APPROVED

TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
March 11, 2019

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

Secretary Diane Chubb called roll:

PRESENT: Bill Kearney, Diane Chubb, Peter McNamara, David Hennessey, Alternate Heather Patterson, Alternate Deb Ryan, Planner/Zoning Administrator Jennifer Beauregard

ABSENT: Svetlana Paliy, Alternate Darlene Culbert

PLEDGE OF ALLEGIANCE – Lead by members of Boy Scout Troop 610

CONTINUED HEARING(S)

Case #ZO2019-00002
Map 42 Lot 10-130
PRINCE, Brian - 10 Westview Terrace - Seeking a Variance from Article VII, Section 307-39 to permit keeping, and the use of a gravel pad located in the WCD buffer. The purpose of the pad is for parking a travel trailer.

Ms. Ryan was appointed to vote.

Mr. Kearney believed Board members had attended the site walk and/or had an opportunity to review the site walk minutes. He asked Mr. Prince (the applicant) if had anything to say before the Board began deliberations.

Mr. Prince stated he had no prior knowledge of the Wetland Conservation District ('WCD') buffer before the work was performed on his property. The home builder didn't notify him of any restriction on the property. The WCD signs were not posted in the area of the work and the plot plan didn't show the buffer zone. He noted that a permit was not required to perform the work (of installing a pad to park his travel trailer). He pointed out that the individual who complained about the work had almost two months to notify him or the Town regarding the removal of the brush and the possible violation of the buffer. The only other issue he heard (from another member of the Conservation Commission) was the removal of the brush. He noted that the brush consumed less than a third of the area of the pad. He didn't understand why the person waited to complain until the gravel was installed if the biggest concern was the removal of the brush. He noted the complaint was brought to his attention within two days of the gravel being installed. Mr. Prince informed the Board during the site walk and reiterated during the meeting that there was a culvert that crossed the road and exited into his property, which was at the base of a hill. He believed the wetlands on his property were the result of the development put in and weren't natural wetlands. During a previous meeting he heard Ms. Chubb state that she tries to help people use their land. He pointed out that he has a 1.6-acre lot; however, due to the buffer he could not use the land for anything.

Mr. McNamara inquired if the trailer is occupied (living inside or used in any fashion) when it's parked on the property. Mr. Prince answered no. The trailer is simply stored on the property.

Mr. Hennessey understood that the applicant's house and the abutting house were built after the neighborhood. He asked if there were any covenants attached to the deed prohibiting a travel trailer to be parked on the property. To Mr. Prince's knowledge there wasn't. If the variance were to be denied, Mr. Hennessey wanted to know where the trailer would be parked if the current area was restored. Mr. Prince said he would have to park it on his lawn but would prefer not to. There was no covenants prohibiting him from parking it on the lawn. It was noted Mr. Prince's septic system was in front of his house.

PUBLIC INPUT

Mr. Ken Stanvick, a member of the Conservation Commission speaking as a citizen and not in representation of the commission. He said when he first noticed the area was being developed, he contacted Planning Director Jeff Gowan and asked that the Code Enforcement Officer review the activity. He believed the Code Officer went to the site. He stated it was the homeowner's responsibility to understand what is involved with their property. He noted the WCD signs were located, and clearly displayed, in the rear of the applicant's property. Mr. Stanvick told the Board that other vehicles had been parked on the pad and had a photo to show such. He called attention to the Board that the pad wasn't sized for only the width of the trailer and could have other things in that location. He spoke about residents in Town relying on wells and the importance of wetlands and WCD buffer areas. He was concerned about ensuring safe drinking water in Town. He thought situations should be brought to the Town's attention when encroachments happen more out of convenience than necessity. Mr. Stanvick thought granting an after-the-fact variance sent a bad message to developers and residents. He noted that the applicant's trailer was previously parked half on the driveway and half on the lawn which was fine because there were no covenants against doing so.

Ms. Karen MacKay, a member of the Conservation Commission, told the Board that her comments were hers and didn't reflect the commission's opinion because they hadn't met since the site walk was conducted. She stated they had the WCD Ordinance to protect wetlands and water quality in Town. She said when they see a case the commission tries to ensure development stays away from the 50-foot buffer and keep as much space as possible from the wetland. She felt bad about the applicant's situation because they were unaware and felt the Town needed to do a better job of getting information out, so houses aren't built at the edge of the WCD. She discussed the function of vegetation in the buffers and wetlands.

Mr. Hennessey wanted to know the mechanics and difficulty of restoring the area of the pad back to the way it was a few months ago. Ms. MacKay thought it would be unreasonable to ask the applicant to re-plant or buy expensive shrubs and thought it could naturally revert or seed could be put down. She commented that the gravel would need to be dug out and it would take a couple years to revert back. Mr. Hennessey questioned how the wetlands would be affected if the trailer was parked on the grass. Ms. MacKay understood the purpose of the pad because it created a stable/firm base to park the trailer. She assumed if the gravel pad was dug out it would be moved to a place further from the wetland area. Mr. Hennessey pointed out that the whole back yard was in the WCD. Mr. Prince reminded the Board that the street and a majority of his house and driveway were located in the WCD. He said no matter where he parked the trailer on his lot it would be within the WCD. Ms. MacKay said the further activity is from the wetland, the better. She said every foot between a wetland and a developed area added value to filtering water. She wanted it on record that they needed to do something with parcels so other applicants didn't 'get stuck' in a situation where they have difficulty using their land.

Mr. Hennessey looked at the Nashua Regional Planning Commission ('NRPC') flood maps and saw that the applicant's lot didn't appear to be within the flood zone. Ms. MacKay spoke about the 'Mother's Day' flood (2006) when the entire Town flooded. She reiterated they needed to try and work better with developers. Mr. Hennessey thanked Ms. MacKay and the members of the Conservation Commission who attended the site walk. He understood there was no time between the site walk and the present meeting for

the commission to meet and make a recommendation. He appreciated the commission members who attended the site walk and came forward to provide their views on their own time.

Mr. Kearney found the application challenging. He commented if it had come as an empty lot he would be vehemently against the request. He grappled with the fact that it was a post request for variance, specifically the effect it would have if the variance is denied and everything is taken out. He didn't know which would be worse (leaving the pad in place or removing it). He also noted that the pad was wide enough to park vehicles on, either by the current owner or a future owner.

Ms. Chubb suggested that the Board review and discuss each criterion.

Mr. McNamara thought it was important for the Board to realize that the applicant's lot was the subject of discussion over ten years ago. On the record they had an opinion from Town Counsel dated April 2007; prior to the lot being developed. The opinion states that the lot was an existing lot of record, therefore not subject to the WCD that had not yet been enacted at that time. Mr. McNamara said regardless of 'why' the house (and shed) was there, it was there properly. He was sensitive to the concerns expressed by Conservation and believed the Board had been sympathetic and cognizant of wetland impact; however, he felt the applicant's lot was significantly constrained. He pointed out if the pad was removed the trailer would still be within the WCD. He said of the 1.6 acres barely one third was usable and felt the Board had to take it on good faith that the applicant didn't know. Mr. Kearney understood the availability to build was for the house; subsequently anything after would have to follow current rules. Mr. McNamara said in allowing the house and shed to be placed there the property was constrained. He said its further constrained by the drainage (from the hill) and the culvert running through the area.

Mr. Hennessey felt Ms. MacKay's comments were germane in terms of being more protective of the environment. He said an ongoing problem with existing lots of record, prior to the enactment of the WCD, was that the courts had held standard that they should be give more leniency. He agreed with Ms. Chubb about the Board reviewing the criteria.

The Board then discussed the variance criteria.

1. *Variance not contrary to the public interest:*

Mr. McNamara asked the Board to consider if the variance affected/endanger health, safety and/or welfare in a marked way. Mr. Hennessey said two people from conservation speak to the reasons for the WCD and about re-charging the water table. One the other hand there was a property owner who was severely constrained in using their property. He felt digging out the gravel (heading into the Spring) would cause some real damage downhill; gravel was more stable than mud. Mr. McNamara said moving the pad still had an incremental impact because it would still be within the WCD. He felt there had to be a marked impact in order to be 'contrary' to public interest. Mr. Kearney replied Mr. McNamara was correct but was concerned with allowing piece after piece because the sum of the total would outweigh the situation. His challenge was that the Board had an obligation to protect the water; therefore, he felt the request was in conflict. He reiterated that he grappled with the fact that the pad was already done and concern that taking it out would cause more harm than good. Ms. Chubb agreed there was an obligation to protect the water. She believed the applicant's testimony that the trailer would have no gas or chemicals and he wouldn't perform oil changes or maintenance. She wanted to know if that same obligation would be passed on to future owners.

Mr. Hennessey made a motion to condition any variance approval - No motor vehicles are allowed on the (gravel) pad, nor should any petroleum products be stored on that base or in anything that goes on the base. Mr. McNamara seconded the motion.

MOTION: (Hennessey/McNamara) Variance conditions - No motor vehicles are allowed on the (gravel) pad. No petroleum products are allowed to be stored on that base or in anything that goes on that base.

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

Mr. Prince asked if a boat fell into that category (described in the motion). Mr. Hennessey said it wouldn't by the way he phrased the motion in terms of petroleum products. He said he didn't specifically say a 'travel trailer' and reiterated he didn't want any motor vehicle, gasoline or petroleum products. He told the applicant that the motor should be drained before it was brought onto the pad. Mr. Kearney felt a boat fit into the category of a vehicle that had petroleum products. He had boats and said no matter how careful a person was removing fluids some always hit the ground. Mr. Hennessey asked if he wanted to restrict usage of the pad to just a travel trailer. Mr. Kearney felt the motion was 'right on' and further believed it also encompassed boats. There was no objection voiced to Mr. Kearney's belief that the motion encompassed boats. Mr. Hennessey commented that the discussion would be in the meeting minutes for education to code enforcement.

2. *Spirit of the Ordinance:*

Mr. McNamara said this was usually more closely aligned with the first criteria. Mr. Hennessey said they were linked. Mr. McNamara said if a member decides on one, they would pretty much had decided on the other. He commented that the applicant's lot was unique in that there weren't many lots in Town that were mostly WCD or wetlands. If the variance is granted, he believed it would be done based on those unique facts. Ms. Chubb felt when the Planning Board allowed the lot it came along with other pieces that went with owning a house, such as having a driveway and other accoutrements. She said the applicant had essentially told the Board that they didn't have a driveway to store the equipment that comes with owning a house. She struggled with feeling that the Board's hand got forced onto some of the issues because the other department allowed something to happen. At the same time, she didn't want to set a precedent for people to break the rules and ask forgiveness rather than ask permission.

3. *Substantial Justice:*

Mr. McNamara didn't feel that the benefit to the applicant outweighed harm to the community. Mr. Kearney respectfully disagreed. Mr. McNamara commented that the lot was unique and constrained. He said by forcing the owner to remove the gravel there may be short term damage and pointed out even if the pad was moved over it would still be within the WCD. He noted having things parked on the lawn may do more damage in the future. Mr. Kearney thought the vegetation line was obvious when they walked the site. He would feel better if the pad was parallel to the driveway and not in the vegetation line. Mr. Hennessey agreed, but went back to the point of substantial justice in that the applicant inherited a terrible situation. He understood it was a 'lot of record'. He believed the applicant's testimony but felt there would be environmental damage no matter what the Board decided to do. Ms. Chubb wanted to know if there was a possibility of having the back half of the pad revert to its natural state and allow the applicant to build more pad closer to the driveway. Mr. Kearney said the Board had to either approve or deny the variance request; however, they could put restrictions on an approval (as they had done). Ms. Chubb asked if the applicant could come back to them with a new plan. Ms. Beauregard informed the applicant could request 'less' relief (during the hearing) than was requested in the application and have the variance amended. Mr. McNamara said if the variance was denied, the applicant couldn't come back with the same-type of request unless the lot or something on the ground substantially changed. With the whole lot being in the WCD, Mr. Hennessey saw no way to seriously change the fact that the wetland would be affected. Ms. Chubb asked if the gravel would need to be dug up if the variance was denied. Mr. Hennessey answered yes.

4. *Values of surrounding properties are not diminished:*

Mr. McNamara didn't believe they had heard evidence one way or another. He suggested if the trailer was parked on the front lawn that the applicant's value and aesthetics to the neighborhood would be diminished. Mr. Hennessey didn't see the question as being germane. Mr. Kearney agreed. Ms. Chubb disagreed based on the testimony of Mr. Stanvick speaking to having well water. She heard that the filtering that should be occurring wasn't, which affected well water and the water table. Ms. Ryan noted that the whole lot was within the WCD. Ms. Chubb understood, but heard Ms. MacKay state there would be a benefit for every foot away from the wetland.

5. Unnecessary Hardship:

Mr. Hennessey commented it was a peculiar lot that was affected peculiarly by the WCD designation of today versus when it became a 'lot of record'. Mr. McNamara believed if prong 5a. was not met that a reasonable argument could be made that 5b. could be used. Mr. Hennessey agreed. Mr. Kearney agreed. Ms. Chubb still grappled with the reason for having the pad or the need for the applicant to be able to store a travel trailer on their lot. Mr. Kearney said the hardship was having the available land that didn't need a variance. He didn't think there was another good spot to have it.

Mr. McNamara commented that the Board didn't hear the cost to remove the gravel, which was sometimes a factor in their determination. He said they only heard testimony about the damage it could cause. Mr. Hennessey said he wouldn't be basing his decision on the removal costs.

Mr. Kearney asked Ms. MacKay to come forward once more (as a concerned citizen). She came forward. Ms. Chubb asked if she had seen any other possible locations to put the pad that would cause less damage than where it was currently located. Ms. MacKay replied she would have preferred it next to the driveway so there would have been 25ft-30ft before the wetland. She didn't know where else to put it because the high point of the lot was the front yard. Mr. Hennessey noted the septic system was located in the front. Ms. MacKay said it shouldn't be any further back on the lot because of the slope of the land and the wetland being in the back. Ms. Chubb asked if she would talk to the potential damage that would come from removing the gravel. Ms. MacKay believed there would be a lot of runoff and siltation coming from the location if it was removed. The pad depth is six inches. She said whatever was exposed would be open soil and run into the wetlands behind the house, which was not desirable. Ms. Chubb asked if the gravel was doing any kind of filtering. Mr. MacKay said it probably wasn't doing much and added vegetation was preferred as it filtered better and slowed water movement. She noted the gravel was a natural material and not seeping pollutants. If the Board considered approval she asked if they could stipulate no additional items would be allowed on the lot. Mr. Hennessey highlighted those comments for the record so if anyone purchased the property in the future would understand the constraints of the lot.

Mr. Prince asked for clarification that the gravel provided some filtering. Ms. MacKay replied it would depend how much it was compacted. She said in this situation having a camper move off it 5-6 times over the summer so it wouldn't get packed down and would remain permeable. She added that vegetation was more desirable and suggested if grass began to grow up through or along the edges that it not be removed. She said if the land had nothing on it, she wouldn't be in favor of adding the pad, but now that it was installed, they had to weigh the situation.

Ms. Ryan questioned if the Board should include a restriction that the pad remain gravel so it wouldn't be paved. Mr. Hennessey said that would be a violation. Ms. Ryan made a motion to such. Mr. McNamara seconded. Ms. Chubb asked that the motion include the stipulation if grass starts growing it should be allowed to. Mr. Kearney said it could be added to the motion but in his estimation was un-enforceable. Ms. Chubb asked if they could place a restriction that the pad not be replaced if it became over-run. Mr. McNamara said a variance runs with the land. It meant the owner could re-gravel the pad. Mr. Kearney noted there was a restriction for no motor vehicles.

MOTION: (Ryan/McNamara) To add a restriction to any variance that the pad remain gravel only (no black top or impervious surfaces).

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

Mr. Hennessey said it was a very difficult decision. He would be voting in favor of the variance. He said he's seen gravel removed and if the variance was turned down enforcement would occur right away and result in considerable damage downhill. In weighing everything he would vote for it but was not thrilled with doing so.

Ms. Chubb said until Ms. MacKay spoke, she was not sure how she would vote; however, her comments led Ms. Chubb to believe they would make a bigger mess if they denied the variance versus approving and restricting the use of the pad. She asked if the Board could restrict anything else on the property. Mr. Kearny said they were only discussing the variance.

Mr. Kearney respected the opinions of the Board but would be voting against the variance. He said the challenge was the detriment to the environment. He believed the applicant was a stand-up person who came to them with good intentions and would abide by the conditions of the variance.

BALLOT VOTE #ZO2019-00002:
Mr. Kearney – 1) Yes, 2) Yes, 3) No 4) Yes, 5) Yes
Ms. Chubb – Yes to all criteria
Mr. McNamara – Yes to all criteria - with conditions
Mr. Hennessey – Yes to all criteria – with restrictions
Ms. Ryan – Yes to all criteria – with restrictions

(4-1-0) The motion carried.

VARIANCE GRANTED

Mr. Kearney noted there was a 30-day right of appeal.

HEARING(S)

Case #ZO2019-00003
Map 17 Lot 12-182
C & E PROPERTIES UNLIMITED LLC - 988 Bridge Street - Seeking a Variance from Article III Section 307-7, 307-8, 307-12 Table 1 & 307-14 to permit the existing 5-acre (+/-) lot to be subdivided into three building lots with one lot having less than the required 200ft. of frontage (75ft). Also seeking a Variance from Article II Definitions, #10 Frontage and Article III Section 307-13B & 307-14 to permit the driveway for all three lots to be shared and accessed from the driveway to be constructed on the lot with 75ft of frontage where the Ordinance requires access from where the lot meets the required 200ft. of frontage.

Ms. Patterson was appointed to vote.

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.

Representing the applicant was Joseph Maynard of Benchmark Engineering. He explained the property was residential and contained approximately 5.5 acres with approximately 475ft frontage onto Route 38

(Bridge Street). The applicant was looking to create one lot with 3.4 acres and 75ft-80ft frontage; there is plenty of buildable/usable area where the building envelope will be. Mr. Maynard said the second request dealt with frontage and driveways. He said the Ordinance was written under definitions that says all lots shall access from where they have their legal frontage. He pointed there was only one location along the parcel's entire frontage that met any form of sight distance to the Department of Transportation ('DOT') standards. Given that the driveway is located on a State road, the DOT requires it to maintain 400ft. of all-season sight distance, which means any where the line of sight is over earth and a snow bank might pile up, they add eighteen inches. He told the Board that the existing driveway (accessing the proposed middle lot) didn't meet all-season sight distance. Mr. Maynard pointed out the difficulty was the location being at the crest of the hill. There was plenty of visibility on the westerly side, it was the easterly side that causes issues. Mr. Maynard stated they were requesting a variance for a shared driveway to service the three homes; if approved the existing driveway would be discontinued. He provided sight distance profiles for the Board to review.

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

Mr. McNamara wanted to know the length of the proposed driveway. Mr. Maynard replied it would be approximately 400ft. to the back lot. Mr. McNamara asked if it would be built to Town standards for Fire Department access. Mr. Maynard answered yes, he would build for Fire Department access (reduced-width). Mr. McNamara understood it would be in essence more of a road than a driveway. Mr. Maynard answered yes. Mr. McNamara said if the variance was granted, the plan would then go to the Planning Board. He commented that they had a similar plan with lots that had many sides and were angry with the configuration. Mr. Maynard replied he could square up some of the lot and still maintain the area; however, the frontages are fixed because of the requirements. He said he was trying to keep the driveway primarily on the three-acre lot for the easement purposes. Mr. McNamara was concerned with the driveway itself based on its length and that it would be maintained by three separate property owners. Mr. Maynard said by right he could do a two-lot subdivision, but still wouldn't be able to access it from the frontage on the property and would need to come in on the west side because it was the only spot that met any kind of sight distance. He said he would be building the 450ft. of driveway for access to the further lot no matter how the lots were configured. Mr. McNamara noted there was an existing use on the property, which was different than coming in with an un-developed property. Mr. Maynard understood and replied he was maintaining the existing use with frontage and one acre. But from the stand point of the existing placement of the house being in the middle of the frontage, he wasn't seeking additional relief.

Mr. Hennessey understood that the proposal was configured to meet the DOT sight lines but was concerned that the sight line was going out to the single most dangerous intersection (at Old Gage Hill Road) in Town. He would be surprised if DOT allowed the proposal to go to the minimum requirements. Mr. Maynard said he had conversations with DOT who indicated they would only approve it in the location that met their 200ft. of (all season) sight distance which put the proposed driveway approximately 600ft-700ft from that intersection. Mr. Hennessey understood mathematically it worked but pointed out the intersection had been closed numerous times in the last year from cars sliding into the intersection.

Ms. Chubb was concerned with adding additional lots and increasing the (turning) traffic at the location. She spoke about her personal experience and the number of trips she takes in and out of her own property on a daily basis. Mr. Maynard replied the AASHTO standard is ten trips per house on average and believed that point would be a discussion for the Planning Board. He said the variance request was for the driveway and by pushing it over from the crest of the hill would provide stacking/visibility for other vehicles. Ms. Chubb agreed that the proposed driveway location was better than the existing location. Mr. Maynard said the second request was for the reduced frontage of one of the proposed homes. He said the three-acre property had approximately two acres of uplands associated with it. He noted by right he could go to the Planning Board and ask to put a cul-de-sac, which in the end could add a long-term cost to the Town. He

noted the highest and best use of the land was a 3-lot subdivision, which was being requested. Ms. Chubb commented just because 'we can' doesn't always mean 'we should'.

PUBLIC INPUT

Mr. William Bowlan, 974 Bridge Street heard talk about the homes and wanted to know if they would be duplexes or single-family homes. Mr. Kearney replied that information wasn't in front of the Board. He said the only thing in front of them was a request for reduced frontage and allow the driveway to come through. If the variance is approved the applicant will submit to the Planning Board, who will require additional information. Mr. Bowlan said he had other questions but understood they were for the present meeting.

Ms. Elizabeth Lawrence, 12 Old Gage Hill Road told the Board her house was located at the corner of Old Gage Hill Road at the dangerous intersection. She said three of her family members had been hit there and spoke about her concern for the safety hazard of adding three homes.

Mr. Kearney said if the variance was requested for another road that was less travelled or in a less dangerous location, he would have less opposition to having three families go in and out of the driveway. He was also concerned with the length of the proposed driveway being 400ft. Mr. Maynard said if they were to do a two-lot subdivision, by right both lots would them become duplex lots since the frontage and land area would be met. He said no matter how the lot was divided it would need a shared driveway. He didn't think 400ft. was long considering some of the other projects that have done around Town and the size of the lot. They were willing to meet any of the requirements placed on them by the Planning Board or Fire Department in relation to the driveway. Mr. Kearney asked if the proposed driveway was closest to the minimum requirement. Mr. Maynard replied he was a little closer because there was a utility pole at that location. He said he stopped the sight distance at 200ft. but believed there was approximately 20ft-215ft. in the direction toward Old Gage Hill Road. Mr. Kearney asked for the distance between the proposed driveway and Beacon Hill. Mr. Maynard replied it was approximately 100ft. He said he tried to put a driveway across from Beacon Hill, but it didn't have adequate sight distance.

Mr. Hennessey stated the general area had been studied by several groups, including the NRPC and the intersection has been on the DOT's list as being one of the most dangerous. He appreciated that Mr. Maynard had configured the lot for the best possible action; however, he believed it was a dangerous spot and felt the community wouldn't be served by the creation of three lots. He thought it would be a mistake to vote for anything on the crest of the hill until the intersection was fixed. Mr. Maynard stated he had studied the area and commented that the difficulty in fixing the intersection was the need to acquire land, reduce the Bridge Street grade and excavate the sidelines. With regard to sight distance, the Town goes by AASHTO, the State uses 400ft. He noted the driveways met more than the typical standard for the speed limit in that location. He agreed the Old Gage Hill intersection needed to get fixed. Mr. Hennessey believed there would be an increase in traffic due to the Salem, NH Tuscan Village project and become a real problem.

Mr. McNamara agreed with Mr. Hennessey and was concerned about safety, adding three lots on top of the hill, the lot configuration and the length of the driveway. Mr. Maynard reiterated that the driveway met the requirements in the proposed location. Mr. Maynard asked that the Board separate the variance requests when they vote because he needed to move forward.

Mr. Kearney wanted to know if the Board could separate the two variances. Ms. Beauregard answered yes; the Board can vote separately.

The Board then discussed the variance criteria with regard to the decreased frontage request (referenced as #ZO2019-00003a).

1. *Variance not contrary to the public interest:*

For this case, Mr. Hennessey didn't feel it was appropriate to reduce the frontage down from 200ft. to 75ft. Mr. McNamara agreed with Mr. Hennessey and added the problems with the existing traffic and safety concern for additional traffic through growth of the Town as well as Salem's Tuscan Village project. He also noted there was adequate frontage for two lots. Ms. Chubb stated she had the same concerns and thought there were alternate ways to configure the parcel, amend the frontage and continue to use the land. Mr. Kearney was challenged by reducing the frontage because of the location of the parcel on the road.

2. *Spirit of the Ordinance:*

Ms. Chubb didn't feel the spirit had been observed; the Town had a 200ft. frontage requirement for a reason and given the specific location the parcel was located on Route 38. Mr. Hennessey also didn't feel the spirit had been observed. He said the Board had gone under when appropriate but didn't think the lot needed to do so.

3. *Substantial Justice:*

Mr. McNamara didn't think substantial justice would be done in terms of the area, traffic and harm to the public and safety. He noted that the applicant already had an existing home and use of the lot.

4. *Values of surrounding properties are not diminished:*

Mr. Hennessey felt the controlling issue in value was the speed and volume of traffic on the road (Route 38). Mr. Kearney felt granting the variance wouldn't diminish the value, but other mitigating circumstances would. Ms. Chubb spoke about the work being done along Route 38 by crews replacing utility poles and rewiring cables. She frequently drove that stretch of road and discussed the continuous work that was done in the area because of vehicle accidents that knocked utility poles down. She said it may not decrease property values, but believed it constrained it because of having difficult access to properties.

5. *Unnecessary Hardship:*

Mr. Hennessey didn't think the lack of a variance was a problem for the parcel. He believed there were peculiar situations on the lot, but it didn't create the rationale for a variance. Mr. McNamara said the motivation appeared to be for driveway access to one of the lots. He said the shape of the proposed lot (9 sides) wasn't traditionally allowed by the Town. Ms. Chubb stated there was an existing house and the applicant could still put an additional house on the lot.

In reading the requests, Mr. Kearney felt if the frontage variance was denied, the second request would be moot. Mr. Maynard noted the Board could be more restrictive and allow less driveways than was requested. He said if they weren't granted the frontage, they would be down to a two-lot subdivision and still in need of a variance because they couldn't fix the driveway sight distance to subdivide the lot. Mr. McNamara understood that Mr. Maynard would be willing to change the request from 'access to three lots' to 'access to two lots'. Mr. Maynard answered yes. He pointed out that the Board could deny the frontage request but still grant the ability to have 'up to three houses off a shared driveway'.

Mr. Hennessey said if Maynard wanted to leave the request on the table, he could but felt he might be better off withdrawing. Mr. Maynard replied his client had a substantial piece of land and would still like to subdivide. He said as a two-lot subdivision DOT would be the restriction and not grant another driveway somewhere else along the frontage. He said DOT wouldn't allow him to use the existing driveway (and split it) because it didn't meet sight distance. He explained he would need a waiver from the Planning

Board to have a driveway that was not on the lot's frontage; however, in Zoning it's listed under definitions. A driveway must be located within the 200ft. of frontage in order to meet the rules. Mr. Hennessey had a problem with the proposed driveway length being 400ft. and suggested he withdraw. Mr. Maynard said withdrawing would have him back in front of the Board with a driveway in roughly the same location for the second lot; it would be shared for a small portion of the existing house.

The Board submitted their voting slips for the 'frontage' variance request.

BALLOT VOTE #ZO2019-00003a:

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

(0-5-0) The motion failed.

VARIANCE DENIED

Mr. Hennessey asked for a ruling by the Chair. He said in the past they had made changes in the best interest of assisting the applicant. He said to go from three lots to two lots was a big change. He asked Mr. Kearney if it was substantial enough to require them to have a change in application. Mr. Kearney believed the difference was substantial enough for there to be another application, although he wanted the Board's input. Mr. Hennessey agreed that it would be a big change. Mr. McNamara understood that a variance would still be needed but didn't think the Board had enough information regarding the new configuration to make a valid judgement.

Mr. Maynard understood that he had lost the variance for frontage and would need to meet the Town's Zoning requirements. He said there was enough frontage for two lots; however, the land had a hardship for where the driveway had to be located. He understood the Board was not comfortable making a vote regarding such and wanted him to provide a new plan (for the lot layout) and re-notice abutters. Mr. Kearney replied that was correct. Mr. Maynard wanted the Board to understand that the driveway site location was 'fixed'. He respectfully withdrew the second variance request and told the Board he would re-post for the next meeting.

Case #ZO2019-00004
Map 29 Lot 7-27-19
PRO-TURF LANDSCAPING OF SOUTHERN NH, LLC - 23 Fletcher Drive - Seeking a Special Exception to Article XII Section 307-76, III to operate a General Home Occupation for the purpose of repairing company vehicles and equipment in an existing garage

Mr. Kearney discussed the review process for a Special Exception and associated criteria.

The applicants, Mr. Chris Beaudry, Owner Pro-Turf Landscaping and Ms. Andrea Dube, Office Manager Pro-Turf Landscaping came forward to discuss the requested Special Exception.

Ms. Chubb read the list of abutters aloud. Ms. Janis Flankenstein told the Board she was not property owner, but her legal address was 25 Fletcher Drive. Ms. Beauregard informed only the property owners were notified; however, she was welcome to attend the meeting and speak. Mr. Gordon Sonia, 42 Briarwood Road (corner of Fletcher Drive) told the Board he did not receive notification. Ms. Beauregard asked if he was within 200ft. of the applicant's property. Mr. Sonia answered yes. Ms. Chubb went through the Certified Mail receipts and didn't find one for Mr. Sonia. Ms. Dube told the Board that the frontage

between their property and Mr. Sonia contained 341ft of frontage, therefore Mr. Sonia wasn't included with abutter notification. She said he didn't appear to be with the 200ft. requirement.

The applicants, Mr. Chris Beaudry, Owner Pro-Turf Landscaping and Ms. Andrea Dube, Office Manager Pro-Turf Landscaping came forward to discuss the requested Special Exception. Ms. Dube told the Board they had been utilizing the existing garage at 23 Fletcher Road for their mechanic to service their vehicles when they break down. She noted there were only a handful of vehicles that didn't fit into the garage attached to their office (Pulpit Rock Road). She said they were under the impression that they were allowed to do so, but it came to their attention last fall that they had to seek a Special Exception.

Mr. Hennessey saw that the applicant was turned down for a limited special exception and was now applying for a general exception. Ms. Dube replied she wasn't involved with the previous request but understood it had been to run the actual landscaping business from that location. She explained that they moved the business itself to Pulpit Rock Road approximately five years ago along with their trucks which were located/parked at 18 Atwood Road. Mr. Kearney believed the request was a significant enough change for the applicant to request a special exception.

Mr. McNamara wanted to know the size of the existing garage. Ms. Dube replied 60ft.x40ft. Mr. McNamara confirmed the only activity was repairing vehicles. Ms. Dube answered yes. Mr. McNamara questioned if vehicles were stored/parked at that location. Ms. Dube answered no. She indicated she had photographs of the vehicles at the yard across Town (Pulpit Rock Road). Mr. McNamara asked if the vehicles came from across Town (Pulpit Rock Road) to the Fletcher Drive property. Ms. Dube answered yes; when the vehicles needed repair, the mechanic brought them to the garage. Mr. McNamara asked if it was a regular thing for trucks to go back and forth. Ms. Dube replied they went back and forth as necessary. The parts delivery truck was a small pickup that may occasionally make deliveries; however, there were no tractor-trailer deliveries or public visiting the location. Mr. McNamara inquired on average how many vehicles were in the garage at any given time. Ms. Dube replied it could hold a maximum of three (possibly four depending on size). Mr. McNamara asked if they performed any fluid exchanges, such as oil, transmission or similar at the property. Ms. Dube answered no, that type of activity was done at Pulpit Rock Road. Mr. McNamara asked for the hours of operation. Ms. Dube replied the mechanic's hours were roughly 8:00am-5pm, Monday thru Friday. She said it fluctuates (within that time) depending on the mechanic's family schedule.

Mr. Kearney wanted an explanation of the difference between the two locations. Ms. Dube replied they had a part-time mechanic that came to the Pulpit Rock location to work on the small equipment (i.e. Bobcats), changed oil, etc. in the evening. Mr. Beaudry stated the mechanic at Fletcher Drive performed general repairs on the equipment and trucks. Ms. Dube described the work as being changing tires, rewiring, fixing lights, fixing snowplows, etc.

PUBLIC INPUT

Mr. Rob Hardy, 19 Fletcher Drive understood that if the criteria were met the special exception would be granted. He said the last time he had been in front of the Board was when the applicant made a request for their business (2004). He stated they had moved most all their trucks to another location. He understood that the difference between the garages was the Fletcher location had a bigger garage door and lift for bigger trucks. In reviewing the criteria, he suggested that the applicant discuss the things they couldn't do at the Pulpit Rock location so the Board would understand. He spoke in favor of the special exception and stated the company did a lot for the community and hired local teenagers. He had no issue with the applicant's request.

Mr. Wayne Pitts, 25 Fletcher Drive stated he was the direct abutter to the applicant's property/business. He said if there was a previous hearing, he was never notified. He told the Board the business didn't only run

Monday through Friday; it worked every weekend and during snow storms. He said they hear backup signals from trucks and had full-size loaders on site. His property is directly beside the building and had vehicles encroach onto his property to the point that he added stones to try and stop it. Mr. Pitts stated the business didn't belong at the location. He said he wasn't able to enjoy his back yard. He brought photographs to show leaf blowers being used at night because they were worked on. He said the applicant wasn't doing what they were telling the Board. He testified that he had seen Bobcats, pickup trucks, plow rigs, large trailers and other landscaper's vehicles being serviced at the location. He commented that work also happened at night. Mr. Pitts reiterated the work wasn't limited to Monday-Friday 8am-5pm. He said it started with only Mr. Beaudry and a smaller business with a variance for an office. As far as he knew Mr. Beaudry didn't have a variance to run a repair center business at the location. Mr. Kearney replied that was the reason for the hearing.

Mr. Pitts stated he already had an encroachment and hardship issue on his property from when Mr. Beaudry constructed the building and cut trees down. The pines were replaced with bushes and now dead vegetation. He said anyone was welcome to walk the property. He said he had videos and photographs that could be produced. He reiterated that the business and equipment didn't belong in the residential area. He spoke about Fletcher Drive and its residential nature. He believed that the applicant's father was the property owner and Mr. Beaudry didn't live at that location. Mr. Pitts told the Board that Mr. Beaudry had never been bad to him or given him a problem. He said he was emotional about the situation. He submitted the photographs to the Board for review.

Ms. Janice Flankenstein, 25 Fletcher Drive told the Board she moved in to what she thought was a residential neighborhood last October. Being retired she's home and had seen a constant flow of commercial vehicles coming in and out of the driveway. She said it wasn't just lawn care equipment, it was also snow plows. She commented that the noise level was at times unbearable with trucks signals backing up. She didn't know how the activity was allowed to continue in a residential neighborhood.

Mr. McNamara questioned how frequently the trucks came through. Ms. Flankenstein said the traffic depended on the weather. She couldn't answer for the traffic at other times because hadn't lived at the residence through summer months. Currently it was winter equipment coming in and out of the property.

Gary and Wendy Williams came forward and provided the Board with photographs. Mr. Williams told the Board that the applicant had constructed the metal warehouse without permission and had been told by the Town to stop running their business from the location but had not done so. He said they grew the business and had continuous truck shuttling all day. The heavy equipment included dump trucks, flatbeds, Bobcats, trailers, lawn equipment etc. He said when he had brought the situation to the Town to complain, the Town said there was nothing they could do. Mr. Williams told the Board that the business was a large company that didn't belong on Fletcher Drive, because it's a residential neighborhood with children and people walking their dogs. He said if the Board wanted to see the size of the company, they should look at their website. Ms. Williams noted that one of the company vehicles backed down the driveway and hit a parked car which could have been a child on a bicycle. She commented that there was a crack in the pavement outside her bedroom window and she heard trucks hitting it as early as 4am. She noted there were many trucks that went to the site, loaded up and then took off to the job sites. They work until the sun goes down and return at 7pm to empty the trucks. She said the applicant also burns in their back yard. There was one time that her daughter became ill and broke out in a rash due to them burning railway ties. Ms. Williams stated the business wasn't small, they had several job opportunities and offered employees benefits such a matching 401K.

Ms. Ryan wanted to know where the photographs were taken from because she understood that the company did business in the neighborhood. Ms. Williams replied they were all taken from her yard showing the applicant's warehouse (garage). Ms. Ryan asked when Mr. Pitts' photographs were taken. Mr. Pitts replied he had seven years of photographs and videos. Ms. Williams said the Planning Director (Jeff Gowan) had

suggested she keep a log, which she did for a period of time and submitted to the Town for their records. She noted that she worked from home and saw a constant flow of 5-6 trucks every half hour. She worried about the traffic because of the curvature in the road and also about pedestrians and children playing. She was also concerned that the applicant would have an 'open door' if the variance was approved. Mr. Williams didn't believe in the applicant's intentions based on what they had already done.

Ms. Chubb inquired what the applicant was 'loading'. Ms. Williams replied bark mulch and added that they also hydroseed. She said they empty out their dump trucks of leaves, debris and landscaping materials. They dump the debris and burn it in the backyard. Ms. Chubb wanted to know what they were seeing regarding the activity on the lot. Mr. Williams replied the applicant would go back and forth up the road with a Pro-Turf pickup truck, flatbed, Bobcat or trailer with lawn mowers. Ms. Williams added that they drive their lawn mowers down the street and leave gas containers on the road for another employee to pick up. She spoke about a day she was blocked in her driveway because of one of the company's trucks. Ms. Chubb asked if the trucks were working in two yards at the same time. Ms. Williams said they occasionally did, usually on Friday afternoon. She reiterated that the trucks traveled back and forth every day. Ms. Chubb questioned how many times the trucks traveled back and forth each day. Ms. Williams replied when they were doing yards (in the neighborhood) it was once a week. On a regular summer day there were at least a dozen trucks each day in the morning, at lunch and in the evening.

Ms. Dube spoke to the loading and unloading of vehicles. She clarified that the mulch, hydroseed and all their material had always been stored at another location; never on Fletcher Drive. She said the (landscape) employees didn't start until 7am. Any Pro-Turf truck going in and out of the neighborhood at 4am was Mr. Beaudry going to the gym. There was no employee activity for Pro-Turf related work happening in the neighborhood aside from them maintaining properties, sprinklers, bark mulch and their own house. She said in many of the neighborhoods they find a safe spot to park the truck and trailer and drove lawn mowers from house to house to keep the truck/trailer out of the roads. They did the same thing in all neighborhoods and not just in the Fletcher neighborhood. Ms. Dube told the Board that the employees started their day at 65 Bridge Street (1st lot off Pulpit Rock Road). She welcomed anyone to visit that location anytime.

Mr. Kearney asked if they had always begun their day at that Bridge Street address. Ms. Dube replied they previously (up to 2014) started at an Atwood Road location when the office was at Fletcher Drive. In 2014 they relocated to the Pulpit Rock address because the company had grown. She noted they had a big presence online so customers would contact them for business. She added that they also offered their employees benefits because they felt they deserved to have them. She didn't think that had anything to do with the fact that they needed a place to fix their equipment and trucks.

In response to public comments, Ms. Dube told the Board that there was no loading/unloading or burning at Fletcher. She said they had a wood stove at the garage. Mr. Beaudry said in the last fifteen years they may have burned some things (outside), but those days had come and gone. Mr. Kearney wanted to know when the last time they burned. Mr. Beaudry replied it had been years. He noted they had just gotten approved for a Category 4 burn permit on a different property to do any burning that they had to do. Ms. Dube stated she had been with the company and never seen them burn anything at the Fletcher location.

Mr. Gordon Sonia (42 Briarwood Road formerly Old Lawrence Road) told the Board that the company previously traveled down his road until he asked that they to use Fletcher Drive. He said they changed their route except for certain times when they used heavy equipment and traveled along his road. He stated they worked six days a week. He said the mechanic arrives at approximately 7:45am and leaves at approximately 4:30pm. He said the activity wasn't quiet and they heard the backup signal from trucks. Mr. Sonia reiterated what the other members of public had stated regarding the area being residential.

Mr. Pitts came forward once more and stated he had never seen bark mulch stored on the property. He said they brought the work equipment to the location, some on trailers. That equipment is dropped off and

picked up at time the next day. He said the hours of operation ran on the weekends and with snowstorms. He described the large equipment that was brought to the garage as well as the tools used within the garage such as impact wrenches and compressors. He stated they were doing oil changes and fluid changes; proof of such which would be submitted to Code Enforcement separate to the meeting. He said they were also doing brake jobs. Mr. Pitts pointed out that the applicant wasn't doing light duty work, they were doing heavy mechanic work in the garage. He reiterated that he hadn't seen bark mulch on the property, but there had been an area filled in. He wanted his statement to be clear that the operation didn't belong in the neighborhood and offered to produce photographs for the Board to review. Mr. Pitts noted that he traveled during the day for his employment but had noticed the activity on the lot had recently quieted down and they weren't on the lot during the weekends.

Mr. Kearney asked the applicant what report was provided with their application. Ms. Dube replied the information was for the electronic timeclock employees used to 'punch in' when beginning and ending work. She noted their former mechanic, who worked greater hours, left in October. Their current mechanic has a family and rarely hits overtime, which was the reason they hired a part-time mechanic to handle work at their Pulpit Rock location.

Mr. Hennessey was familiar with the (garage) building and asked if it was ever approved. Ms. Beauregard explained the applicant had come in for a general home occupation (in 2004) and was denied. She didn't know if the garage was an 'after the fact' permit but had since been permitted. In reviewing the criteria for a general home occupation, Mr. Hennessey didn't feel the garage could be considered a 'home garage'. He said it looked like a commercial structure and didn't fit the character of the neighborhood. Ms. Beauregard said she hadn't seen it and noted they didn't have a size requirement. Mr. Hennessey wanted to see the permit information on the garage. He asked who was living at the house. Ms. Dube replied Mr. Beaudry and his father lived at the house. Ms. Beauregard noted a person had to be a resident (at the home occupation address) but they didn't have to be an owner. Mr. Hennessey reviewed the map of the parcel and looked at the area in and around the garage. He stated a general home occupation is supposed to be a secondary residential usage and asked if it was primarily a business structure. Ms. Dube said the garage was, but the house had no business activity in it. Mr. Hennessey understood there was one mechanic at the Fletcher location and wanted to know if the applicant worked at the Fletcher or Pulpit Rock location. Ms. Dube replied she worked at Pulpit Rock Road. Mr. Beaudry said he worked everywhere. He explained they previously had an office at Fletcher Drive; however, in 2014 they removed the office and that space was a billiards room. Mr. Hennessey said according the rules (general home occupation) there should be no more than two vehicles visible at any given time; however, in the photos provided to the Board there was more than two vehicles visible on the site. Ms. Dube didn't know when (abutter) submitted photos were taken. The photo she provided was taken earlier in the day; one vehicle was Ms. Dube's, one vehicle was Mr. Beaudry's fathers, the gold SUV was the mechanic's personal vehicle and the work truck was the mobile repair vehicle.

Under the criteria, Mr. Hennessey noted that the occupation had to clearly be secondary to the primary residential use and shall not change the residential character of the neighborhood. He believed the Board should conduct a site walk. Mr. McNamara agreed. He said there was a lot of conflicting testimony and photos showing multiple vehicles. Mr. Kearney believed from the structure itself, it dictated that the use isn't secondary. He felt every picture showed the intention of the garage.

A photograph was displayed showing the applicant's home, driveway access to garage and the garage structure. Mr. Hennessey felt prima facie the structure wasn't a residential structure. On the other hand, the applicant had put the structure up in the past and were back in front of the Board stating the property was primarily residential with one or two employees working from time to time. He said they weren't going to make them take the garage down. Ms. Chubb pointed out the driveway for the garage was separate and apart from the residence driveway. She appreciated the applicant submitting the figures (calculation) which showed the usage as being under 49%; however, she believed the driveways and vehicle paths for

the purpose of rotating the vehicles (through the lot) should be part of that equation. Mr. Kearney stated that equation wasn't included with the 'gross residential living space'. Ms. Chubb believed the garage changed the residential nature of the property (criteria #2). Mr. Hennessey believed the crux to the issue was whether it was 'residential'. When walking in the area he was always struck by the incongruous appearance of the structure.

MOTION (Hennessey/McNamara) To conduct a site walk.

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

A site walk was scheduled for March 30, 2019 beginning at 8:00am. Mr. Kearney stated the site walk was open to the public.

The case was date specified to April 8, 2019.

SITE WALK – March 30, 2019 beginning at 8:00am
Case #ZO2019-00004 - Map 29 Lot 7-27-19 - PRO-TURF LANDSCAPING OF SOUTHERN NH, LLC - 23 Fletcher Drive

DATE SPECIFIED CASE – April 8, 2019
Case #ZO2019-00004 - Map 29 Lot 7-27-19 - PRO-TURF LANDSCAPING OF SOUTHERN NH, LLC - 23 Fletcher Drive

MINUTES REVIEW
February 11, 2019

MOTION (McNamara/Ryan) To approve the February 11, 2019 meeting minutes as amended.

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

(Ms. Chubb submitted amendments to the Recording Secretary)

ADJOURNMENT

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

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

The meeting was adjourned at approximately 10:10pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary