

APPROVED

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
March 9, 2020**

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

Secretary Diane Chubb called roll:

PRESENT: Bill Kearney, Diane Chubb, David Hennessey, Peter McNamara, Matthew Hopkinson, Alternate Karen Plumley, Alternate John Westwood, Planning/Zoning Administrator Jennifer Beauregard

ABSENT: Alternate Deb Ryan, Alternate Heather Patterson,

PLEDGE OF ALLEGIANCE

Mr. Kearney explained the Board's role and hearing process.

CONTINUED HEARING(S)

Case #ZO2019-00026

Map 18 Lot 12-16

MAKO DEVELOPMENT LLC - Old Gage Hill Road - Seeking a Variance concerning Article III, Section 307-13(B)(1) & (2) of the Zoning Ordinance to permit the subdivision of the subject parcel located at the east of Old Gage Hill Road into residential building lots from a public way located in the Town of Salem, NH known as Beechwood Road

Ms. Beauregard noted the abutter's list was previously read into the record.

Representing the applicant was Attorney Patricia Panciocco and Shayne Gendron of Herbert Associates. Attorney Panciocco described the purpose of their requests for Variances. She displayed a plan highlighting the property location; concept plans, using the tax map, were given to the Board (for reference only). She said the applicant was proposing wells and septic unless the Town of Salem, NH allowed a water line to be extended. The only access into the property was over Beechwood Road in the Town of Salem. The property abuts a large wetland (to the west). There is a possible right-of-way extended to the South toward Methuen, MA but not something that had been formalized. The applicant was considering extending the right-of-way to the North, but the abutters to such have not been contacted. There are no agreements in place to extend access ways; the sole access remains over Beechwood Road.

Attorney Panciocco stated the applicant was requesting relief from Article III which requires direct access from a street in Pelham. Before filing the application and appearing in front of the Board she conducted research to find out the intent of the provision, other than for emergency vehicles. She did not find a lot of explanation in the meeting minutes from 2006 and 2007. She reviewed Town Reports for broader context and found (in 2007) the Town had a modest Fire Department and noticed there was a lot of fire equipment funded through Town Meeting; in 2012 the voters approved a bond article to build a new fire station (done in 2013). She said she did not have direct confirmation of the reasoning for the article, she guessed the Town was growing and the Fire Department wasn't quite keeping up. She believed the purpose of the

Article was to protect public safety. She looked to see if there were other locations in Town where support services had to leave the corporate limits to access. She was aware of one subdivision (with access from outside of Pelham) where the road was private. There were also three homes on Fisher Drive in close proximity to the applicant's property that were serviced by the Salem Fire Department. From what Attorney Panciocco read, there were a lot of mutual aid agreements between Salem and Pelham and also generally across the state. She informed the Board they spoke with the Salem, NH Fire Department and read aloud a letter dated June 10, 2019 from Salem Fire Department Assistant Chief.

The Salem Fire Assistant Chief indicated they will provide mutual aid for fire and/or EMS services to the development (as they do for Fisher Drive). Salem Fire Department recommends the new subdivision comply with the Salem Fire Department rules regarding subdivisions greater than 3 building lots to provide fire protection water supply. The requirements are as follows: 1) If the municipal water line is within 500ft. of the new subdivision the developer shall extend the water line and install the required fire hydrants; this will require permission from the Town of Salem to extend the municipal water line. 2) If not (following #1) the new development is to install a cistern meeting the requirements of the Pelham Fire Department OR Provide each new home with residential sprinklers in accordance with NFPA 13D and Salem Fire Department rules and regulations.

Attorney Panciocco told the Board there was an existing fire hydrant at the end of Beechwood Drive; if allowed, her client will extend the water line. She indicated they met with the Pelham Highway Safety Committee ('HSC') and read aloud their letter dated November 21, 2019. The HSC unanimously voted to recommend the following conditions to the Zoning Board and potentially the Planning Board if a Variance is approved:

- 1) The new named roads within the proposed Pelham development should remain private roads with the property owners being responsible for all maintenance as described in Homeowner's Association documents, to be approved by Pelham Town Counsel;
- 2) The developer must provide a fire cistern in the size required by the Fire Department or provide fire suppression sprinklers in each unit as an alternative to the cistern;
- 3) A letter from Salem Fire Department confirming they will be the first responders for all fire/ambulance calls to this development rather than relying upon the standard mutual aid agreement.

Attorney Panciocco stated her client was fine with the HSC recommendations other than #3 and requested the two fire chiefs decide who should respond first. She pointed out the comments appeared to address the restriction in the ordinance affecting public safety. She noted zoning balances private property rights and public interest. In this case the Board was given jurisdiction to look at the individual facts of the case/property. She hoped they adequately addressed the public safety concerns. She then read aloud the responses to the Variance criteria as submitted with the application. She provided the Board with minutes/miles information from MapQuest to show emergency response from both Pelham and Salem to the proposed location; it showed Salem as being closer.

Mr. Hennessey was troubled by the two letters from the fire departments not coinciding with one another. He read the Salem letter as indicating response would be through 'mutual aid' and read from the Pelham fire department a requirement for approval would be for Salem to agree to be the first responder. Attorney Panciocco didn't know the reasoning for such. She mentioned the applicant was happy to defer to and abide by whatever the two fire chiefs decide who should have primary jurisdiction. Mr. Hennessey commented the location was so far away from Pelham's one and only fire station; the Town couldn't provide adequate fire coverage. He said if Salem pushed back and indicates they will only respond in a mutual aid capacity the residents of the proposed development would be 'out of luck'. In the past there were suggestions the Town needed a second fire house on that side of Town; however, it never came to fruition and Pelham built a new fire house that worked for approximately 90% of the Town. He had trouble approving the request absent the letter requested by the Town's HSC. Mr. Hennessey stated the second

problem he saw with the request was the absence of a traffic study, which he felt was needed. Especially if there was further development, as it was a self-evident obvious cut-through to Route 38. He said if the project connected in any way to Old Gage Hill Road it would be dangerous and needed a traffic study to evaluate as part of the approval.

Attorney Panciocco believed the map provided to the Board clearly showed the chances of having a road out to Old Gage Hill Road was probably slim to none. She felt it best to have a potential secondary emergency access to the south toward Methuen. She believed the applicant has given up any thought of a connection to Old Gage Hill Road due to the huge wetland impact that would occur to connect that way. She recalled there were old trolley lines (running to the south) that were considered as a potential second emergency access. Regarding a traffic study, Attorney Panciocco pointed they were basically showing a concept plan and understood they would need to do one for the Planning Board. She said all they were presently asking for was to get to the point of being able to introduce a concept but was unsure about the exact number of lots they would be able to get. In looking at the plan, Mr. Hennessey believed it showed potential connections to the north and west at the end of the extension from Beechwood. Attorney Panciocco believed the intention was to gain a secondary access if they could because the cul-de-sac length may be beyond the limitation. She pointed out the plan was a concept on a tax map and not meant to be a fully developed plan.

Mr. Kearney informed if a variance were granted there were several other 'hoops' the applicant would have to go through in order to get approval for a development, such as meeting with both the Salem and Pelham planning boards. He understood a traffic study would be done in order for the plan to move forward.

Mr. Hennessey wanted it clear that the Board was presented with a 'conceptual' and confirmed there was nothing more than a secondary access heading out toward Old Gage Hill Road. He said he would be more than upset if there was a connection to Old Gage Hill Road given the issues, they had with traffic out to Route 38. Mr. McNamara believed the Planning Board would be very interested in talking about a second access. Mr. Hennessey believed this was the type of issue that should be discussed with the Zoning Board and Planning Board at the same time (through a joint meeting).

Ms. Chubb reviewed the submission and noted it showed cul-de-sacs with an extended road clearly going into undeveloped property. Attorney Panciocco replied it was a tax map with an overlay showing two different routes for Salem EMS. She mentioned in addition to the environmental challenges, the applicant had no property rights in the direction of Old Gage Hill Road. Ms. Chubb wanted to know specifically about the blank spaces (on the plan-undeveloped land) that abutted the cul-de-sac. Mr. Gendron believed there were homes on both of the lots that were subdivided within the last 7-10 years that accessed off the northerly section. To answer the question about the rights-of-way off the cul-de-sac, he said they were shown for good planning so as to not cut people off in the future. Ms. Chubb saw two other cul-de-sacs on the Salem side that would be on the Pelham/Salem line. Mr. Gendron believed that was access off Sunrise; a private driveway to access the lots. Ms. Chubb was concerned they had a commitment from one fire department or another who was showing up first.

Mr. Kearney understood Pelham had a reciprocal agreement with Salem to coordinate who could get to a location faster, so the public is served. Ms. Beauregard didn't know if an agreement was made as to who the first responder would be; however, the HSC typically advises the Planning Board. She said the Zoning Board was determining whether the land met the hardship criteria.

Ms. Chubb said she would ask for a motion to make sure the question (of fire response) was answered for the Planning Board. Based on the letter from the HSC, Mr. Hennessey said he would make the Board's approval of a variance subject to the HSC's #3 recommendation being satisfied regarding who will be responsible for police and fire response. He asked the Board not to vote until they heard from the HSC. Mr. Kearney understood the concern but felt doing so would get into a situation beyond their jurisdiction.

Mr. Hennessey felt the Nashua Regional Planning Commission ('NRPC') letter was correct in indicating the whole proposal tied together with safety and access. He believed it would be a mistake for them to approve variance that ran with the land without straightening out who is responsible for responding with fire and police. He reiterated his suggestion for the Board not to vote until they heard from the HSC. Mr. McNamara disagreed and believed they were getting ahead of themselves, the Planning Board and HSC. He felt the issue would be addressed further down the road. He pointed out the applicant was in front of the Board to determine if the lot met the hardship criteria. He felt they were speaking about putting an undue restriction on the applicant. Mr. Hennessey pointed out the property had no access to the public street system in Pelham; the same as a Class VI. He said the Board didn't approve those without an 'okay' from the Selectmen; the equivalent was the HSC. He said he couldn't vote to approve a variance for a subdivision that had no access to a public road system of the Town. He felt they would put lives in jeopardy if they didn't straighten out who would be the first responders. Mr. McNamara didn't think it was the Board's responsibility to do so. Mr. Hennessey called attention to the HSC indicating their unanimous vote for the Town of Salem to have first responder status. He was willing to wait for a letter indicating such and would not vote until they had.

Attorney Panciocco thought the proposal was very different from a Class VI road (unimproved road). She told the Board the development would have compliant Class V roads that would fully meet Town Regulations. She pointed out the Board sent the application out for regional impact. She heard the Board's concern and felt a solution would be to 'condition' an approval on the Planning Board determining who the first responder would be. Mr. Hennessey read aloud the three recommendations outlined in the HSC letter, making a point about the wording '...rather than relying upon the standard mutual aid agreement.' He would like to see a letter from Salem indicating they will be the first responders. Attorney Panciocco replied they could vet it and added by way of comparison the data outlining the travel distance (response times) from the Salem and Pelham fire stations. She said they could ask to have it clarified but without a plan it was a difficult spot and may not be reasonable to ask a fire chief to make a commitment without knowing the facts.

Ms. Chubb read aloud correspondence from the Nashua Regional Planning Commission ('NRPC') dated January 28, 2020 speaking to receipt of a development of regional impact. NRPC notes since the proposed development borders and takes access exclusively from a neighboring municipality, the Board was correct in finding the development was of regional impact. She went on to read the entire letter into the record. Mr. Hennessey thought the applicant made a good point that the wetlands would make it difficult to connect the road though; however, he felt the Board needed to know who would handle fire (emergency) response should be determined before the Board voted. Mr. Kearney asked if the Board would consider a conditional approval for the applicant to obtain confirmation from Salem/Pelham Fire Departments. Mr. Hennessey felt the Board should go back to the fire chiefs and evaluate their responses before approving the request. He believed the two letters were irreconcilable. Mr. McNamara and Mr. Kearney agreed. Mr. McNamara commented the situation would be 'hashed out' by the HSC and the Planning Board. Mr. Hennessey replied the variance would 'in effect' create the (proposed) lots for development.

PUBLIC INPUT

Mr. Matt Desrochers, 29 Beechwood Road, Salem NH came forward and told the Board his major concern was public safety. He said the original letter from the applicant read as if Salem was going to provide first response services. In following up with Salem Fire, he learned they agreed to provide mutual aid under the current agreement. He received statistics that it took Salem 9 minutes to respond to his home where the national standard is 4 minutes. Mr. Desrochers stated he wasn't opposed to the development but felt there should be access elsewhere based on the safety concerns it would bring. He felt with the proposed right-of-way it seemed inevitable for further expansion. He noted there were a lot of children living along Beechwood Road and was concerned with increased traffic and safety concerns. He believed the HSC letter was clear they wanted a commitment of first response. He noted from his driveway to the Town border he

clocked it at 5 minutes and 2.3 miles (with no delays). Mr. Desrochers found it interesting in the variance application, the applicant mentioned emergency services 'provided by Salem' in response to four of the five criteria when it had not been committed to. He pointed out mutual aid is much different than first response. In looking at the Pelham tax map the property on Fisher Drive abuts Salem, NH and extends to Methuen, MA. He said the applicant indicates that abutter had not been contacted, which he found interesting based on the property lines. He heard the applicant say safety concerns were resolved; however, he didn't feel they had been met. He believed the request was contrary to public interest especially with safety to both Pelham and Salem residents.

Mr. Nick Turner, 16 Beechwood Road, Salem NH read aloud a letter from Salem's Assistant Fire Chief that reiterated their agreement to provide mutual aid under the current mutual aid agreement, it read further that it did not imply primary services (fire and ambulance) as was implied (in a letter) by Mr. Zohdi of Herbert Associates. The letter indicated Salem's services would depend on unit availability and current call volume at the time of a request, which would need to be initiated by Pelham Fire Department, as was the current standard practice for the Fisher Drive area (accessed through Pelham). The letter informed no further discussions or agreements had taken place. Currently the Beechwood Drive area is an area of Salem in which Salem Fire has extended response times; the last home on Beechwood is currently at 9 minutes well outside the recommended national standard of 4 minutes. Mr. Turner told the Board he shared the concerns of Mr. Desrochers and believed there were other lots that would become accessible if the proposed lot was developed. He commented his own cul-de-sac development was new and had abutting conservation land. He was worried how the development would affect his property. Before any vote is taken, he felt there should be conditions put in place to research how the existing open space (20-25 acres) and issues brought up by the NRPC regarding historical sites and wetlands. Mr. Turner didn't see a reason to put the matter to a vote at the present meeting and felt it had already been 'tabled' and could continue to be. He believed the proposal would cause adverse traffic and wear/tear on Beechwood Road not just from the proposed lots, but from the lots that would be developed along Fisher Drive and the lots currently for sale in Methuen MA. In reference to property values, Mr. Turner felt if the proposed lots were going to be serviced by propane, well and septic, they would (negatively) affect the values of existing homes on Beechwood that were serviced by sewer and natural gas; through sale prices being less expensive for the new homes. He spoke of his concern for the proposed houses being so close to the existing wetlands though impacts to wildlife and groundwater. He understood there were remaining hurdles such as seeing if Salem will extend the water line (into Pelham). Mr. Turner told the Board the main concern was safety given there was only one access (currently) to Beechwood Road.

Attorney Panciocco told the Board they never represented the letter from Salem Fire to be anything more than it states. She said they haven't represented they signed up to be a first responder, which she agreed was in conflict with the condition imposed by the HSC. She stated there were no anticipated wetland impacts. They had no intention of access extending to Gage Hill Road. To address emergency response, she pointed out there were three options: 1) extend the existing water main, 2) install a cistern or 3) add sprinkler systems (in the homes). Attorney Panciocco stated they couldn't make a decision for the two fire chiefs; it was up to them to determine what is best for the public. She said the provision in the ordinance when applied to the property was just confiscatory, taking all development rights away from it. This would constitute a taking and the Board is asked to balance public and private rights. She was open to the Board's suggestions as well as a continuance to try to force the fire chiefs to make a decision. She ended by saying they weren't in a position to do anything more than install fire sprinklers and indicated they were willing to do so.

Ms. Chubb stated there was a lot more than fire at risk. She understood sprinklers would help within the home but pointed out they wouldn't help with ambulance services. She agreed with Mr. Hennessey that the Board needed to have an answer but was willing to entertain some sort of stipulation or consideration that put the situation in front of the Planning Board to be addressed. She said as the road develops the fire chiefs will have to talk and work something out. Ms. Chubb wanted it clear the Board wasn't 'taking'

anything; they were putting public safety first. She said an approval might have a contingency or stipulation. She referenced the correspondence received from both the Pelham and Salem fire departments and understood mutual aid is the default. She said the HSC indicated that wouldn't be enough. Ms. Chubb wanted to make sure the situation was addressed and answered.

Mr. Hennessey said he would make a motion to continue the case to the next meeting in hopes the applicant could get a satisfactory agreement between the Pelham and Salem fire departments as to who would provide emergency services. He said until that was done the Board would be remiss in approving the application for variance. He didn't agree with putting it off as a strong suggestion for the Planning Board would answer the fundamental question of the application. Unless someone takes responsibility for emergency services, there was no question in his mind the proposal was 'premature development'. Mr. McNamara noted that was the Planning Board's bailiwick. Mr. Hennessey agreed, but given the conflict the Zoning Board unearthed between the two fire departments, he felt it had to be settled before the variance was granted. Mr. McNamara disagreed.

Mr. Kearney understood 911 calls would be directed to Pelham. He also understood mutual aid was dependent on where equipment was located at the time of the call. He believed mutual aid happened on a reciprocal basis all the time with border properties. Ms. Chubb noted that was the default; however, the HSC was asking for more than the default. Mr. Hennessey said he was suggesting the applicant withdraw the request until they obtain a letter from both safety departments coming to an agreement or he would vote in opposition. Mr. Kearney stated he was taking into account the roles of the different boards. He noted the Planning Boards of Pelham and Salem would both pick up the topic of traffic, emergency services, number of houses etc. He believed the Board's responsibility at this time was to review the application to determine if the applicant met the criteria; the biggest in his opinion was hardship. He said the concerns raised by the Board had to be addressed. Mr. Hennessey reiterated the HSC voted unanimously to recommend specific conditions to the Zoning Board and potentially to the Planning Board if variance approved. He felt the responsibility was on the Board to discuss/evaluate the HSC's recommendation and make a decision. He didn't know how the Board could vote in favor of a variance when the HSC was telling them it was vital to have a letter from Salem saying they agree to be the first responder.

Respectfully, Mr. McNamara disagreed with Mr. Hennessey. He believed the Planning Board would take up the question both in Pelham and in Salem. He stated the land was in a residential area with no wetland issues. He reiterated the applicant will still need to go through the Planning Board 'hoops' and the Planning Board will make a decision whether the proposal is 'premature development'. Mr. Hennessey didn't feel it was in the public interest to approve a variance on a parcel that has nobody promising first responder service. Mr. McNamara pointed out the Board's concern was the variance request.

Ms. Chubb made a motion to strongly advise the Planning Board to discuss emergency response, and further the discrepancies of what is being said by each of the fire departments (Pelham and Salem) must be resolved one way or another by the Planning Board. Mr. Kearney understood the motion was an approval would be conditional upon on the fire departments determining who would be the first responder. Ms. Chubb said the Planning Board is strongly advised to resolve the discrepancies that currently exist between (the fire departments – Pelham and Salem) as to who would be the first responder in this matter.

MOTION (Chubb/McNamara) Planning Board is strongly advised to resolve the discrepancies that currently exist between (the fire departments – Pelham and Salem) as to who would be the first responder in this matter.

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

Attorney Panciocco felt it was wholly appropriate to condition the variance on that matter being decided. She said they were perfectly fine with doing so. Mr. Kearney confirmed the applicant had no objection to the other two stipulations in the HSC letter (dated November 21, 2019). Attorney Panciocco answered yes; there was no objection.

- 1) *The new named roads within the proposed Pelham development should remain private roads with the property owners being responsible for all maintenance as described in Homeowner's Association documents, to be approved by Pelham Town Counsel;*
- 2) *The developer must provide a fire cistern in the size required by the Fire Department or provide fire suppression sprinklers in each unit as an alternative to the cistern.*

MOTION (Chubb/McNamara) The applicant agrees to the first two requirements of the Highway Safety Committee; the approval is conditioned upon their (the applicant's) agreement of such.

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

BALLOT VOTE Mr. Kearney – Yes to all criteria
#ZO2019-00026: Ms. Chubb – Yes to all criteria; with two motions as stated
 Mr. Hennessey – No to all criteria
 Mr. Hopkinson - Yes to all criteria
 Mr. McNamara – Yes to all criteria; with two conditions stipulated in motions

(5-0-0) The motion carried.

VARIANCE GRANTED

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

Case #ZO2020-00005

Map 28 Lot 2-1-6

DANILUK, Brian - 19 Pond View Road - Seeking a Variance concerning Article VII, Section 307-39 of the Zoning Ordinance to permit the construction of a 12ft. x 14ft. shed with a 3ft.x 8ft. lean to one side to be located within the Wetlands Conservation District buffer zone

Mr. McNamara stepped down.

Ms. Plumley was appointed to vote as she had previously participated with discussing the case.

The applicant Brian Daniluk came forward to discuss his request.

Ms. Chubb read aloud correspondence submitted to the Board. 1) Karen MacKay (writing as a resident and Conservation Commission member) dated February 15, 2020 pertaining to the site walk, 2) Dennis Hogan (Conservation Commission alternate writing as a private citizen) and 3) Al Steward (Conservation Commission alternate).

Mr. Daniluk reminded the Board the area to the left of his house has irrigation and a sink hole problem he would be addressing this year. He explained he couldn't locate the shed directly next to the driveway due to snow removal.

Mr. Hennessey told Mr. Daniluk the Board received letters from individuals who happened to be members of the Conservation Commission who urged them not to grant the variance because the proposed location for the shed was within the setback. He said the original owner or developer had also cut into the setback. He commented Mr. Daniluk had continued to cut the area and was using fertilizer. Mr. Daniluk replied he never watched the company (maintaining his yard) and only assumed they were using fertilizer. Mr. Hennessey had hoped the shed location would be moved from the proposed area closer to the driveway or to the other side of the lot. He said he had a hard time approving the request given the concerns of the conservation members who thought it wasn't a good idea. He urged Mr. Daniluk to reconsider as he didn't feel he could vote for the original application as submitted. Mr. Daniluk said he would agree to moving the shed location to be situated approximately 15ft. from the edge of the house. Using a displayed plan, he marked the new proposed location of the shed and drew a line for the existing driveway; this was done as an estimated distance of 15-feet from the corner of the house/edge of paved driveway. He then showed the previously proposed shed location.

Mr. Kearney saw that the newly proposed shed location would move it halfway out of the Wetland Conservation District (WCD') buffer.

Based on the sketch (drawn by Mr. Daniluk during the meeting), Mr. Hennessey said he would stipulate the Board agreed to allow the applicant to change his application and move the shed to the newly proposed location. Mr. Daniluk further clarified the new location would be 15-feet from the edge of the paved driveway to the front of the shed. Ms. Chubb wanted to know if the entire shed would be 15-feet from the paved driveway, or only one of the corners would be 15-feet. Mr. Hennessey understood the shed would remain partially within the wetland setback. The prior proposal showed the shed being 44-feet into the WCD. The shed size is 12ft x 14ft with the lean to the size would increase to 12ft x 17ft. There will also be a foot of stone surrounding the structure. For clarification, Mr. Daniluk then marked the dimensions of the shed on the drawing.

MOTION (Hennessey/Chubb) To move the shed as stipulated on the sketch (15-feet from driveway hardtop) presented at the (current) meeting (and understood by Ms. Beauregard).

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

Mr. Hennessey then discussed additional stipulations. 1) with the assistance of the Zoning Administrator and the Conservation Commission the applicant is to obtain WCD boundary medallions to affix to the trees along the boundary within the wetland setback and 2) immediately cease all mowing and fertilizer within the wetland setback. Ms. Chubb seconded the motion.

MOTION (Hennessey/Chubb) To stipulate the following: 1) with the assistance of the Zoning Administrator and the Conservation Commission the applicant is to obtain WCD boundary medallions to affix to the trees along the boundary within the wetland setback and 2) immediately cease all mowing and fertilizer within the wetland setback.

VOTE: (4-1-0) The motion carried. Mr. Kearney voted in opposition.

Members of the Board didn't like the idea of possible storage of fertilizer but recognized the difficulty to enforce it.

Mr. Kearney opened the discussion to public input. No one came forward. Mr. Kearney told Mr. Daniluk if the Board granted the variance with the stated stipulations, he must abide by it. Mr. Daniluk asked who was responsible for identifying the WCD boundaries. Mr. Kearney replied the medallions could be obtained

from the Planning Department. Ms. Beauregard stated Code Enforcement would typically provide guidance based on the plan. She said it was typically done by a surveyor; however, if the Board was okay with the Planning Department working with the applicant, they would do so.

Mr. Hennessey told Mr. Daniluk the Board wasn't picking on him. The stipulations of the WCD should have been explained when the house was purchased. He said there were a lot of others in the Town with the same situation. Mr. Daniluk pointed out the original shed was located deeper into the WCD when he purchased the house.

Mr. Kearney asked Mr. Daniluk if he was in agreement with the proposed stipulations of no cutting and no fertilizer in his backyard within the WCD. Mr. Daniluk answered yes. He noted he had canceled the services this year because he would be doing a lot of lawn work and putting fresh soil down. He said he had not been aware of the WCD location being so close (to the house). From what he understood, he couldn't do anything much further back in his yard.

BALLOT VOTE	Mr. Kearney – Yes to all criteria with stipulations
#ZO2019-00005:	Ms. Chubb – Yes to all criteria as amended in the drawing and with stipulations
	Mr. Hennessey – Yes to all criteria with stipulations
	Mr. Hopkinson - No to three criteria; Yes to two criteria
	Ms. Plumley – Yes to all criteria with stipulations

(4-1-0) The motion carried.

VARIANCE GRANTED

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

Mr. McNamara returned to the Board.

HEARING(S)

Case #ZO2020-00007

Map 20 Lot 2-108

COOKE, William - Hinds Lane - Seeking a Variance concerning Article III, Sections 307-7, 307-12 & 307-14 of the Zoning Ordinance to permit the construction of a four-bedroom single-family house on a pre-existing non-conforming lot of record that contains 15,815SF where 43,560SF is required and maintains 119.83ft. of frontage on a Town approved road where 200ft. is required

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 Shayne Gendron of Herbert Associates. He described the property and stated there was an existing cottage (with heating system) in disrepair. There was an existing septic system and well. The applicant would like to improve the lot with a new house, septic system (through Shore Land permitting process) to meet the building and health codes and also meet the needs of the owner. The lot is lake-front and a pre-existing lot of record (prior to current zoning) which is undersized in acreage and frontage (containing 119.83ft. where 200ft. is required) on Hinds Lane. Mr. Gendron told the Board the proposal contemplates a slightly larger house than the existing. From a building coverage standpoint, it would increase from approximately 8% to 15%. The impervious coverage on the lot would go up slightly from approximately 14.3% to 19.37%. These figures would have the proposal fall in the category of 'standard Shore Land permit'; the request will not go above the 20% threshold. Mr. Gendron stated the

house would be located away from the 50ft. buffer; the well will be located by the water and the septic would be located near Hinds Lane with permits through the State. The house will meet the Town building setbacks. In summary, Mr. Gendron reiterated the request is to construct a house on a non-conforming lot of record that doesn't meet frontage or acreage. He then read aloud the responses to the variance criteria as submitted with the application.

Mr. Gendron informed the Board the property was the last on Hinds Lane that hadn't been improved; all surrounding properties had been improved to year-round homes permitted through Shore Land and/or through the Zoning Board.

Mr. Kearney asked for a description of the existing home. Mr. Gendron replied the existing home is single-story with approximately 915SF on the pad. The new proposal is for a pad of 1590SF with a two-story home. Mr. Cooke added the land across the street is owned by the Town (conservation land). No one's view would be obstructed by the proposed house.

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

Mr. Hennessey stated he was familiar with the location and walked the area at the time the Town purchased the abutting 150 acres. He noted the Town owned land was higher (topographically) than the applicant's land.

BALLOT VOTE #ZO2019-00005:	Mr. Kearney – Yes to all criteria
	Ms. Chubb – Yes to all criteria
	Mr. Hennessey – Yes to all criteria
	Mr. Hopkinson - Yes to all criteria
	Mr. McNamara – Yes to all criteria

(5-0-0) The motion carried.

VARIANCE GRANTED

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

Case #ZO2020-00008

Map 30 Lot 11-142

SCOTT, Kimberly - 120 West Shore Drive - Seeking a 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

Mr. Hennessey told the Board one of the immediate abutters was his wife's cousin and his own property was within approximately 200 yards (although he wasn't notified as an abutter). He stepped down. Mr. Westwood 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 Mr. Vernon Dingman of V.W. Dingman Consulting. The proposal is to replace the existing (2-bedroom) house, septic system and install a well on a pre-existing non-conforming lot. Currently water is drawn from the pond. The existing home is 39ft. from the shoreline and the existing septic system is 58ft. from the shoreline. Mr. Dingman told the Board the proposed structure, septic system and well are completely within the building envelope for the zone. The proposed home will sit

approximately 77ft. from the water line; the closest corner of the proposed deck will be 67ft. The proposed septic system (active treatment system – Clean Solutions) will be 142ft from the lake. The proposal attempts to bring all the entities into conformance with the understanding the lot is a pre-existing and non-conforming; just under 12,000SF. The lot has access on West Shore Drive, but not physical frontage. They have Department of Environmental Services ('DES') permits 'in hand'. The Shore Land permit is being revised because the owner is pushing the house further back from what was previously approved. With the proposal, lot coverage will increase from 6% to approximately 14%, all within the existing approved Shore Land permit. Mr. Dingman read aloud the responses to the variance criteria as submitted with the application.

Mr. Kearney asked for a description of the existing house. Mr. Dingman replied it was a single-story home; the proposed plan showed a two-story home and single-story garage. He didn't feel they were doing anything different from the surrounding structures on the street. He reiterated DES had already looked at the plan.

Mr. McNamara questioned the access to the lot. Mr. Dingman replied the lot had deeded access to West Shore Drive. The address is listed as West Shore Drive. Mr. McNamara inquired about the height of the proposed structure from the ground to the peak of the roof. Mr. Dingman replied the profile indicated 27ft. (ground to peak).

PUBLIC INPUT

Mr. Craig Fields, 144 West Shore Drive felt the Board should approve the proposal because it would add beauty to the neighborhood. He believed the house to be removed hasn't been occupied for at least thirty years. He said the structure was an eye sore and was caving in. He reiterated his support for the request.

Mr. James MacGuire, 124 West Shore Drive told the Board the 'green cottage' next to his property had to be removed. He said it didn't fit the layout of the shoreline. He was concerned about the property lines and wanted to make sure they met the proper boundary and well setbacks; those were his only concerns at this point.

Ms. Linda O'Connell came forward as representative for Constance Pozniak of 116 West Shore Drive as she currently lived in Virginia and was unable to attend the meeting. She provided the Board with a packet of information to review (in summary – there were additional documents included):

- 1) an opinion letter asserting the reason why the Board should not grant the variance. Ms. Pozniak is very upset about her neighbor essentially trying to prevent her use of her property. Ms. O'Connell described the ownership of Ms. Pozniak's property and the manner in which she accessed her lot. She believed the proposal would ignore Ms. Pozniak's access rights;
- 2) Attorney John Troy's resume;
- 3) Title opinion rendered by Attorney John Troy;
- 4) Subdivision plan previously submitted by Richard Hanlon;
- 5) 1984 West Shore Drive plan;
- 6) Deed from original owner George Wood to Mary and Stanley Pozniak;
- 7) Transfer deed from Elizabeth Pozniak to Constance Loschi f/k/a Constance Pozniak;
- 8) Fiduciary Deed from Currier to Hanlon;
- 9) Quitclaim Deed Hanlon;
- 10) Lot line adjustment plan;
- 11) October 17, 2013 correspondence between Linda O'Connell, Pelham Planning Department and James O'Neil land surveyor;
- 12) Several photographs of the Pozniak lot, camp and view from various angles.

From the documents provided to the Board, Ms. O'Connell stated they needed to have resolution as to what boundary line was correct as there was conflicting information. She then reviewed the photographs of the cottage from different angles for the Board to understand the reasons for their concerns and objection to the request. Ms. O'Connell told the Board her client was adamant that none of the variances should be granted for reasons including: 1) right-of-way (to cross 120 West Shore Drive to get to 116 West Shore Drive), 2) boundary line dispute (they have a surveyor under contract) and 3) statement by Mr. Hanlon (in 2013) indicating his subdivision plan wouldn't affect her client's access. Ms. O'Connell asked the Board to deny the variance or continue the case to give them an opportunity to have survey work done. If the Board decided to walk the site, she offered to be available to show members her client's situation.

Mr. McNamara understood there were time constraints; however, giving the Board the information packet on the night of the hearing didn't allow them to adequately absorb the contents. He said he would move for a continuance. He explained the Board didn't have jurisdiction to determine property rights or rights-of-way. He suggested the Board seek an advisory opinion from Town Counsel as to their rights and responsibilities.

Mr. Richard Hanlon told the Board he was the owner of 120 West Shore Drive which was being sold to (the applicant) Kim Scott. He said the Board didn't have all the pictures; they only had those which favor what Ms. O'Connell was stating. Based on his knowledge of the property and associated deeds, he described the access and boundaries. He told the Board he had title work done and redone to clarify the property.

Mr. Kearney appreciated the points being made; however, they were beyond the Board's purview. Mr. Hanlon replied he was just responding to the topics that came up during the meeting. Mr. Kearney said he would let Mr. Hanlon continue and asked that he speak about things the Board could control. Mr. Hanlon mentioned the camp was previously used as a bath house and through the proposal would be moved back (and out) of the 50ft. WCD for which he has an approved dated January 3rd. He added the well was approved. The septic has the required 75ft. radius setback. Mr. Kearney appreciated his input.

Mr. Dingman commented none of the pictures presented showed the actual driveway for 116 West Shore Drive. He stated it was physically constructed within Ms. Pozniak's lot. Using a displayed plan, he drew the physical location of the driveway for 116 West Shore Drive. He told the Board the lots were surveyed and subdivided in 2013 and in 2018. He didn't understand why the lot corners etc. weren't contested during those times. He commented there were three different surveyors who reaffirmed the property lines since 2013 and questioned why it was being contended now. He understood this wasn't the purview of the Board but would like the applicant to have an opportunity to provide their own information so both sides were heard.

Mr. Kearney agreed with Mr. McNamara regarding the Board seeking legal opinion. He noted the lot line was beyond their purview. Mr. Dingman stated Mr. Hanlon had a complete title workup done for the property in which a given right-of-way from 120 to 116 West Shore Drive was not found.

Ms. Chubb felt at the least the Board should continue the case to allow for the (abutter's) surveyor to finish their work. Mr. Kearney replied survey work was not the Board's purview. His concern was the access to the property if a given right-of-way was in place.

Ms. Beauregard asked the Board what they wanted her to ask Town Counsel. Mr. Kearney replied they wanted to ask Town Counsel or Ms. Beauregard if there is a right-of-way that runs through 120 West Shore Drive to get to 116 West Shore Drive. Ms. Beauregard didn't believe she or Town Counsel could be the deciding factor in that type of dispute. She said she could however ask counsel how the Board could proceed given the dispute between parties.

The case was continued to April 13, 2020 to allow the Board to receive advice from Town Counsel.

Mr. Hennessey returned to the Board.

DATE SPECIFIED CASE(S) – April 13, 2020

Case #ZO2020-00008 - Map 30 Lot 11-142 - SCOTT, Kimberly - 120 West Shore Drive

MEETING MINUTES

MOTION (McNamara/Hennessey) To approve the February 10, 2020 meeting minutes as amended.

VOTE: (4-0-1) The motion carried. Mr. McNamara abstained.

MOTION (Hennessey/Hopkinson) To approve the February 1, 2020 and February 15, 2020 site walk meeting minutes as amended.

VOTE: (4-0-1) The motion carried. Mr. McNamara abstained.

ADJOURNMENT

MOTION (Hennessey/Chubb) To adjourn the meeting.

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

The meeting was adjourned at approximately 10:00pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary