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The Chairman Bill Kearney called the meeting to order at approximately 7:00 pm.

The Secretary Diane Chubb called roll:

ABSENT: Alternate Darlene Culbert, Alternate Deb Ryan, Alternate Thomas Kenney, Alternate Lance Ouellette

HEARING(S)

Case #ZO2018-00017

Map 28 Lot 7-152

CUMMINGS, Allison - 5 Theodore Avenue – Seeking a Variance concerning Article VII, Sections 307-39 & 307-41 (B) to permit the construction of a 24'x24' two-car garage with a concrete slab base.

Ms. Chubb 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.

Ms. Cummings requested a variance to she could construct a 2-car (24'x24') garage on a concrete slab. She explained there was a seasonal stream that ran through her property making it impossible to locate the garage at a 50ft. distance from it. She read aloud the responses to the variance criteria as submitted with her application.

Ms. Chubb wanted to know if the garage would create an impact to neighbors or the seasonal stream by allowing it to be constructed. Ms. Cummings explained that most of the building would be in the location of the existing driveway. The driveway will be cut, and pavement will be removed to construct the garage. Ms. Chubb understood that the garage wouldn't be adding to impervious surface already on the property. Ms. Cummings commented that less than half the size of the building would be extended back into the side yard. Ms. Chubb questioned if gutters would be installed onto the garage to direct the runoff. Ms. Cummings was open to putting gutters on the building, although she was not yet at that stage of planning. Ms. Chubb said her only concern was roof runoff and where it would flow. Ms. Cummings was open to including gutters.

Mr. Cummings provided the Board with photographs pertaining to her request and showing the proposed location of the garage.

Mr. Kearney opened the discussion to public input. No one came forward.

46 Mr. Hennessey understood that the street had some mixed use and commercial development. He noted it
47 wasn't a pristine single-family area. He commented that vehicles would be inside a structure and not
48 parked on asphalt, which he felt would provide protection for the stream. He felt it was in the best
49 interest of the Town to allow the variance. He believed the applicant made a case for hardship given the
50 unique configuration of the lot.

51

52 Mr. McNamara complimented the applicant for the manner she answered the criteria questions because
53 she got into a lot of the specificity in terms of house placement and constraints on the lot.

54

55 Ms. Chubb reiterated her concern regarding runoff.

56

MOTION: (Chubb/McNamara) Approval stipulation for the applicant to work with the
Planning Department to create zero runoff toward the stream.

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

57

58

BALLOT VOTE Mr. Kearney – Yes to all criteria
#ZO2018-00017: Ms. Paliy – Yes to all criteria
Ms. Chubb – Yes to all criteria – with stipulation
Mr. Hennessey – Yes to all criteria
Mr. McNamara – Yes to all criteria – with stipulation in motion

(5-0-0) The Variance was Granted

59 **VARIANCE GRANTED**

60 (There is a 30-day right of appeal)

61

62

63 **Case #ZO2018-00018**

64 **Map 30 Lot 11-211**

65 **MALAPAN, James & Sharon - 15 South Shore Drive - Seeking a Variance concerning Articles**
66 **XII & III, Sections 307-74 (O), 307-8, 307-12, Table I, 307-13 (A) & 307-14 - to permit an accessory**
67 **dwelling unit within an existing single-family home on an undersized lot on a private way**

68

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

71

72 Attorney David Groff came forward to represent the applicants James and Sharon Malapan. He explained
73 to the Board that there was an existing house and garage. The accessory unit was located on the second
74 floor of that existing garage. There is no proposal to change anything on the exterior. The lot will remain
75 as is. He reviewed the responses to the variance criteria as submitted with the application.

76

77 Mr. Hennessey questioned when the septic system was installed. The applicant didn't have an exact date.
78 Mr. Hennessey said the reason he asked was South Shore Drive was a private road with no mandatory
79 maintenance agreement. He said the applicant wanted to add a new dwelling unit with no requirement for
80 maintenance. He pointed out that under the new State accessory dwelling unit law the unit could be
81 rented by a tenant that would have no guarantee that the road would be maintained. He was bothered that
82 building lots and accessory dwelling units were being approved with no maintenance agreements and
83 believed it was a problem. Mr. Hennessey wanted to know if the Selectmen had to review the new unit.

84 Ms. Beauregard replied she would check on that aspect and said the applicant may need to submit a
85 waiver of liability.

86

87 Mr. McNamara inquired how many homes were on South Shore Drive. The applicant didn't have a
 88 number. Mr. McNamara stated he would be voting in favor of the variance; his only concern would be if
 89 the other homes on the street also added dwelling units. He hoped the Selectmen would review the
 90 proposal. Ms. Beauregard told the Board she would find out from Town Counsel if it's required. If it is,
 91 the Planning Department would make sure the application went to the Board of Selectmen.

92

93 Mr. Hennessey questioned if the application had to go to the Department of Environmental Services
 94 Shoreland Protection since it was within 200ft. of the shoreline. Attorney Groff answered no, because the
 95 structure and septic wouldn't change.

96

97 Ms. Paliy wanted to know the lot size. Attorney Groff stated the lot was .37 acres according to the tax
 98 card. Ms. Paliy asked if it was a combination of two lots (back lot and front lot). Mr. Malapan answered
 99 no. Ms. Paliy suggested it might be a good idea to draft an amendment to the regulations. Mr. Hennessey
 100 felt it was part of the whole review of how accessory units have changed the rules. He commented under
 101 the new State regulations the applicant could rent the accessory dwelling unit, meaning the Board was
 102 creating a new rental unit. He understood the Town needed smaller units; however, being on a private
 103 road without any kind of mandatory requirement for maintenance. Ms. Paliy didn't disagree with Mr.
 104 Hennessey but felt something should be submitted to the Selectmen. Mr. Hennessey felt the Planning
 105 Board/Zoning Subcommittee was the appropriate group to do so. Mr. McNamara suggested they first ask
 106 Town Counsel what legal requirements had to be met and then they could fashion a policy. Mr. Kearney
 107 agreed they needed to address the topic as a Town; however, he asked the Board to refocus on the case
 108 before them.

109

110 Mr. Kearney understood that the existing dwelling had a garage with an apartment above. The request
 111 was a formality since no building would occur. Attorney Groff answered yes.

112

113 Mr. Kearney opened the discussion to public input. No one came forward.

114

BALLOT VOTE
#ZO2018-00018:

Mr. Kearney – Yes to all criteria
 Ms. Paliy – Yes to all criteria
 Ms. Chubb – Yes to all criteria
 Mr. Hennessey – Yes to all criteria
 Mr. McNamara – Yes to all criteria

(5-0-0) The Variance was Granted

VARIANCE GRANTED

(There is a 30-day right of appeal)

117

118

Case #ZO2018-00019

Map 30 Lot 11-211

**MALAPAN, James & Sharon - 15 South Shore Drive - Seeking a Special Exception concerning
 Article XII, Section 307-74 to permit an accessory dwelling unit**

123

*(The abutter list was read during the previous case – the applicant, location and abutter list were
 identical)*

126

127 Representing the applicant was Attorney David Groff. Seated beside Attorney Groff was applicant James
 128 Malapan. Attorney Groff explained they were requesting an accessory dwelling unit within an existing
 129 single-family home on an undersized lot on a private way.

130

131 Mr. Hennessey stated he would vote in favor of the request but felt the Board should obtain legal opinion
132 to find out if it is possible to have a variance to enable a special exception. Ms. Beauregard replied at
133 present Town Counsel recommends following the process they had. She said a meeting would be set with
134 the Board soon and they could ask questions at that time.

135

136 Ms. Beauregard wanted confirmation that there was a 75% common wall. She understood that the
137 Building Inspector had reviewed the plan for the square footage, but she was unclear where the common
138 wall was located. Mr. Malapan said the Building Inspector told him the whole floor was common,
139 because it was attached. Ms. Beauregard replied an unfinished area above a garage was not a common
140 wall. She said 'common wall' had to be living area to living area. She wanted to make sure that it met
141 the requirement. Mr. Malapan noted that he asked the Building Inspector that specific question and was
142 told it would qualify because it was heated, and they accessed the apartment through the space. Ms.
143 Beauregard recommended if the variance is approved that the 'common wall' is verified with the Building
144 Inspector. Mr. Malapan told the Board that the Building Inspector told him that it was okay to have the
145 floor be the 'common' partition.

146

147 Mr. Hennessey understood the Building Inspector would have to sign-off on the plan prior to a building
148 permit being issued. Ms. Beauregard answered yes; she and the Building Inspector would review the
149 building plan. She suggested a condition to verify there is a 75% common wall.

150

MOTION: (Hennessey/McNamara) Approval Stipulation to verify there is a 75% common wall.

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

151

152

BALLOT VOTE Mr. Kearney – Yes, verify common wall
#ZO2018-00019: Ms. Paliy – Yes
Ms. Chubb – Yes, with stipulation regarding review of the plans
Mr. Hennessey – Yes, subject to verification of common wall
Mr. McNamara – Yes, with verification of common wall and
Building Inspector

(5-0-0) The Special Exception was Granted

153 **SPECIAL EXCEPTION GRANTED**

154 (There is a 30-day right of appeal)

155

156

157 **Case #ZO2018-00020**

158 **Map 39 Lot 6-179-7**

159 **MARCHAND, Paul & Robin - 48 Moonshadow Drive – Seeking a Special Exception concerning**
160 **Article XII, Sections 307-73 & 307-74 to permit the conversion of an existing two-family home to a**
161 **single-family with an accessory dwelling unit**

162

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

165

166 Attorney David Groff came forward with the applicant Paul Marchand. Attorney Groff told the Board
167 that the dwelling was already an existing two-family house and the applicant wanted to change it to a

168 single-family with an accessory dwelling unit. He believed it met the criteria and was simply a re-
169 classification.

170

171 Mr. Kearney read aloud a letter of support from neighbors on Moonshadow Drive urging the Planning
172 Department to approve the conversion of the existing two-family home to a single-family with an
173 accessory dwelling unit.

174

175 Ms. Chubb recalled a recent case and questioned if there was an issue with having two front doors. Ms.
176 Beauregard replied an additional door cannot be added to access the accessory dwelling unit; the
177 applicant's house already has two doors.

178

179 Ms. Paliy asked how many electric meters the house currently had and if the electricity was divided. Mr.
180 Marchand said it had two; one board for the 750SF and the second board serviced the main house. Ms.
181 Paliy wanted to know if all the utilities were divided and if there were two furnaces. Mr. Marchand
182 answered no; there was one furnace that served three zones because of the layout of the house. He noted
183 there was one gas bill and one propane tank in the ground. Ms. Paliy questioned if there was a separate
184 garage and driveway. Mr. Marchand replied there was no garage and one driveway. Ms. Paliy asked for
185 the size of each residence. Mr. Marchand stated the in-law apartment was 750SF and the remaining
186 house was approximately 3,000SF.

187

188 Mr. Hennessey didn't believe that changing the existing two-family into a single-family with in-law
189 would change the value. He said a multiple listing service would allow a property to be listed however
190 they wanted. He felt the owner was restricting future usage of a legal two-family to making the owner of
191 the property (per law) live in one of the two units before they could rent the other. He didn't see how
192 changing the dwellings to a more restrictive use could increase value. He didn't see the request as a
193 special exception. Ms. Beauregard pointed out if an applicant met the criteria a special exception had to
194 be granted.

195

196 Attorney Groff told the Board that the applicant was building a new house next door. The property (being
197 discussed) was under agreement with contract contingencies. The applicant wanted to convert the home
198 and they met the criteria.

199

200 Ms. Paliy stated if the property was two-acres the owner could subdivide the other acre if it wasn't a two-
201 family. Attorney Groff replied it couldn't be subdivided. He noted that the owner was moving next door
202 to the property and would like to see the character of the neighborhood maintained.

203

204 Mr. Kearney confirmed that all the criteria was met. Ms. Beauregard answered yes.

205

206

BALLOT VOTE
#ZO2018-00020:

Mr. Kearney – Yes
Ms. Paliy – Yes
Ms. Chubb – Yes
Mr. Hennessey – Yes
Mr. McNamara – Yes

(5-0-0) The Special Exception was Granted

207 **SPECIAL EXCEPTION GRANTED**

208 (There is a 30-day right of appeal)

209

210

211 **Case #ZO2018-00021**

212 **Map 35 Lot 10-325**

213 **ENB PROPERTY MANAGEMENT LLC – 96 Bridge Street - Seeking a Variance concerning**
214 **Article III, Section 307-12, Table I - to permit the existing building to become three residential**
215 **units**

216

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

219

220 Representing the applicant was Joseph Maynard. He explained that the building had started as a house
221 and subsequently over time became a daycare center. However, the daycare center has moved next door
222 and the applicant has been renting the property as two units. As time has gone by they are having trouble
223 renting one of the units because it's too big for a two-bedroom unit. Mr. Maynard stated they would like
224 a variance so one of the two-bedroom units could be divided into two one-bedroom units. The property
225 has a relatively newer septic system that was put in for the daycare use. The field didn't meet the Town's
226 Article K Regulations for the proposed use of three apartments. They have since done a new design to
227 show that the property met State standards and loading criteria. The field shown on the proposed
228 (contingency) plan is sized to accommodate nine bedrooms. The lot is approximately one acre in size
229 with 150ft. of frontage along Bridge Street. Mr. Maynard then read aloud the responses to the variance
230 criteria as submitted with the application.

231

232 Mr. Hennessey questioned if the lot was a non-conforming use. Ms. Beauregard replied it was an allowed
233 use in the district on a non-conforming lot. She believed the past Zoning Administrator approved the use
234 of the two units based on what had been there prior.

235

236 Mr. Kearney opened discussion to public input. No one came forward.

237

238 Mr. Kearney had issue with the non-conforming use on an acre lot, where two were required and the side
239 setbacks. He said the applicant was seeking a use that would require three acres. Mr. Hennessey didn't
240 see a hardship. He pointed out that the applicant currently had two units. Ms. Chubb questioned if the
241 frontage was a hardship. Mr. Maynard explained that the Town had a setback restriction based upon the
242 height of a structure. He said the building was a one-story ranch-style structure with a 48ft. setback; the
243 requirement was 82ft setback because of the height. Ms. Chubb saw there were four things to discuss: 1)
244 lot size not being three acres, 2) lack of frontage, 3) front lot line setback, and 4) didn't have minimum
245 setback of 55ft from side lot.

246

247 Mr. McNamara heard the points but saw the requested expansion as a hybrid because the number of
248 bedrooms would remain the same. There was no increase in the size of the property and the number of
249 vehicles would remain. He stated it wasn't a major expansion, it was a minor change to the interior of the
250 property. Mr. Maynard explained to the Board that his client was a real estate agent and had told him one
251 of the units had been empty for a while primarily because when people look at it they see the size and
252 location being on Route 38. Mr. Hennessey agrees, but noted economic hardship had been disallowed as
253 criteria.

254

255 Ms. Chubb questioned if the hardship was for the building being residential in a business zone. Mr.
256 Hennessey said the applicant could convert to the correct zoning. Ms. Beauregard believed the applicant
257 would need a variance to convert back to commercial. Ms. Chubb wanted to understand the hardship.
258 Ms. Beauregard stated all residential units are permitted in the commercial district. Mr. Maynard stated
259 the unique setting of the residential building in a commercial/business district was somewhat of a
260 hardship. He said it was an older house located on Route 38 (busy road) and time changed around it by
261 becoming a business district. It's a residential house in nature and would remain so until someone tears it
262 down and builds a commercial property there. Mr. Maynard spoke about the nature of the area and noted
263 families wouldn't want to reside there because it located on a busy road with no yard. The potential

264 tenants didn't need as much space as was in the two-bedroom unit; therefore, the request for converting it
265 to two one-bedroom units was submitted. He spoke about the required septic system design for the
266 number of bedrooms being discussed. He pointed out although the lot was only an acre, it met the
267 requirements for the proposed use. He described the nature of the surrounding area. Ms. Chubb wanted
268 to know if the lot could still be used commercially or mixed zoning. Ms. Beauregard replied they would
269 need a variance to do so.

270

271 With the discussion, Mr. Hennessey understood that it was a unique site and felt the applicant had
272 demonstrated hardship. He said one-bedroom units made more sense from a safety point of view. Ms.
273 Chubb questioned how that was different from an economic hardship. Mr. Hennessey said the
274 configuration of the lot was a valid reason. Also, under Simplex they not only look at the lines on a
275 zoning map, they look at what is already there. He said the thought of having a family live on the site was
276 a scary prospect. Whereas, a single one-bedroom (presumably adult) made a lot of sense. He believed
277 having a two-bedroom at that location was a hardship given what's around it.

278

279 Mr. Kearney struggled with the current non-conforming aspect of missing an acre. He said by adding
280 another unit the non-conformity would be missing two acres. Mr. McNamara commented if a variance
281 was granted it wouldn't really change anything; they could assume there would be the same number of
282 people in the house and same vehicular traffic.

283

284 Ms. Paliy said if the lot was located anywhere else she would have a problem with it. She felt Mr.
285 McNamara was correct that the area lent itself to the proposed type of housing. She pointed out that
286 Pelham had a housing shortage and commented that no one would build one-bedrooms or studios. She
287 saw the hardship given the combination of the shortage and the location not being residential. She said
288 the testimony regarding the septic and the fact that the building would remain as-is helped form her
289 opinion.

290

291 Ms. Chubb asked where the driveway was located. Mr. Maynard replied the house had a circular
292 driveway in front of the property. Ms. Chubb questioned if the driveway could be moved. Mr. Maynard
293 said that would require State permitting; the curb cuts were put in for the daycare. Ms. Chubb was
294 concerned with traffic existing the lot in addition to the cars that were already there. She felt the
295 intersection (Route 38/Willow Street/Highland Ave) was already challenging. Ms. Paliy replied the
296 intersection was the responsibility of the Department of Transportation ('DOT'), not the Board or the
297 Town. Mr. Maynard spoke about the history and said the property was allowed to have up to three curb
298 cuts.

299

300 Mr. Hennessey said if they reviewed what was on the street, the property should be commercial, yet in
301 terms of safety the best thing would be residential. He didn't think there would be much difference
302 between two two-bedrooms and the proposed two-bedroom and two one-bedrooms. Ms. Chubb wanted
303 to know how that factored in to their decision. Mr. Hennessey said it was a unique lot and a hardship in
304 the way it was being used.

305

306 Ms. Chubb reiterated her concern about traffic entering/exiting the multi-family building. Ms. Paliy
307 stated it was not up to the Board, it was a matter for the DOT. Mr. Maynard spoke about the things that
308 fell under the Town's jurisdiction.

309

BALLOT VOTE
#ZO2018-00021:

Mr. Kearney – 1) No, 2) No, 3) Yes, 4) Yes, 5) Yes
Ms. Paliy – Yes to all criteria
Ms. Chubb – Yes to all criteria
Mr. Hennessey – Yes to all criteria
Mr. McNamara – Yes to all criteria

(4-1-0) The Variance was Granted

310 **VARIANCE GRANTED**

311 (There is a 30-day right of appeal)

312

313

314 **MINUTES REVIEW**

315

316 **June 11, 2018**

MOTION: (McNamara/Hennessey) To approve the June 11, 2018 meeting minutes as amended.

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

317

318 **ADJOURNMENT**

319

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

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

320

321 The meeting was adjourned at approximately 8:33pm.

322

323

324

325

Respectfully submitted,
Charity A. Landry
Recording Secretary