

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
June 8, 2020

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

PLEDGE OF ALLEGIANCE

Mr. McNamara was appointed acting Secretary. He then called roll.

PRESENT ROLL CALL: Bill Kearney - Present
 David Hennessey - Present
 Peter McNamara - Present
 Jim Bergeron – Present
 Alternate John Westwood - Present
 Alternate David Wing – Present via Zoom
 Alternate Jeff Ciara – Present
 Planning/Zoning Administrator Jennifer Beauregard - Present

ABSENT/NOT PARTICIPATING: Matthew Hopkinson
 Alternate Karen Plumley

The following notice was read aloud “A Checklist To Ensure Meetings Are Compliant With The Right-to-Know Law During The State Of Emergency” (*regarding access to the meeting*)

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

CONTINUED HEARING(S)

CASE #ZO2020-00009

Map 39 Lot 1-83

WILSON, Brian - 41 McGrath Road - Seeking a Variance concerning Article III Sections 307-8-C & 307-12, Table 1 to permit the construction of new 30ftx36ft garage to replace an existing 24ftx24ft garage on a non-conforming lot and less than 30ft from lot line

Mr. Westwood was appointed to vote

Mr. Brian Wilson came forward to discuss his request for variance.

Mr. Kearney summarized the actions and concerns from the previous hearing. He asked Mr. Wilson what had transpired since he was last in front of the Board.

Mr. Wilson informed he had submitted a Shore Line Protection application but had not heard back. He said there had also been a concern regarding the setback from the road. The north side of McGrath has an existing 10ft. setback. He said he will not be going any closer with the expanded garage. The east/west side of McGrath will have an 18ft. setback to the boundary with the expanded garage.

Mr. Kearney asked where the existing garage was located. Mr. Wilson displayed a plan that showed both the existing garage location and the proposed (expanded) garage. He showed where the sides of the structure would be in relation to the boundary lines and McGrath Road.

Mr. Cairra recalled the Board discussing the septic during their previous meeting. Mr. Wilson displayed a map showing the septic leach field being 16ft. from the proposed garage. His plan was to construct a high frost wall foundation on the side nearest the leach field and then back-fill the remaining area so as to not impede the natural flow of the septic.

Mr. Kearney asked where the front of the garage faced. Mr. Wilson replied the garage doors would be on the east/west side of McGrath Road.

Mr. Kearney opened the discussion to public input. No one requested to speak (in person or via telecommunication). He then closed the discussion to the public and brought it back to the Board.

Mr. Hennessey wanted to stipulate any approval be subject to Shore Land Protection approval. Mr. McNamara seconded.

Mr. Bergeron spoke to the setback regulations regarding the septic system. He noted when a foundation was put in the ground the dimensional setback requirements to the leach field changes. He was unsure if this point would get picked up in the Shore Land application. He wanted to know if the applicant had an 'as built' septic plan that would certify the dimensions. He wanted to know if the setback of 16ft (mentioned by Mr. Wilson) was to the edge of the last chamber or to the toe of the slope. Mr. Wilson replied it was toward the chamber not toward the slope. Mr. Bergeron reiterated his concern regarding the certification of the location of the leach field. Mr. Hennessey questioned if Mr. Bergeron was asking for a septic design approval from the State. Mr. Bergeron answered no; he wanted to know what affect the building would have on the effluent disposal area and the down slope receiving area. He explained the setback dimension requirements would change when the foundation was built (down 4ft) per D-1000 of the Department of Environmental Services Regulations. He was not comfortable with the expansion request without having a certification of the septic location. Mr. Hennessey asked who Mr. Bergeron wanted to certify the information. Mr. Bergeron wanted to know if the proposed motion would provide clarity. Mr. Hennessey replied he was looking for approval from the State Shore Land Protection that all criteria under shore land was met. He said anything above that should be contained in a separate motion.

MOTION: (Hennessey/McNamara) Any approval is subject to Shore Land Protection approval.

ROLL CALL VOTE: Mr. Kearney – Yes
Mr. Hennessey – Yes
Mr. McNamara – Yes
Mr. Bergeron - No
Mr. Westwood - Yes
(4-1-0) The motion carried. Mr. Bergeron voted in opposition.

During the previous meeting Mr. Hennessey recalled the applicant stipulating the height of the proposed garage would be the same as the current structure being 20-feet. Mr. Wilson stated that was true. Mr. Hennessey made a motion to limit the height to 20ft. Mr. McNamara seconded the motion.

MOTION: (Hennessey/McNamara) Any approval is subject to the height of the structure being limited to 20-feet.

ROLL CALL VOTE: Mr. Kearney – Yes
Mr. Hennessey – Yes

Mr. McNamara – Yes

Mr. Bergeron - No

Mr. Westwood - Yes

(4-1-0) The motion carried. Mr. Bergeron voted in opposition.

Mr. Bergeron stated he wanted to make a condition (in addition to the previous two motions). He said if the application was moved favorably, his motion was to confirm the dimension setback of the expanded (proposed) building, to the leach field, be in compliance. Mr. Hennessey seconded for discussion. He questioned who would make that determination. Mr. Bergeron believed the applicant would be hiring an engineer because they would not make it through Shore Land Protection without a certified plot plan. Mr. Hennessey replied that had not been his experience. He said the State was so backed up that applications were being waved through quickly. Mr. Bergeron believed it would be simple to contact the original designer was Ted Hatem the current Town of Salem Health Officer and the installation was done by Felix Construction out of Manchester, NH. (in 2001-02). He said the applicant could ask the original designer to give him a letter certifying it would be in compliance.

Mr. Kearney asked Ms. Beauregard if she had knowledge of Shore Land Protection and if they require a certified plan. Ms. Beauregard did not know if they would 'weigh in' on the septic design or leach field. She recommended to the applicant that they get in touch with the Town Deputy Health Agent Paul Zarnowski to find out the requirements and if they have been met.

Mr. Hennessey questioned if Mr. Bergeron was asking for someone, other than the State, such as certified septic installer to stipulate/sign-off on a new design. He did not understand why an additional 'layer' had to be included. He said he would be in favor of it if the State required it; however, if they do not, he was concerned with adding another level of approval that the Board had never insisted on. Mr. Bergeron understood from the discussion that the Shore Land Protection would not cover that aspect. Mr. Hennessey inquired who would make the requirements Mr. Bergeron was referring to. Mr. Bergeron replied the State of New Hampshire Department of Environmental Services per Section D-1000 (of their regulations). Mr. Hennessey questioned who was enforcing it and wanted to know if it was part of the Zoning Board's purview. Mr. Bergeron replied his oath was to uphold the law. He explained if the dimension of the EDA area was taken, the entire section of the applicant's property just met it. If its encroached upon, he believed there had to be some regard for the receiving area of the septic system. Mr. Hennessey understood but did not recall the Board ever going beyond stipulating the State reviewing/approving a design under Shore Land Protection. He said Mr. Bergeron was asking for something the Board had never gotten into.

Mr. Bergeron re-stated his motion. He wanted to make sure the new construction would meet the State's requirements for setbacks to the existing septic system. Again, Mr. Hennessey questioned who would ensure the requirements were met. Mr. Bergeron replied it was typically made by a certified designer/installer or licensed engineer. Mr. Hennessey wanted to know where it was required within the Board's Regulations. He did not see it as their role. He felt his motion to require DES approval under Shore Land Protection was about as far as the Board could go. Mr. Bergeron commented this was the second meeting he was involved with the Board. During his first meeting there was another application in front of the Board that had an approved septic system, delineated setbacks, and Shore Land approval. He said when the Board didn't have those things, they should put the 'checks' in place to ensure them. Mr. Hennessey said his motion asked (for confirmation) of the State's Shore Land Protection approval and wanted to know if there was any way they could ensure Shore Land Protection requires the applicant to come up with a septic design. Mr. Bergeron replied they did; if an applicant did not have a certified/registered septic system (within 200ft.) they could not move forward with an expansion. Knowing this information, Mr. Hennessey questioned why the Board needed an additional motion. Mr. Bergeron replied it would draw attention to whoever checks the plan (under Mr. Hennessey's motion) that the EDA area or downslope receiving area isn't destroyed. Mr. Hennessey stated the Board was asking for the State

Shore Land approval before the applicant could request a building permit and did not think they needed to have an additional motion. Motion on the table withdrawn.

Mr. Cairn agreed with Mr. Bergeron that the proposed building would encroach the septic system. He believed there would be more problems than they thought. Mr. Kearney also agreed with Mr. Bergeron but believed the State would require the applicant to do exactly what he was asking them to do. Mr. Bergeron said if the Building Department followed up, they should be fine, otherwise they would be letting go of something they should be aware of.

Mr. Kearney stated had issue with the fact that there was currently a non-compliant garage and the applicant was requesting to compound it by making two sides (of the lot) non-compliant. Mr. Bergeron asked if the Board had any input from the Town's emergency response personnel regarding any impacts to sight distance or access for larger vehicles. Mr. Wilson replied there is an existing stone wall and vegetation. He added the road layout caused vehicles to slow down and his proposal would increase the sight line by taking down the stone wall and removing the bushes. Mr. Bergeron saw the design proposed a 20ft. high full-dormered building. He asked the distance from the roadway. Mr. Wilson replied it was currently 10ft. Mr. Bergeron pointed out the 10ft. non-conformity would be extended out an additional 12ft. Mr. Wilson reviewed the plan and pointed out the existing driveway and explained the land area leveled off and there currently was not a sight line. He showed the road had a 90-degree transition in the are of the proposed garage and mentioned that portion of the road only serviced two other houses. He spoke with both abutters and said they seemed to be okay with the proposal.

Mr. Bergeron understood there was a force-feed main that came across the road at the location and supplied the elevated leach field. He noted the proposal could come close to and possibly cross it. With that he felt the Shore Land Protection Agency would get into those aspects. He asked Mr. Wilson if he was hiring an engineer for the Shore Land Protection permit. Mr. Wilson replied he had already submitted the application.

Mr. Hennessey said he wanted to make a motion to stipulate the applicant will take the wall and vegetation down that prevents a clear view of the turn. Mr. McNamara seconded.

MOTION: (Hennessey/McNamara) Any approval is subject to the wall and vegetation being removed (as stated by the applicant).

ROLL CALL VOTE: Mr. Kearney – Yes
Mr. Hennessey – Yes
Mr. McNamara – Yes
Mr. Bergeron - Yes
Mr. Westwood - Yes
(5-0-0) The motion carried.

Case #ZO2020-00009

ROLL CALL VOTE: Mr. Kearney – 1) No, 2) No, 3) Yes, 4) Yes, 5) Yes / Final Vote-No
Mr. Hennessey – Yes to all five criteria / Final Vote Yes, with stipulations
Mr. McNamara – Yes to all five criteria / Final Vote Yes, with conditions contained in motions
Mr. Bergeron – 1) No, 2) No, 3) No, 4) Yes, 5a) Yes, 5b) No / Final Vote- No
Mr. Westwood – Yes to all five criteria / Final Vote-Yes
(3-2-0) The motion carried.

VARIANCE GRANTED

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

HEARING(S)

CASE #ZO2020-00011

Map 38 Lot 1-55-2

ZAANA-17, LLC – Lot #2 Chardonnay Road - Seeking a Special Exception concerning Article XII Section 307-74 of the Zoning Ordinance to permit the lower level of a Single-Family home to be converted for the use of an Accessory Dwelling Unit.

Mr. Westwood was appointed to vote.

Mr. McNamara 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.

The applicant Frank Gorman joined the meeting via Zoom. He told the Board the home was located on Chardonnay Road within the new subdivision off Sherburne Road ('The Vineyards'). He explained one of the applicants was a family who wanted to include an accessory dwelling unit ('ADU'). The proposed plans show the outside of the house, the side elevation and floor plan for the first floor along with the requested dwelling unit within the lower level. Mr. Gorman added the house will contain a total of four bedrooms; three on the first floor and one downstairs. The septic system is designed for five bedrooms. The driveway will look/appear as a single-family home. He said the ADU will have access from the rear of the house and be less than 1,000SF. The building will contain (fire) sprinklers. The principal owner's will have their parents in the house.

Mr. Kearney asked if the application was complete. Ms. Beauregard answered yes; everything was complete except they had not received the State approval for the five-bedroom design. She saw that it had been submitted to the State. Any approval should be stipulated on receiving the approval for the five bedrooms.

MOTION: (Hennessey/McNamara) Any approval is subject to the receipt of State approval for the five-bedroom septic design.

ROLL CALL VOTE: Mr. Kearney – Yes
Mr. Hennessey – Yes
Mr. McNamara – Yes
Mr. Bergeron - Yes
Mr. Westwood - Yes
(5-0-0) The motion carried.

There was no public input.

Case #ZO2020-00011

ROLL CALL VOTE: Mr. Kearney – Yes
Mr. Hennessey – Yes – with stipulation
Mr. McNamara – Yes – with stipulation in motion
Mr. Bergeron – Yes – with five-bedroom approval of septic system
Mr. Westwood - Yes
(5-0-0) The motion carried.

SPECIAL EXCEPTION GRANTED**CASE #ZO2020-00012****Map 15 Lot 8-217-2**

PERRY, Michael & Barbara – 4 Lemere Drive– Seeking a Special Exception concerning Article XII Section 307-73 & 307-74 of the Zoning Ordinance to bring a previously unpermitted Accessory Dwelling Unit into compliance.

Mr. Caira was appointed to vote

Mr. McNamara 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.

The applicants Barbara and Michael Perry came forward to discuss their request for Special Exception. Ms. Perry explained they purchased their home in 1999 as an in-law and recently learned it was not compliant. She had been working with Ms. Beauregard to fulfill the requirements.

Ms. Beauregard informed the Board she had everything needed for an approval. The Building Inspector had reviewed the plans; the applicant has already corrected the safety issues that were found. The State approved septic design has been received.

Mr. Kearney opened the discussion to public input. No one requested to speak (in person or via telecommunication). He then closed the discussion to the public and brought it back to the Board.

Case #ZO2020-00012

ROLL CALL VOTE: Mr. Kearney – Yes
Mr. Hennessey – Yes
Mr. McNamara – Yes
Mr. Bergeron – Yes
Mr. Caira - Yes
(5-0-0) The motion carried.

SPECIAL EXCEPTION GRANTED**CASE #ZO2020-00013****Map 18 Lot 12-6**

CARLOS, Joseph & Helena – 4 Indian Valley Road – Seeking a Special Exception concerning Article XII Section 307-74 of the Zoning Ordinance to bring a previously unpermitted Accessory Dwelling Unit in the basement into compliance.

Mr. Caira was appointed to vote.

Mr. McNamara 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.

The applicants Joseph and Helena Carlos joined the meeting via Zoom. Mr. Carlos told the Board he would like to convert his basement to an accessory dwelling unit ('ADU').

Mr. Kearney asked if all requirements had been met. Ms. Beauregard stated the Code Enforcement Officer had gone out because of a non-compliance and safety concerns. She said the applicants had worked with the Town to remedy the deficiencies. The Building Inspector had reviewed the plans and confirmed the

ADU did not exceed 1,000SF and it met all other building requirements. The applicant also has a State approved septic design on file.

Mr. Kearney confirmed the applicant could hear the Board's discussion. Mr. Carlos answered yes. Mr. Kearney then confirmed all improvements had been made. Mr. Carlos answered yes.

Mr. McNamara saw the applicant had written in the application the square footage was 1,214, when in fact it was only 995SF. Ms. Beauregard explained the applicant had previously counted spaces that were not 'livable' spaces and not required to be included with the total square footage calculation. The information had been confirmed.

Mr. Hennessey pointed out the lot contained one acre. He said with the passage of Article 2 on the Warrant, if the property were not on one-acre (built prior to the one-acre Zoning requirement) the lot could not be made legal. He noted the lot for the previous case (Case #ZO2020-00012) also contained one acre.

Mr. Kearney opened the discussion to public input. No one requested to speak (in person or via telecommunication). He then closed the discussion to the public and brought it back to the Board.

Case #ZO2020-00013

ROLL CALL VOTE: Mr. Kearney – Yes
Mr. Hennessey – Yes
Mr. McNamara – Yes
Mr. Bergeron – Yes
Mr. Caira - Yes
(5-0-0) The motion carried.

SPECIAL EXCEPTION GRANTED

CASE #ZO2020-00014

Map 31 Lot 11-86-1

LAMOUREUX, Robert & Sharon– 28 Blueberry Circle – Seeking a Variance to Article III Sections 307-12, Table 1 and 307-14 of the Zoning Ordinance to permit the existing lot to be subdivided into two lot, both containing less than 200' of frontage.

Mr. Caira was appointed to vote.

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

Mr. Robert Lamoureux came forward to discuss his Variance request. He displayed a scaled plan showing the proposed house location and apologized for not having engineering done prior to attending the meeting. He said he wanted to seek relief for the driveway prior to spending money on engineering. He read aloud the responses to the five variance criteria as submitted with his application.

Mr. Kearney asked for the existing frontage distance. Mr. Lamoureux replied there was currently 67 +/- feet; a 50ft. right-of-way dead-ends at his lot line on an angle. He said both driveways could come off the 50ft. He noted he needed to maintain the connectivity of the existing trail located at the back side of the property, either through an easement or through the Town. Mr. Kearney asked if the current/existing house was accessed with a driveway through the end Blueberry Circle. Mr. Lamoureux answered yes. The proposed house will be to the right of the existing house.

Mr. McNamara inquired if the lot was a pre-existing non-conforming lot in terms of frontage. Ms. Beauregard believed Mr. Lamoureux previously received a variance for the lot. Mr. Lamoureux stated the variance was in the 1980s. Ms. Beauregard stated the lot was subdivided and received access at the end of Blueberry Circle in 2009. At this point it is a pre-existing non-conforming lot. Mr. McNamara stated in the past the Board had been extremely reluctant to grant a variance to split a lot into two non-conforming lots. The request in front of the Board was to take the existing non-conforming lot and create two non-conforming lots with regard to the frontage requirements. Mr. McNamara commented per State Statute the Board had to judge each case based on its merits and not an applicant's family circumstances as a basis to grant a variance. The hardship criteria have to be with the lot itself that distinguishes it with other lots in the area such that applying the 200ft. frontage (requirement) would be an undue burden. He understood the applicant had approximately 10 acres and should be able to get other lots out of it. However, he had difficulty with the fact that without the Variance there were other uses for the existing land such as to build an accessory dwelling unit (attached or detached), a duplex (with possible frontage variance) or the property could be subdivided. He needed the applicant to show there was a hardship peculiarity with the land. Mr. McNamara said without an engineered plan the Board could not look at the topography or driveway location in relation to the existing driveway etc. He saw there was information pertaining to 'proposed' driveway locations. Mr. Lamoureux felt the best approach would be to have the proposed driveway come into the lot and not as a prescribed easement from the existing driveway. He also did not want to install a 200ft. road to gain frontage. Mr. McNamara understood and commented sometimes the law of 'unintended consequences' kicks in. He recalled a past case that kept returning to the Board (incrementally) for additional house lots off one access.

Mr. Lamoureux stated he had been around awhile and had seen the Board issue many double/split driveways. Mr. McNamara believed there was a current case in front of the Planning Board that the applicant had requested a variance for a driveway and came back with a subdivision request containing a road. Mr. Lamoureux replied he was not going to subdivide. Mr. McNamara applauded Mr. Lamoureux for what he was trying to do and the issue with children trying to come home. He said he would listen to everyone and see what the facts bear.

Mr. Hennessey understood the request was for a single-family home and the same type of variance would be required for a duplex. He asked Mr. Lamoureux if he would be opposed to a stipulation that the home be 'single-family' and there be no further subdivision. Mr. Lamoureux replied he had no problem with that as long as it carried on when he was gone. Mr. Hennessey believed it would run with the property and the Planning Board would have to make sure it was done. He felt a Variance approval should include a stipulation that 'there would only be a single-family home' and 'no further subdivision'. Mr. Hennessey commented it was an unusual piece of property and he had been to it. He said the reason Pelham was listed as an abutter was because of an abutting conservation area and trail head for a very long and extensive trail going over much of the Town. Because of this, it was a very unusual parcel and the interest of the Town was important. He did not like the idea of creating two non-conforming lots out of one non-conforming lot; however, he would like to protect the lot from further subdivision due to the proximity of the conservation area (Nature's Way). He was tempted to request a site walk because of the nature of the property and felt the Board should see the connection to the conservation area. He noted the Board could not bind the Planning Board as part of the subdivision but went on to make a motion to stipulate any variance indicate 'no further subdivision' and 'single-family home only'. Mr. McNamara seconded the motion.

Mr. Bergeron asked the applicant if he owned Lot 11-86 that fronts Dutton Road. Mr. Lamoureux replied his mother owned that lot; it was a separate lot. Mr. Bergeron felt it was important for the Board to understand the applicant's property was 'L' shaped that passed onto two tax maps. He noted the lot had a second 50ft. access into the property although he did not know the suitability of such. One access was extended from Blueberry Circle. Mr. Bergeron stated if the proposed motion was successful and Mr. Lamoureux was denied his right to a secondary access (deeded/registered by a past Planning Board) to the other section of his property the Board would be doing something that may be successfully challenged in

court. He did not think any land use board could/should do such without due consideration. Mr. Bergeron pointed out if the Variance were approved the plan would have to go in front of the Planning Board to consider the suitability of the land for building with all the engineering done. He viewed the request as a classic Zoning Board case because there was no other access/frontage. He said members of the Board and others had worked with Mr. Lamoureux in connection with the trail system and understood he had reassured people there would be a dedicated trail system. He was not in favor of limiting future development but agreed they could set a condition for a single-family dwelling. He spoke to the proposed lot and believed it would be a beautifully shaped rectangular lot (containing more than two acres) as the Planning Board loved.

Furthermore, Mr. Bergeron reminded the Board they recently sent a case to the Planning Board (still active) that contained a single access for four lots (on Mammoth Road). He was concerned for the future and wanted the applicant to be able to keep a separate driveway for the proposed lot to avoid any trouble. He could not support a motion to 'not allow' future development. He felt it was restrictive given the property contained approximately 11.2-acre lot. He added there was a dedicated access that was put there for a reason.

Mr. Lamoureux assumed the motion was for a single-family home on the new proposed lot, not a restriction for the entire lot. Mr. Hennessey said the Board did not have information regarding how big the new lot would be or the location. He understood Mr. Lamoureux would subdivide the new lot off his existing land and the Board was considering a variance to allow it to have inadequate frontage and to create two non-conforming lots. He said in return for that gift from the Town, he did not think it was unreasonable to restrict the new lot to a single-family home with no further subdivision. He inquired if the new lot would contain two acres. Mr. Lamoureux replied it would be closer to three. He said he also had to do something for the trail easement to keep the connectivity of the trails; he would prefer the Town had it versus having an easement. Mr. Hennessey said if the Board did not restrict the new lot from further subdivision he would have to vote against the variance as it would go against what they had always done (creating two non-conforming lots). He thought it was an opportunity for the Town to keep a beautiful piece of land with a trail head abutting a conservation area. He said he did not want to vote against the request and believe they would like to see the land stay as undeveloped as possible. A three-acre lot would help protect the land at the trail head and have access to Nature's Way. Mr. Lamoureux stated he had put a lot of money into Nature's Way. Mr. Hennessey understood but felt there should be a restriction if a variance was granted for two small frontages.

Mr. Beauregard asked Mr. Hennessey if his motion (for no further subdivision) referred to only the newly created lot. Mr. Hennessey answered yes. He said part of the problem was the Board operating in the dark without any engineering or knowing the configuration of the new lot. Mr. Lamoureux replied it was pretty much spelled out on the plan he submitted and displayed. Ms. Beauregard commented she did not receive a copy of the displayed plan. The Board members also indicated they did not have a copy of the displayed plan.

Mr. Kearney asked how large the proposed new lot would be. Mr. Lamoureux approached the displayed plan and showed the proposed lot line of the new lot and pointed to the trail head coming off from Blueberry Circle. He noted the back portion of the new lot was approximately 445ft.; the total acres could be 2.5-3 acres. He showed the area of the proposed new house, the location of the proposed new well and well radius along with the proposed septic area. He agreed the plan would need to be engineered but did not want to pay for it if he could not prove his hardship.

PUBLIC INPUT

Mr. Kearney opened the hearing to public input (both present on site as well as via electronic communication).

Mr. James Todd (via Zoom) told the Board he had no comments.

Ms. Karen MacKay, 33 Blueberry Circle stated she lived next door to the applicant and was not opposed to him subdividing the lot for a single-family home. She saw that the plan showed the road going straight into the lot but noted it was actually a big circle. She approached the displayed plan and stated her concern about the area along the stone wall between her property and Mr. Lamoureux that was full of water in the winter that may or may not be wetlands. It was currently dry. She preferred the driveway to be situated further west so access could come in behind the wetlands because it was lowlands. Ms. MacKay reiterated she was not opposed to the applicant trying to subdivide the property and added it was directly behind her house.

Mr. Hennessey withdrew his earlier motion although he did not think the Board had enough information. At a minimum he believed wetland markings needed to be done. He was not opposed to the proposal as it could be an opportunity for the Town that could protect land; however, he felt they needed more information.

Mr. Bergeron pointed out should the Board look favorably on the 2+ acre new lot with short frontage, the case had to go to the Planning Board. He said the Planning Board would send the plan to the Conservation Commission for opinion and would take their input very seriously.

Mr. Lamoureux stated he had been in Town for a long time and had dealt with a lot of the woods and wetlands. He said if someone is not a soil scientist, they could not say whether something is a wetland. He added if he thought the area had wetlands he probably would not have come in front of the Board. Mr. Hennessey reiterated the Board needed more information. Mr. Lamoureux replied that would put him into a hardship. He did not want to spend the money.

Mr. Kearney mentioned the conversation began with Mr. McNamara commenting about the proposed creation of a second non-conforming lot. He personally had a huge issue with doing so, although the lot size had a lot to do with how they would handle the lot conformity. For him, without some type of additional information that would sway him to the positive side, from what he saw, read, and heard he would personally have a hard time voting in favor of the application. He was having a hard time envisioning what the applicant was planning. Mr. McNamara agreed. He said they only had drawings to review. He added the Board was being asked to create two non-conforming lots without knowing what they would look like. He said there were a lot of unknowns and felt like he was 'flying blind'.

Mr. Lamoureux said he was trying to figure out what would pacify the Board without spending a year of time and a large amount of money (\$10,000-\$15,000).

Mr. Larry Horgan, 32 Blueberry Circle spoke in favor of the subdivision given the applicant had 12+ acres and would only be subdividing the front corner of the parcel abutting Blueberry Circle to build a house for his daughter. He noted the property abutted Blueberry Woods. The trail (Nature's Way) would connect on the other side of the existing house. He did not believe the house would be visible from the street. He reiterated he was voicing his opinion in favor of the proposal.

Mr. Bergeron asked if the Board was looking to know there was sufficient non-hydric soil to support a single-family dwelling. Mr. Kearney stated the earlier motion was withdrawn. Mr. Bergeron understood the applicant agreed to a stipulation for a single-family home. He wanted to know if the Board wanted to go in the direction of having the applicant show the Board (and abutters) that there was sufficient non-hydric soil for a single-family home that resulted in a 2+ acre lot. He did not want to see a vote turned down based on not knowing if there was enough soil since the Planning Board had to figure it out. Mr. Hennessey was sure there was enough good soil. He knew where the lot and where Nature's Way was

located. He did not know where Blueberry Circle came into the land. He wasn't interested in doing the Planning Board's job but to approve two non-conforming lots he needed to see where the driveway(s) would be located and what the land would look like after the subdivision (in terms of the neighbors). Mr. Hennessey commented he was not looking for full engineering; he was looking for an accurate depiction of where the two lots were located in relationship to each other and to the wetlands. He recommended Mr. Lamoureux withdraw the request for now and do minimal engineering and wetlands mapping then come back with a single proposal of where the properties would be.

Mr. McNamara agreed the Board should know where the wetland was. He also wanted to see where the lot and the driveway would be located with boundaries of the lot. He heard mention about a site walk but did not think it would help them without the other information.

An aerial photograph was displayed showing the existing lot and existing house.

Based on what he heard, Mr. McNamara stated he would be inclined to grant the variance but would like more certainty on what he was voting on. He did not need a fully engineered plan. He wanted to know where the wetlands were, where the driveway was coming off Blueberry Circle in relation to the parent parcel and where the proposed lot would be.

There was a brief discussion regarding how to proceed and decided to continue the case to July 13, 2020 to allow the applicant to submit additional information to the Board for consideration. Mr. Kearney stated if the applicant were not able to obtain all the information by that date the Board would push the case an additional thirty days.

CASE #ZO2020-00015

Map 23 Lot 11-347

HEGARTY, David & Lynn – 11 Springdale Lane – Seeking a Variance concerning Article III Sections 307-8 of the Zoning Ordinance to permit the construction of a new house with “second floor expansion”, with an increase of 137sf (from 871sf to 1000sf) and moving the house further from the property line and 2’ back from the original location.

Mr. Caira was appointed to vote.

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

Mr. David Hegarty joined the meeting via Zoom. He stated currently there was a 75-year-old seasonal cottage on the property that he owned for approximately 21 years. His wife's father owned the property for approximately 28 years prior to that. They would like to raze the property and reconstruct a two-story single-family home. In the course of doing so they would like to create more distance from one side by approximately one foot and push it back a couple feet from the road and water. He then read aloud the responses to the variance criteria as submitted with the application.

Mr. McNamara wanted to know the height of the current house and proposed new building. Mr. Hegarty believed it was approximately 20ft high from the foot of the basement. He was unsure where to measure it from because the property sloped. He said the back of the house would be approximately 28ft. high and in the front, the measurement from the lowest point to the highest peak would be just under 33ft. Mr. McNamara reviewed the photographs submitted in the application and assumed they were in the proximity of the applicant's property.

Mr. Bergeron inquired if the lot was within the 250ft. Shore Land Protection area. Mr. Hegarty replied they had received an approval of the permit (by notification) from the State (Shore Land Permit by Notification – approval for septic system).

Mr. Kearney opened the hearing to public input (both present on site as well as via electronic communication).

Ms. Liz Toabe, 8 Springdale Lane joined the meeting via Zoom. She indicated her address was listed improperly with the Town. She spoke in favor of the project. She understood the applicant was rebuilding their home and mentioned multiple homes in the neighborhood had been rebuilt during the last several years. From what she understood the new home would be pushed further back from the road and away from the water.

Mr. Bergeron stated he had visited the site and informed it was a sloping lot and should not be anyone behind the house that would have an affected view. He added the new structure would be moved north and east to help it conform. He called attention to the fact that the applicant had a State approved septic system and said with all the conditions being met it was not a bad scenario for granting a variance. Ms. Beauregard indicated the applicant stated they had their State approval, but she had not received a copy.

MOTION: (Hennessey/McNamara) Stipulation for an approval – the Town receive State Shore Land approval on the septic and general Shore Land Protection from the Department of Environmental Services.

ROLL CALL VOTE: Mr. Kearney – Yes
Mr. Hennessey – Yes
Mr. McNamara – Yes
Mr. Bergeron - Yes
Mr. Caira - Yes
(5-0-0) The motion carried.

Mr. McNamara understood the applicant's engineer James Herrick was connected via Zoom but had audio difficulties. He said the information and explanations Mr. Herrick submitted showed voluminous proof that the property would be improved and would improve surrounding properties/homeowner value. The proposed was a minor expansion that would look nice. Mr. Kearney concurred.

Case #ZO2020-00015

ROLL CALL VOTE: Mr. Kearney – Yes to all criteria
Mr. Hennessey – Yes to all criteria – with stipulations
Mr. McNamara – Yes to all criteria – with stipulations in motion
Mr. Bergeron – Yes to all criteria
Mr. Caira – Yes to all criteria
(5-0-0) The motion carried.

VARIANCE GRANTED

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

DATE SPECIFIED CASE(S) – July 13, 2020

CASE #ZO2020-00014 - Map 31 Lot 11-86-1- LAMOUREUX, Robert & Sharon– 28 Blueberry Circle

MEETING MINUTES – May 11, 2020

MOTION: (Hennessey/McNamara) To approve the meeting minutes of May 11, 2020 as amended.

ROLL CALL VOTE: Mr. Kearney – Yes
Mr. Hennessey – Yes
Mr. McNamara – Yes
Mr. Bergeron - Yes
Mr. Westwood - Yes
(5-0-0) The motion carried.

ADJOURNMENT

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

ROLL CALL VOTE: Mr. Kearney – Yes
Mr. Hennessey – Yes
Mr. McNamara – Yes
Mr. Bergeron - Yes
Mr. Westwood - Yes
(5-0-0) The motion carried.

The meeting was adjourned at approximately 9:22pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary