated since the Board determined that the building would be a duplex, he will take appropriate action with the property owner. In his view as Zoning Administrator, the variance granted formerly for the daycare in a duplex will stand.

Mr. Hennessey believed that the variance (for the daycare) was granted on the basis of misrepresentation and was therefore not a legal variance. He asked for a vote by the Board to seek legal counsel's opinion regarding the situation.

MOTION: (LaFrance/Guay) To seek legal counsel's opinion as to whether the variance for the daycare is a legal variance.

VOTE: (5-0-0) The motion carried.

Mr. Gowan will draft the question for legal opinion and reply to the Board.

SITE WALK – April 19, 2014 – beginning at 8:30am
Case #ZO2014-00005 - MCCANN, Keith - 24 Woekel Circle - Map 31 Lot 11-285
Case #ZO2014-00006 -CONSTANT, Daniel & Debra - 2 Springdale Lane - Map 30 Lot 11-335
Case #ZO2014-00007-CONSTANT, Daniel & Debra – Springdale Lane – Map 23 Lot 11-352

DATE SPECIFIED PLANS - May 12, 2014
Case #ZO2014-00005 - MCCANN, Keith - 24 Woekel Circle - Map 31 Lot 11-285
Case #ZO2014-00006 -CONSTANT, Daniel & Debra - 2 Springdale Lane - Map 30 Lot 11-335
Case #ZO2014-00007-CONSTANT, Daniel & Debra – Springdale Lane – Map 23 Lot 11-352

MINUTES REVIEW

March 10, 2014:
MOTION: (Kearney/LaFrance) To approve the March 10, 2014 meeting minutes as written.

VOTE: (4-0-1) The motion carried. Ms. Guay abstained.

ADJOURNMENT

MOTION: (LaFrance/McNamara) To adjourn the meeting.

VOTE: (5-0-0) The motion carried.

The meeting was adjourned at approximately 9:35 pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary