

APPROVED

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
June 13, 2022**

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

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT ROLL CALL: David Hennessey
Jim Bergeron
David Wing
John Westwood
Jeff Caira
Alternate Shaun Hamilton
Planning Director/Zoning Administrator Jennifer Beauregard

ABSENT: Recording Secretary Jordyn Isabelle

MINUTES

March 14, 2022

MOTION: (Hamilton/Wing) To accept the March 14, 2022, meeting minutes as written.

VOTE: (6-0-0) The motion carried.

REHEARING(S)

CASE #ZO2022-00006

WALKER, Richard & Ethel - 81 So. Shore Drive; Map 31 Lot 11-268 – Seeking a Variance concerning: Article III, Section 307-12 Table 1, & Article VII, Section(s) 307-41A, 307-41B of the Zoning Ordinance to permit an existing seasonal camp structure and garage to be demolished and replaced with a 32' x 36' 2-bedroom year-round residence with a 10' x 36' deck and an attached 24' x 30' garage on an undersized and non-conforming lot with less than 200' of frontage. The construction will be shifted to meet the 15' setbacks but will be located within the 50' WCD setback and the deck and steps will be located 6' from the side setbacks where 15' is required. Also, replacing and relocating septic, setback will be 110' from WCD where 125' is required.

Mr. Wing read the list of abutters aloud. There was no one whose name was not called that is an abutter or has a statutory interest in the case.

Atty. Bernard Campbell came forward to represent Mr. Richard Walker and Mr. Earl Sanford. He explained the reason for the variance request to redevelop a seasonal property into a year-long structure that would

bring the lot into more compliance with current zoning regulations. Atty. Campbell informed that Mr. Walker received a Shoreland Impact Permit and septic approval for the proposed project.

Atty. Campbell then read the five criteria into the record.

Mr. Caira asked for specifics of the original and proposed setbacks would be. Atty. Campbell replied that the distance from the pond would increase from 10.2 feet to 29.5 feet and that the lot line setbacks were increasing from 4 feet to 6 feet.

Mr. Wing asked if there was a trade-off in the amount of impervious soil to compensate for the increasing size of the garage. Mr. Sanford replied that they were following the shoreland guidelines, where they must stay under 20% of impervious soil. He explained that while the impervious soil on the lot was increasing from 12% to 17%, they are still well under the 20% limit. He noted that this means the plan would pass without mitigations in place, but they have included added mitigations.

Mr. Hennessey asked what the benefit would be to the applicant, the Town, and the lake if the variance were to be granted. Mr. Campbell replied that the biggest benefits would be a new State approved septic system, which would significantly enhance the protection of the pond. He stated that the plan would also increase the tax base as opposed to the existing structure, creating a financial return to the community.

Mr. Hennessey opened the discussion to the Public.

Ms. Kathleen Woekel, of 38 Woekel Circle, came forward to address the Board. She informed that she had some discrepancies with the plot plan, noting that Woekel Circle is not an accepted road that would stop at Walker's property. Mr. Hennessey explained that the Board does not deal with lot line disputes and deeds unless necessary to address the five criteria. Ms. Woekel raised concerns over the drainage on the property and issues of flooding in the past. She added that she believed all boards reviewing the application should be aware of how little dry area there is on the property. She informed that she had begun to review the Shoreland application, noting that they were recommending putting up some orange fencing along the western side of the lot. She asked for clarification on where this fence would go.

Mr. Hennessey stated that it was his belief that the applicants are bound to not create any further outflow of water from the property. Mr. Sanford replied that was correct. He added that they would also need to use an erosion control mechanism during the construction. Mr. Sanford replied to Ms. Woekel that they are duty-bound to not affect more than a certain percentage of a natural site, which the orange fence would signify. Ms. Woekel asked what safeguards would be taken for the water that already sits below the property and grows due to land movement. She explained that she had brought this concern to Mr. Walker and Mr. Campbell, asking them what their plan was to fix the flooding into Woekel Circle from the lots.

Ms. Woekel continued that at a previous meeting regarding number 80 So. Shore Drive, it was mentioned that the water could potentially also flow into So. Shore Drive without a property drainage plan. Chairman Hennessey clarified that this case was solely 81 So. Shore Drive. Ms. Woekel then read aloud from the Board of Selectmen letter dated April 27, 2022. She quoted directly regarding the expansion of a property in the WCD being against the public interest. She explained that her main concerns were not regarding the specifics of the house, her concerns centered around the overflow and outcomes on the side of Woekel Circle and the impact it would have on abutters. She asserted that she would like to see a mandate to redirect flooding the pond area before issuance of an occupancy permit, should this variance be granted. Mr. Sanford replied, discussing the specifics of how they planned to maintain water during construction, noting that it can be left in. Ms. Woekel stated that there is significant footage to the sides of the bio berm and wanted to know what was being done to address that portion of the property. Mr.

Hennessey reiterated that there can be no further egress of water during and after construction. Mr. Sanford agreed, noting they designed the infiltration mechanisms that are permanent on this structure, as they are infiltrating the water rather than letting it flow off the property.

Mr. Hennessey asked if it would be possible to add a stipulation into the approval regarding increasing oversight on the property regarding out flow of water, or if it would be up to the Planning Board. Ms. Beauregard stated that the Board can condition a variance as they see fit. She noted that someone would need to contact the Planning Department to inform if it were to create more of a flooding issue, which the Code Enforcement Officer would then look into and inform the State. Mr. Hennessey emphasized that residents need to be aware and hold others accountable – encouraging them to say something if they see something.

Ms. Christine Kamal of 79 So. Shore Drive came forward to address the Board. She informed that when she purchased the abutting home in October, the septic system passed. She noted that they have not used the property yet and the septic system just failed because during the winter, the water table rose and seeped into the septic, causing the need to rebuild the septic system. She emphasized that the area could become extremely saturated. She stated that a couple of houses that were newly built really impacted the road, which cost abutters their own money. She urged the Board to consider how the renovations to the lot could impact abutters. She stated that many people would like to see an updated home and septic but would want the person responsible for any damages that may happen to take responsibility for it.

Ms. Julia Mawson Steed of 17 So. Shore Drive came forward to address the Board. She stated that the goal of the abutters is really to ask thoughtful, respectful questions because they are all responsible for a shared road and the shared resource of the lake. She specifically asked for clarification on impervious surfaces. She believed that her calculations differed from that of the engineer. He explained that there is a slight discrepancy primarily due to interpretations of the shots, and that the numbers he presented were more refined and based on the numbers shoreland gave. She then asked more specifics on the numbers presented.

Mr. Hennessey asked if the driveway was impermeable. Mr. Sanford replied that they are using gravel, which is considered impervious.

Ms. Adrienne Keane, of 63 So. Shore Drive, came forward to address the Board. She informed that she wanted to build on Ms. Steed's calculations. She stated that her calculations showed the proposed changes would increase the footprint by 61%. She stated that she was not allowed to increase the footprint of her house in 2012 when she rebuilt it. She expressed that she was happy to keep it the same, as it protects the lake and the drainage. Mr. Hennessey asked if it was possible for the applicant to build on the existing footprint and put a modern septic system on the property. Mr. Sanford replied that it was possible but not prudent as this would put it right on the edge of the lake. He explained that there's a significant advantage of pushing the footprint back 30 feet away from the water. Ms. Keane asked if it was possible for the applicant to move the footprint back but keep it the same. Mr. Sanford replied that anything would be possible, but not necessarily practical. He stated that the Board should consider that the applicant consolidated two lots to accommodate.

Mr. Campbell replied that he believed that Ms. Woekel was correct in her statement of the issues with the extension of Woekel Circle. He added that he was involved in Woekel Circle activities years ago. He stated that he did not believe that the Town maintained right of way up to the boundary line in the survey, he picked it based on plans he had seen. Mr. Campbell stated that regarding his obligation to "do no harm," he is trying to make sure that the proposed designs do not enhance any runoff areas that would go in that direction. Mr. Campbell stated that if it rains, whether they build or not, there will still be some runoff off

the lot as the proposed mitigations are not in place currently. He reiterated that the proposed plan would not enhance or aggravate the overall water table. He added that the addition of vegetation on the lot would further help with mitigations. Mr. Campbell added that while this case can be compared to others, each case's circumstances are different, and he was not aware of the specifics of the abutter's case. He further added that they would not be increasing the number of bedrooms in the structure.

Mr. Campbell stated that he believed the application meets the criteria for a variance and that they have two levels of State approval on the proposed plan. He stated that he believes that this is something that would enhance the neighborhood, benefit the community, and still have a residual benefit to Mr. Walker.

Mr. Bergeron asked if the existing septic system is registered with the State and is certifying the two bedrooms there now. Mr. Campbell informed that the house predates State approval, noting that would be an advantage of approving the project, as it would eliminate the uncertainty of the septic. Mr. Bergeron asserted that he appreciates when applicants come in trying to make lots more conforming. Mr. Bergeron raised the point of the dimensional inadequacy of the lot, noting that it is also irregularly shaped. He also highlighted the considerable wetlands on the property. He expressed that he does not have issues with the intent of the application but believes that it violates the spirit of the ordinance, as it is increasing in size by 60+%. Mr. Campbell replied that the house is expanding in size, as the standards of when it was built are different. He added that this house is still well under the typical square footage seen for a two-bedroom home. He added that the size of the garage is not adequate for today's standard of cars and that a lot of the increase in square footage was due to the increase in the garage.

Mr. Hennessey closed the discussion to the Public.

Mr. Hennessey explained that the Board would now discuss the five criteria for a variance.

1. The variance will not be contrary to the public interest because:

Mr. Hamilton did not believe that it would be contrary to the Public interest, especially in terms of protection of the lake. Mr. Westwood primarily agreed, noting that he had some problems with the second half of the testimony.

Mr. Bergeron stated that he believed that with the moving of the lot further away from the water and installing a new septic system would be in the interest of the Public. Mr. Caira agreed.

Mr. Wing stated that he did not believe it was contrary to the public interest. He believed that Mr. Campbell had a very thorough presentation, noting that he went on the site walk and does not believe that this would be out of character for the neighborhood. He added that the shoreland protection and state approved septic designs were in the interest of the public.

2. The spirit of the ordinance is observed because:

Mr. Caira stated that he agreed with moving the house away from the water, though he did not believe that the spirit of the ordinance is met with the addition of the garage.

Mr. Wing stated that he believed the spirit of the ordinance is observed. He explained that the applicant is improving the setbacks, and that the increase is well within the purview of the Board.

Mr. Bergeron stated that he did not believe it met the spirit of the ordinance from the aspect of the expansion percentage. He stated that he understood the applicant has vested rights and that there's an established use but believed that the expansion did not meet the spirit of the ordinance.

Mr. Westwood stated that he believes the spirit of the ordinance is met, noting that he was against the application when he came in tonight. Mr. Hennessey commended this and encouraged other members to not make their minds up before hearing all testimony.

Mr. Hamilton stated that he believes the spirit of the ordinance is met. He explained that the applicant purchased another lot to give more room, adding that he did not feel like they were asking for an exorbitant amount of space. He believes they have met most people's concerns that were raised.

3. Substantial justice is done because:

Mr. Hamilton believed that substantial justice has been done. Mr. Westwood agreed.

Mr. Bergeron stated that he would like to respect the zoning ordinance, believing that substantial justice has not been met as it has been presented.

Mr. Wing stated that he believed substantial justice has been done. His opinion was that the public would gain in this instance as it would be a better looking home, an improved septic design, and it is further away from the lake.

Mr. Caira did not feel that substantial justice has been met. He stated that he believes there may be some effect to neighbors regarding water runoff.

4. The values of surrounding properties are not diminished because:

The Board all agreed that the surrounding property values would not be diminished, and rather are more likely to increase.

5. Owing to special conditions of the property that distinguishes it from other properties in the area, denial of the variance would result in unnecessary hardship because:

(A) no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because?

(B) If the criteria in subparagraph A above are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Mr. Hamilton stated that he did not believe that the property was different from others in the area, as each property had their own inherent problems, such as strange footprints. He added that he believed it was a reasonable use. Mr. Westwood agreed with this.

Mr. Bergeron stated that he did not see any differences between this lot compared to the surrounding lots, adding that he believed the conversion from a seasonal property to a year-round property would be sufficient as an unnecessary hardship. Mr. Hennessey stated that the town does not differentiate between seasonal and year-round zoning. Mr. Bergeron stated that he did not agree with Mr. Hennessey, stating that this could be seen as an expansion of use.

Mr. Wing stated that he believed the shape of the lot and the purchasing of the additional lot were unique enough to distinguish it from other properties. He also stated that he believed it was a reasonable use of the lot. He noted that many others around the lake had changed and upgraded their homes already.

Mr. Caira stated that he did not see a difference between this lot and surrounding lots.

Mr. Hennessey stated that he believed that the variance would not be contrary to the public interest, the spirit of the ordinance is observed, substantial justice has been done, and values of surrounding properties will not diminish. He stated that the lake needs to be protected by modern septic systems. He added that the applicant has already put money into obtaining shoreland protection approval, getting a new septic system design, and then getting that design approved by the state. Mr. Hennessey explained that many of the pond lots were created before zoning laws were put into place, which is why so many of them do not meet the current zoning requirements.

MOTION: (Wing/____) To stipulate that the height from grade on the property be no more than 34 feet.

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

MOTION: (Bergeron/Wing) To stipulate that the applicant submit an updated plan with the correct measurements and square footage added.

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

CASE # ZO2022-00006

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|------------------------|---------------|---|----------------------------------|
| ROLL CALL VOTE: | Mr. Westwood | – | 5 yesses; final vote “YES” |
| | Mr. Bergeron | – | 2 yesses, 3 nos; final vote “NO” |
| | Mr. Hennessey | – | 5 yesses; final vote “YES” |
| | Mr. Caira | – | 1 yes, 4 nos; final vote “NO” |
| | Mr. Wing | – | 5 yesses; final vote “YES” |

VARIANCE GRANTED

Mr. Campbell stated that he appreciated the Board’s patience and the dialogue that was had.

HEARING(S)

CASE #ZO2020-00008(2)

LOSCHI, Constance -120 West Shore Drive – Map 30 Lot 11-142 - Seeking a *one-year extension* of approval of the Variance concerning Article III section 307-8-C & 307-12, Table 1 of the Zoning Ordinance to permit the applicant /owner to move and make improvements to a pre-existing non-conforming lot by moving and replacing the house, septic system and well into conforming setbacks. Variance granted May 11, 2020, final approval granted July 13, 2020.

Chairman Hennessey recused himself from the conversation and appointed Mr. Bergeron to act as Chairman on his case. Mr. Bergeron appointed Mr. Hamilton to vote in favor of Mr. Hennessy.

Mr. Wing read the list of abutters aloud. There was no one whose name was not called that is an abutter or has a statutory interest in the case. Mr. Wing questioned the planning board if extending this variance was going to open this case for rehearing. Ms. Beauregard explained that the rehearing had already passed and that she believed any new approval would open up the rehearing period but was not positive about her answer and said she would follow up on it.

Mr. Bergeron then asked the planning director if there had been any changes to the zoning ordinances because he believed there were no changes. Ms. Beauregard agreed that there were no changes. At this time Mr. Bergeron opened this case to the public; no one from the public decided to speak on this case.

CASE #ZO2020-00008(2)

MOTION: (Wing/Westwood) To grant an extension of the variance for one year.

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

CASE # ZO2022-00010

OUELLETTE, Lance – 24 Cardinal Drive - Map 41 Lot 6-148 – Seeking a Variance concerning Article III, Section 307-12, C, & Table 1-Dimensional Requirements of the Zoning Ordinance to permit container pods, trailers, storage bins and other similar equipment to either be classified as non-buildings so that they are exempt from setback requirements for this lot; or to permit container pods, trailers, storage bins and other similar equipment to be located within 5 feet of the Front and side boundaries of this lot, which is the Industrial Zone.

Mr. Wing read the list of abutters aloud. There was no one whose name was not called that is an abutter or has a statutory interest in the case.

Atty. Groff and Mr. Ouellette came forward to address the Board. Mr. Groff informed the Board of the reason they were seeking the Variance. Mr. Ouellette and Mr. Groff inform the board that they have deliveries of bark mulch depending on sales, from March to July to the property. He added that they also store the movable pods that come and go from the customer sites. Mr. Groff informed that the applicant would like to request to be able to align the storage pods along the border of the property rather than in the middle. He explained the reason being that there is not a lot of maneuvering room on the property site and moving the pods would increase that.

Mr. Groff supported the claim by informing the board of how permitting this variance would not be a disturbance, as surrounding lots have permission to do the same. Mr. Groff believes that if the pods are placed on the border of the lot, it would better fit the fire and police accessibility. Mr. Groff gave examples of instances where temporary structures were located in lots of residential, commercial, and industrial zones in town. He stated that permitting the variance would not diminish the value of surrounding properties as they are located in the industrial zone where storage container pods and trailers have permitted use. Mr. Bergeron outlined that Mr. Groff and Mr. Ouellette were requesting two separate things. Mr. Groff clarified by stating that he is applying in the alternative, he is requesting to either have the board state that the storage pods and container are not buildings for purposes of setbacks or that they are permitted to park them within five feet of the property lines.

Mr. Hennessey began to speak on the case. He stated that this case was previously before the board, and he decided to recuse himself. Mr. Hennessey said that this case upheld the administrative decision of the zoning administrator, and it was ruled that the container pods were for the purpose to buy zoning buildings. Mr. Hennessey questioned the zoning administrator's decision on the case. Ms. Beauregard shared that she did not really decide on container pods. She informed the board that the previous decision that was questioned was about one building that was going to stay. She stated that the decision was made alongside the building inspector. Ms. Beauregard made it clear that the decision that was made about the one permanent container pod had no impact on any decision made about the variance for the remaining storage pods.

Mr. Hennessey restated how the case is dealing with an unusual lot with odd dimensions. He states he wants to hear from the abutters and other board members before making any final decisions. Mr. Bergeron said that he understands how setting this variance can be very narrow in scope. He also believes that the board should not try to overturn the will of the voters and that the zoning administrators ruling should be upheld but in cases can be waived.

Mr. Groff reiterated the two options he believed his client was entitled to. The two options are the board stating that under their zoning ordinances the structures are not classified as buildings. The second option is allowing the structures to be placed alongside the border of the property line given the unusual shape of the lot. Mr. Hennessey rebutted the claim made by Atty. Groff by reiterating that they as applicants decide what to apply for and they as the board decide whether the applicants will be granted their variance.

Mr. Westwood questioned the applicant on what time the deliveries take place during the day. Mr. Ouellette stated that the hours of operation for his construction and landscaping company run from seven to seven. As for deliveries Mr. Ouellette states that deliveries arrive at any given time and any given day. Mr. Westwood questioned the applicant on the level of noise disruption during early morning hours. Mr. Ouellette stated he has a neighbor present with him and that he does not believe that he has broken any noise violations or received any complaints from the town.

Mr. Wing decided to also add a question for the applicant. He asked if the lot is generally level or is limited access to the back of the lot due to terrain causing a transportation barrier. Mr. Groff explained the terrain and access to the back of the lot. He clarified that the tractor-trailers would not be stored in the rear of the lot and instead the storage containers would be. Hamilton added that in order to come to conclusion they need to determine whether they establish the storage pods as buildings or on-buildings. He stated that he believed that if the storage container was not attached to any electricity, a roof, and no one was living in it that it was a non-building. Mr. Bergeron agreed that it was necessary to establish the status of whether the structures are buildings or not. Mr. Hennessey decided due to the application being confusing they would hold off making any decision before hearing the public's opinion.

Mr. Darwin Phouong of 600 Colburn Ave in Dracut, Massachusetts came forward to address the Board. Mr. Phouong stated that from what Mr. Ouellette had informed him if he forced to move his equipment and storage it was going to cause an eye sore. Mr. Phouong informed the board that he believes that way Mr. Ouellette has things organized is perfectly fine and noise is not something for concern in the neighborhood. Mr. Bergeron brought up to Mr. Phouong the idea of having concern for the cur value of his home by having a storage container so close to the property line. Mr. Phouong stated that he does not see that as something to be concerned about. He believes it is far enough away from his property and restated that he thinks where it is now is a good location for it. Mr. Bergeron asked Mr. Phouong if there is more than one storage container on the east side of the property along Phouong's property line. Mr. Phouong stated there was not any against his property line. Mr. Hennessey asked if anyone else want to speak in opposition or had questions on the proposal. No one else from the public decided to speak. Mr. Hennessey concluded that he was still unsure on his decision but made it clear the board had to make their decision. Mr. Groff at this point then stated to the board that he and his applicant were willing to withdraw their application as it relates to classification. Concluding Mr. Groff is now just seeking the setback.

Mr. Hennessey questioned Ms. Beauregard if the variance for this lot was approved would it go to planning for site plan. Ms. Beauregard replied stating that the building that was in question was brought up at a previous meeting and was on the plan for the lot. She also stated that she thought it was assumed that this type of business would have storage containers that come and go from customer sites and are stored against the building on the lot. Ms. Beauregard believed that as far as the rest of them it didn't necessarily have to go back to the planning board. As it was assumed that this was going to be occurring

with this type of business. Mr. Bergeron asked the applicant if the container pod that was against Cardinal Drive was move the applicant informed the board it was moved. Mr. Bergeron then wanted to question the planning director if she was informed or knew anything about the storage containers bring moved since she had last made the decision on the single pod. Ms. Beauregard reiterated again that she had no influence on the storage containers as a whole she, alongside the building inspector permitted the one container pod that was going to be permanent. The planning director explained the manner and purpose of the permanent storage container. She continued with stating that it was up to the planning board to conclude a decision on the remaining storage containers as she had ruling over that one singular building.

Mr. Bergeron decided to clarify that if the board was unable to come to a consensus that they were to grant the applicant some sort of relief due to the uniqueness of the lot. Mr. Bergeron made it clear that this was to not create an egregious situation in the future by having the applicant abuses the uniqueness of the situation to their power by filling their lot with containers. Mr. Bergeron outlined that he believed that the eastern boundary of the property should be protected, and that the setback should not be granted for that border of the property. He stated he saw no issue with the other borders of the property for waiving setback requirements.

Mr. Bergeron claimed he wanted to wait until he hears the other board members opinions before making the motion to vote. He also believes that Mr. Groff is giving them the ability to limit decision and set conditions. Mr. Hennessey agreed with this statement, he also states that the uniqueness of this property given the circumstances needs to be taken seriously also given the hardship of the land. Mr. Caira agreed that there is a hardship with the land and the applicant is doing their best job to use the given scenario to use the property reasonably and neatly. Although Mr. Caira also agrees that they should not be lined along the border of the property against Dracut.

Mr. Hennessey explained that a scenario similar to this one would typically be sent to the planning department for them to come up with a site plan. Mr. Bergeron replied and was adamant that the board was capable of this decision. Mr. Wing stated that Mr. Bergeron brought up an important point he also thinks that they are making policy which he believes that board should vote as a judicial on the variance. He agrees that there are going to be some limitations as to the amount of storage containers that are safely placed on this property. Reason being the number of deliveries that come in and out of the property.

Mr. Westwood stated that he couldn't say no to this case. Although he stated he does remember the last time this case was open and he remembered a lot more noise issues. The complaints were from neighbors that were complaining of loud noise between the hours of five and seven am. Ms. Beauregard supported the applicant by stating the particular situation Mr. Westwood is addressing is not about this case. Mr. Hennessey wanted to clearly hear what the board was voting on before they get to casting their votes. Mr. Bergeron questioned the applicant before he wanted to make the motion. It was asked how many containers are located on Cardinal Drive that are within the setback distance. Mr. Ouellette replied saying there are currently two storage containers. He stated there was previously four and he owns five. The maximum amount Mr. Ouellette desires to have on the property is five. Mr. Bergeron wanted to know what the distance in between the property line and where the storage containers are when they are parked. The applicant stated the distance between the storage containers were previously twelve feet now they are currently eighteen, the distance from the containers and the road is currently ten feet. Although the applicant is proposing permission to permit the containers to stretch to five feet inside the perimeter of the property. The applicant then discusses willing to comply to not storing storage containers on the side of the property that borders Dracut. Mr. Ouellette just requests that he is allowed to have his employee parking alongside that border of his property.

MOTION: (Bergeron/___) To waive the setback requirements to five feet on the side abutting JDL Realty Holdings, LLC and Cardinal Drive only, with the Dracut side still requiring the setback minimums.

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

CASE # ZO2022-00010

ROLL CALL VOTE:

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| Mr. Wing | – | 5 yesses, final vote “YES” |
| Mr. Caira | – | 5 yesses, final vote “YES” with the specification that the Dracut side require setbacks |
| Mr. Westwood | – | 5 yesses, final vote “YES” |
| Mr. Bergeron | – | 5 yesses, final vote “YES” |
| Mr. Hennessey | – | 5 yesses, final vote “YES” |

VARIANCE GRANTED

Mr. Hennessey explained that there is a 30 day right to appeal.

CASE #ZO2022-00011

MAGUIRE, James T. & Angela J. – 134 West Shore Drive – Map 30 Lot 11-111 – Seeking a Variance concerning: Article III, Sections 307-8, 307-12, & 307-41 of the Zoning Ordinance to permit the construction of a 12’ x 25’ deck with a landing and stairs to be built on the pond side of the existing, non-conforming home. *Previously referred to as “124 West Shore Drive” in error*

Chairman Hennessey recused himself from the conversation. Mr. Bergeron was appointed to act as Chairman on this case. Mr. Bergeron appointed Mr. Hamilton to vote in favor of Mr. Hennessy. Mr. Hennessy clarified with the applicant on his correct address as it was previously recorded incorrect.

Mr. Wing read the list of abutters aloud. There was no one whose name was not called that is an abutter or has a statutory interest in the case.

Mr. Dingman, representative for the applicants came forward to address the Board. Mr. Dingman informed that the applicants were proposing to construct a deck off the front of the property. Mr. Dingman states that this feature is consistent with almost every other abutting property. He explains that the applicants desire an open deck that would not require digging - instead newer construction technology would be used. Mr. Dingman states that they do not want to physically impact the property in any way. Although the physical property would extend twelve feet closer to the pond. Mr. McGuire explained the physical structure and how the deck was not going to be intrusive to the property. He further explained that his father works for a property management company out of Lowell where they replace decks using the above-mentioned technology that avoids digging^s.

Mr. Bergeron asked for clarification on what an open deck was implying. The applicant replied that the deck would not contain a roof.

At this point Ms. Beauregard raised her hand to clarify the abutters were taken off the correct list to eliminate confusion.

Mr. Hamilton complimented the technology used and how not disruptive to the property. However, he questioned the applicant as to if he had a plan as to what would occur if they were to run into any major obstacles such as granite. Mr. McGuire commented that, that is something they had talked about but have

not been able to formulate a plan in regard to a situation like that. He added that there is the capability to angle the beams slightly so that they are able to miss major obstacles. Mr. Dingman supported Mr. McGuire's statements by including that the abutting properties that have similar landscapes and septic designs had predominantly sandy soil. Mr. Dingman was confident that there would not be any restrictions in the soil. Mr. Hamilton as well as Mr. Bergeron agreed that they would most likely not run into any obstacles. His less intrusive method made it an easier decision for the board to allow the applicant to extend his physical property on his lot.

Mr. Dingman then read the five criteria for the variance into the record.

Mr. Bergeron opened the discussion to the Public. As no one from the public came forward to speak, the discussion was brought back to the board.

Mr. Bergeron clarified the importance of the five criteria and how the case must meet all criteria outlined for a variance. Mr. Wing addressed Mr. Bergeron concerning if a stipulation should be put in place to outline that the applicants at any point will not add a roof to the deck.

CASE #ZO2022-00011

MOTION: (Wing/Westwood) To stipulate that the deck must remain an open structure.

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

Mr. Bergeron

1. The variance will not be contrary to the public interest because:

Mr. Wing stated that the proposed plan does not alter the essential character of the neighborhood and that the applicant testified that there are many other homes in the area with decks on them heading towards the water. He added that the applicant already has state approval, so he does not believe that the health, safety, or welfare of anyone would be impacted by this. He asserted that he did not believe that this was contrary to the public interest. No one from the Board spoke in opposition of this.

2. The spirit of the ordinance is observed because:

Mr. Wing stated that the applicant testified that while the applicant is moving closer to the water, he is still within the setbacks. Mr. Bergeron clarified that the applicant is within the WCD setbacks, which is part of the relief that he is seeking. Mr. Wing continued that he believed the spirit of the ordinance is observed, noting that the applicant was obtaining a shoreland permit and keeping the deck open. No one spoke in opposition.

3. Substantial justice is done because:

Mr. Wing stated that the public would be getting an improved home with a deck much like the other homes in the area. He asserted that substantial justice is done. The rest of the board was in agreement.

4. The values of surrounding properties are not diminished because:

Mr. Cairra stated that he did not believe that this would diminish the surrounding property values. The board agreed.

5. *Owing to special conditions of the property that distinguishes it from other properties in the area, denial of the variance would result in unnecessary hardship because:*

(C) *no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because"*

(D) *If the criteria in subparagraph A above are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Mr. Wing noted that it is often discussed that the properties around the pond are old and predate zoning, and there is not a way to fully bring them into compliance with current zoning. Mr. Wing stated that he believed the property itself is providing an unnecessary hardship. He continued that he believed it was also a reasonable use – having a home on the water with a deck should be considered a reasonable use. The board agreed.

Mr. Wing stated that to be in strict conformance with the ordinance, it would provide a hardship as the deck could not be built outside of the setback and to move the house would provide a financial hardship to the applicant. The Board agreed.

CASE # ZO2022-00011

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| ROLL CALL VOTE: | Mr. Hamilton | – | 5 yesses; final vote “YES” |
| | Mr. Westwood | – | 5 yesses; final vote “YES” |
| | Mr. Bergeron | – | 5 yesses; final vote “YES” |
| | Mr. Caira | – | 5 yesses; final vote “YES” with the stipulation that the deck remain open |
| | Mr. Wing | – | 5 yesses; final vote “YES” |

VARIANCE GRANTED

Mr. Bergeron explained that there is a 30 day right to appeal.

CASE #ZO2022-00012

ACCOMANDO, Michael W. & Karen A. – 96 Mulberry Lane – Map 24 Lot 12- 44-4 – Seeking a Variance concerning: Article VII, Sections 307-41B of the Zoning Ordinance to permit an existing inground swimming pool to remain within the Wetland Conservation District (WCD).

Atty. Tom Hildreth came forward with Mr. Michael Accomando to address the board. He explained that they were seeking an after the fact variance to allow an in-ground pool that was mistakenly installed within the WCD buffer to remain where it is. He explained that the pool was installed in November of 2020, noting that the pool has not been used as it has not been fully completed. He stated that natural vegetation has started to take root around it and there has been no erosion since it was installed. He highlighted that a positive is that since it was installed over a year ago, they don’t need to speculate on the potential impact on neighbors as the major impact on the neighbors (the construction) had already occurred. He stated that the placement of the pool does not alter the essential character of the neighborhood, the Conservation Commission unanimously voted to endorse the restoration plan proposed, and that removing the pool today would do more harm than good. He added that the addition of the vegetation in the restoration plan would enable the wetlands buffer to function better.

Mr. Hildreth then read the five criteria of the variance into the record.

Mr. Hennessey commended the applicants for working closely with the Conservation Commission.

Mr. Westwood stated that he does not know the applicant but does live in the neighborhood. He stated that the installation of the pool has disrupted the neighborhood due to emotions of the abutters.

Mr. Hennessey opened the discussion to the public. As no one from the public came forward, discussion was closed and brought back to the board.

Mr. Hennessey commended the applicants for not only trying to abide by the law, but also for honoring the spirit of the ordinance.

MOTION: (Wing/___) That the conditions set forth have been satisfied to the satisfaction of the Zoning Administrator prior to the use of the swimming pool.

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

CASE # ZO2022-00012

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| ROLL CALL VOTE: | Mr. Caira | – | 5 yesses; final vote “YES” |
| | Mr. Westwood | – | 5 yesses; final vote “YES” |
| | Mr. Bergeron | – | 5 yesses; final vote “YES” |
| | Mr. Hennessey | – | 5 yesses; final vote “YES” |
| | Mr. Wing | – | 5 yesses; final vote “YES” with the recommended stipulations of the Planning Director and Conservation Commission |

VARIANCE GRANTED

Mr. Hennessey explained that there is a 30 day right to appeal.

CASE# ZO2022-00013 – 1:50:50 – 2:08:40 (0:17:50 long)

WITHROW, Leanne – 23 So. Shore Drive – Map 30 Lot 11-216 – Seeking a Variance concerning: Article III, Sections 307-12, Table 1 of the Zoning Ordinance to permit construction of a 12’ x 16’ shed one foot off the property line where a shed of this size would need to meet the minimum 15’ side yard setback.

Mr. Wing read the list of abutters aloud. There was no one whose name was not called that is an abutter or has a statutory interest in the case.

Atty. Joe Maynard came forward to represent the applicant. Mr. Maynard explained the physical features of the applicant's lot and how the applicant years prior was before the board to permit construction of a house on the lot, which was successful. The board was informed that the applicant was seeking to add a shed to her property. Mr. Maynard explained that the applicant is requesting to ideally, she is allowed to place the shed about a foot off the lot line. The shed will meet the thirty-foot setback from the street and the fifty-foot setback from the lake. The plan that Ms. Withrow has for the shed represents how the shed would be placed on the southwestern border of her property. Where the fence would be place would make it adjacent to the neighbors shed across the fence. Mr. Maynard explained to the board that this location for the shed is the most reasonable. He elaborated by saying if the applicant was to abide by the fifteen-foot side setback, the zoning would require for a shed of this size. It would leave the applicant placing the shed in the only flat yard-area on this lot. Mr. Maynard detailed that the impervious coverage is about twenty-one percent while the shed they are looking to construct increase that percent by one. He

explained that the applicant was holding off on submitting the shoreline permit to the state, they decided to the applications together. Mr. Maynard outlined the drainage measure for a structure of this sort. It was mentioned for drainage the plan was for a drip line infiltration off the soffits of the proposed roof. Construction of this structure would require twelve to eighteen stone trenches that run from about twelve to eighteen feet wide. This method would infiltrate the soil.

Mr. Maynard at this point proposed to the board to read the five criteria.

Mr. Bergeron asked Mr. Maynard in the construction plan what structure was placed directly south of the proposed shed location. Mr. Maynard explained to the board that the septic tank is in the corner of the lot and would be south of the proposed shed. Mr. Bergeron clarified with the applicant that the shed was not going to place on top of the EDA.

Mr. Maynard further explained to the board the sizing and usage of the shed the applicant desires. The applicant would enjoy a space to store her lake equipment that is not the garage, this is because she would like to park her car during the winter months. The variance for this shed would allow the applicant to properly and effectively store her equipment with the best use of space.

Mr. Bergeron opened the case to the public. Mr. Hennessey addressed the public questioning if anyone would like to speak in favor or opposition to the proposal. Julia Steed Mawson of 17 Shore Dr decided to address the board. Ms. Mawson stated she is the applicant's neighbor. She shared her concerns with the board regarding drainage in the area. Ms. Mawson questioned the applicant on what type of structure would be flooring the shed. Mr. Maynard established that the flooring of the shed itself will consist of wood, while lining the ground would be crushed stone. Mr. Maynard elaborated to Ms. Mawson that issue revolving drainage would fall under a different variance. He included that to fix some of the drainage on So. Shore Road a culvert would be placed to aid drainage on the opposite side of the shed. Mr. Mawson added that she decided to share these concerns as an abutting neighbor was complaining to her about water coming through his property.

Mr. Maynard clarified what permits he was still required to receive from the state. He explained that he needs a shoreline permit along with a wetlands permit. Mr. Wing explained the Road Association was in charge of maintenance of the runoff that dumps into the pond.

Mr. Hennessey addressed the room asking if there were any final questions before the board moved to a vote. Mr. Bergeron clarified that the board must accept the five criteria as is, if the board was going to move forward. Mr. Hennessey added that he agrees for this case he would accept the criteria if the rest of the board agreed. No one from the board objected to accepting the criteria outlined by Mr. Maynard.

CASE # ZO2022-00013

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| ROLL CALL VOTE: | Mr. Bergeron | – | 5 yesses, final vote “YES” |
| | Mr. Westwood | – | 5 yesses, final vote “YES” |
| | Mr. Hennessey | – | 5 yesses, final vote “YES” |
| | Mr. Caira | – | 5 yesses, final vote “YES” |
| | Mr. Wing | – | 5 yesses, final vote “YES” |

VARIANCE GRANTED

Mr. Hennessey explained that there is a 30 day right to appeal.

ADJOURNMENT

MOTION: (Westwood/Bergeron) To adjourn the meeting.

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

The meeting was adjourned at approximately 11:10 pm.

Respectfully submitted,
Jordyn M. Isabelle
Recording Secretary