

**APPROVED**

**TOWN OF PELHAM  
ZONING BOARD OF ADJUSTMENT MEETING  
February 10, 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, Matthew Hopkinson, Alternate Karen Plumley, Alternate John Westwood, Planning/Zoning Administrator Jennifer Beauregard

**ABSENT:** Peter McNamara, Alternate Deb Ryan, Alternate Heather Patterson,

**PLEDGE OF ALLEGIANCE**

Mr. Kearney explained the Board's role and hearing process. He congratulated Mr. Hopkinson on being appointed to the Board as a full member.

**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**

Mr. Kearney informed the applicant had submitted a request for their case to be date specified because their representation was unable to attend the meeting.

The case was date specified to March 9, 2020.

**Case #ZO2020-00003**

**Map 39 49Lot 1**

**WILIAMS, Bruce & Rhonda – 157 Mammoth Road – Seeking a Variance concerning Article II, Sections 307-6, 10-Frontage of the Zoning Ordinance to permit a 4-lot subdivision where 3 of the lots will have a shared access from the public right of way.**

Mr. Westwood was appointed to vote.

Ms. Chubb read aloud a letter submitted by the Conservation Commission dated February 9, 2020. They voted 5-0 on the following (should the proposal be approved):

- 1) Only one driveway into the uplands rather than three separate driveways;
- 2) Provide the Town with a 15ft. wide trail along the southern stone wall boundary thereby providing connectivity from Cutter Woods to Mammoth Road;

- 3) Move the driveway to the north, where it meets Mammoth Road, to minimize WCD impacts;
- 4) The driveway be narrower than 20ft, ideally only 14ft. wide.

Ms. Chubb then read aloud a letter submitted by Planning Director Jeff Gowan in response to the Board's request for information pertaining to the roundabout project (Mammoth Road/Marsh Road & Mammoth Road/Sherburne Road). Mr. Gowan informed the project is no longer within the New Hampshire Department of Transportation ('DOT') 10-year plan; it is a Congestion Mitigation Air Quality ('CMAQ') project funded through a mix of federal (60%) and local (40%) dollars. Until the DOT approves the submitted project plan and gives Pelham permission to move ahead the Town cannot get into any discussions regarding right-of-way acquisition. He advised the Board to proceed without further discussion or consideration for the potential need for right-of-way acquisition related to the roundabout project. Until a plan is approved by DOT even the Planning Board will not be able to discuss the need for right-of-way or any accommodation for it.

Representing the applicant was Shayne Gendron of Herbert Associates. He spoke about the plan being in front of the Conservation Commission. In reviewing their recommendations, he saw #1 (one driveway) as being key. He said they made a lot of recommendations that would be good to discuss with the Planning Board. They will work with the commission to possibly move the driveway slightly, which may require obtaining an additional opinion from the Highway Safety Committee ('HSC'). Mr. Gendron felt it was key that they were requesting only one driveway to access the back land, which he believed the commission was in favor of. He noted the only variance being requested was for access to be from the single driveway and not from the frontage. He added they met all the Zoning Requirements and would prefer not to have three crossings.

Ms. Chubb asked how the applicant felt about having two houses versus three. Mr. Gendron replied they weren't interested in reducing the number of homes; they met all the Zoning Regulations for the three lots. He said if they had to get three crossings they would do so.

Mr. Westwood inquired what other boards would review and vote on the proposal. Mr. Kearney replied the only request in front of the Board was if a single driveway would be allowed. Mr. Westwood reiterated his question as to what other agencies would review the proposal. Mr. Kearney replied if the Zoning Board grants a variance the applicant would then have to go in front of the Planning Board who would review the plan in depth.

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

Mr. Kearney personally felt with 10 acres of land and the proposed impact with one crossing was relatively small. He agreed with Mr. Gendron's assessment of the Conservation Commission's input. He believed the proposal was a good plan.

Mr. Hennessey agreed that the proposal in front of the Board was simply mitigating the effects of the access for the lots. With the Conservation Commission weighing in favor of the single road going in it was a 'done deal' for the Board. He commented the other items (listed in the commission's letter) were for the Planning Board. He didn't feel it was up to the Board to discuss the applicant giving up a lot; their decision was in regard to the access. He was in favor of the variance.

Mr. Hopkinson requested clarification regarding the driveway width. Mr. Gendron replied the Conservation Commission makes recommendations all the time; however, in reality the HSC had 'teeth' in the proposal. With a common driveway the HSC is looking at the safety factors and ability for emergency vehicle access. He believed the HSC recommended the driveway be no less than 20ft. wide. If the alignment is changed, the applicant may go back to the HSC for opinion; however, in Mr. Gendron's experience, they wouldn't want less than 20ft. Mr. Kearney believed safety was an issue. Mr. Hopkinson

spoke about the commission's recommendation regarding driveway placement and assumed the Board was voting on the proposal as submitted. Mr. Kearney answered yes.

Ms. Chubb referenced the plan set and stated one of her main concerns has been putting three houses on the space. She said they already had a new neighborhood nearby and felt they hadn't yet seen the full impact of water. She assumed the 'squiggle lines' on the plan were trees/brush etc. She wanted to know if any of the buildable area on the property would affect the Wetland Conservation District ('WCD') or if it was just the driveway. Mr. Gendron replied the only two WCD impacts were for the driveway totaling 3,887SF (at the Mammoth Road entrance and after wetland impact). Once out of the WCD the property was all buildable. He said the 'squiggle lines' were existing tree lines around existing wood roads. Ms. Chubb questioned if the WCD would be impacted in the event a new owner wanted to construct a shed, garage, in-law apartment etc. Mr. Kearney noted the Board had to be cautious about questions pertaining to potential situations in the future. They had to look at what was currently in front of them. Ms. Chubb replied she was looking at the proposal and trying to decide in her own mind whether two houses was plenty. She was being mindful of other decisions where later on people wanted to expand and there were WCD impact. She wanted to be sure if they approved three there would be room for owners to do things on their land.

Mr. Kearney inquired about the total amount of space each lot had that was high and dry. Mr. Gendron replied each lot contained the required 15,000SF buildable area. He added they weren't small lots; 1) 4.5 acres, 2) 1.8 acres and 3) 2.7 acres. Each had plenty of room for pools, sheds etc. without being in the WCD. He felt the questions were for the Planning Board and was only asking the Zoning Board to consider the access. He added the lots met the Zoning Regulations. He said they weren't interested in giving up a lot and would go to the Wetlands Conservation Bureau for crossings if the Board didn't want to allow a common driveway. Mr. Hennessey understood the applicant wasn't coming in front of the Board for permission to have three lots; they were in front of the Board for access off Mammoth Road. Ms. Chubb stated the number of lots affected the driveway length and access from Mammoth Road. She noted the applicant needed the Board's approval which would disrupt the WCD. Mr. Hennessey noted the variance would be the same whether the applicant was requesting two or three houses.

Ms. Chubb questioned if the Board would be making a motion regarding the Conservation Commission's recommendations, with the exception of the driveway width given the HSC recommended it be not less than 20ft. The Board made the following motion for the Planning Board to consider.

**MOTION** (Chubb/Hennessey) To recommend the Planning Board consider the first three (recommendation) items in the Conservation Commission's letter of February 9, 2020.

- 1) Only one driveway into the uplands rather than three separate driveways;
- 2) Provide the Town with a 15ft. wide trail along the southern stone wall boundary thereby providing connectivity from Cutter Woods to Mammoth Road;
- 3) Move the driveway to the north, where it meets Mammoth Road, to minimize WCD impacts.

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

**BALLOT VOTE** Mr. Kearney – Yes to all criteria with recommendation to Planning  
**#ZO2020-00003:** Ms. Chubb – Yes to all criteria with motion  
 Mr. Hennessey – Yes to all criteria with recommendations  
 Mr. Hopkinson - Yes to all criteria  
 Mr. Westwood – Yes to all criteria

(5-0-0) The motion carried.

## **VARIANCE GRANTED**

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

### **Case # ZO2020-00004**

#### **Map 24 Lots 11-308 & 11-309**

**RIEL, Zachary & SIROIS, Jennifer – 1 & 3 Little Island Park – Seeking a Variance concerning Article III, Sections 307-8:A, 307-12, 307-13 & 307-14 of the Zoning Ordinance to permit conversion of one non-conforming use to another. To permit structures that do not conform to the setback requirements and development of a lot that does not conform to the area and frontage requirements. To permit development of a lot that does not have the required buildable area. To permit development of a lot that does not have the required frontage on a public road.**

Ms. Plumley was appointed to vote.

Mr. Kearney stated the Board conducted a site walk

The applicant Zachary Riel came forward with his representative Peter Stoddard of S&H Land Services. Mr. Stoddard provided an overview and explained they were requesting a variance to allow the homeowner to tear down two structures on two separate lots. He stated there was currently a house and a cottage; the idea was to build a new house and garage and bring the lots together. During the previous meeting the proposal was for the garage to be 30ft. in height. He said some of the abutters had concerns about what it would look like on the site, therefore the Board decided to conduct a site walk, during which balloons were flown at the proposed elevation of the house and garage peaks. Subsequent to the site walk the homeowners have decided to reduce the garage height to a maximum of 25ft. Mr. Stoddard informed the garage peak will be approximately two feet lower than the peak of the proposed house. He believed the consensus during the site walk was most of the neighbors were in favor of the project; however, there is one abutter who is more directly affected. They were able to go up on that neighbor's deck to see what the proposal would look like.

## **PUBLIC INPUT**

Mr. John Murphy, Honor Roll Road told the Board he purchased his home twenty-five years ago. He said the house wasn't anything special, but the view was great; it was his dreamhouse. He mentioned when he spoke to the applicant about the proposed building, he was told his view wouldn't be affected; however, when the balloons went up, he believed his view would be severely affected. From his back deck he believed he would lose approximately 30%-40% of the view to the lake. He mentioned he has windows on the driveway side of his house and believed if the proposed house and garage are constructed his view of the lake will just about be totally blocked. Mr. Murphy stated he would be impacted more than anyone. He said the applicant would get a great view, but his own view would be diminished and obstructed. He enjoyed looking out onto the lake; this was the reason he purchased his home.

Mr. Mark Pultar, 22 Little Island Park was in favor of the applicant building the house. He agreed removing the two cottages and building a new house would be great and beautiful for the neighborhood and increase home values. He stated he was also in attendance of the meeting as an association member. He commented during the site walk a structure was brought to the Board's attention as it was 6ft-7ft on the road, which had nothing to do with the current owner (Riel) and an existing problem prior to their purchase. He explained there was a lawsuit that came about with the previous owner and fell into the Riel's lap. Mr. Pultar informed there were additional encroachments of the property that the applicant had corrected. He said the

association was under the assumption the other encroachments would go away when the new house is constructed. He mentioned the association had spent close to \$30,000 to get the road back and had not yet met or decided what to do on the subject regarding the proposal. He understood with the road being private the Board and Town consider the situation to be a civil matter but to Mr. Pultar it was part of the building process. He said as an individual he felt the proposed house was great; however, as an association member, he had to voice his concerns and put on record that the proposal was an encroachment on a private road that should not be. He reiterated it wasn't something Mr. Riel did, it was from a previous owner and assumed when the house is built the encroachment would disappear. Mr. Kearney appreciated Mr. Pultar's comments and noted the (encroachment) concerns didn't fall under the Board's purview.

Mr. Hennessey questioned if removal of trees on the parcel would open the abutter's view to the pond. Mr. Riel answered yes. Mr. Hennessey felt the abutter would be blocked more on the left side of their porch but believed they would have a clearer view of the pond with the removal of pine trees. Mr. Riel told the Board he had a conversation with Mr. Murphy about losing view with the height of the house but at the same time gaining view with the loss of the trees. He believed it was a give and take; in his opinion the abutter would gain more of what he currently saw because the proposed house was more to the left and the tree directly in front of him (the abutter) would be removed. Mr. Hennessey believed there was some confusion regarding the height of the garage. He asked if the measurement was being taken from the foundation. Mr. Stoddard said that was correct; the balloon was 26ft. with a foot of elevation.

Ms. Chubb asked for clarification of how the roof peak would be situated in relation to the front of the structure. She understood Mr. Murphy wouldn't see a 'full' roof (rectangle) and would see the roof from the side ('A' frame/triangle). Mr. Riel replied Mr. Murphy would look at the face of the garage.

Mr. Kearney wrestled with the second floor of the garage and not the size of the house. He said the Board had been really conscientious so abutters could continue to enjoy their view and not impede them. He personally had a problem with the height and second floor of the garage as it wasn't living space. Mr. Riel explained the reason for having a storage room above the garage was because the proposed house style didn't allow for attic space/storage.

Ms. Chubb thought the garage peak was going to be 2.5ft. lower than the house. Mr. Kearney said that was correct. He had issue with the height of the garage, not with granting relief for the house.

Mr. Kearney wanted to know if the variance request was a single request. Ms. Beauregard answered yes. She noted the applicant didn't specify the height of the garage, therefore she felt it could be amended without affecting the application.

Mr. Hennessey shared the concern but pointed out there could theoretically be two houses given there were two lots. He preferred to see the roof line two feet lower (at 24ft not 26ft). He said it came down to what the affect to value was for the abutter's property, which he felt would be minor. He noted the other abutters were in favor of the proposal and wished he could satisfy all the abutters all the time.

Mr. Kearney told the applicant the Board had concern regarding the height of the garage and asked if they had any comments prior to voting.

Mr. Stoddard was unsure what the garage height would be without storage space above. He asked if they were looking for a reduction in the height. Mr. Kearney replied that would be favorable. Mr. Hennessey suggested one or two feet; he was trying to answer an abutter's complaints. Mr. Stoddard commented the height was currently at 25ft. Mr. Riel agreed to reduce the height to 24ft.

**MOTION** (Hennessey/Chubb) To stipulate the garage height from grade is to be no more than 24ft.

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

**BALLOT VOTE** Mr. Kearney – Yes to all criteria with 24ft stipulation (for garage)  
**#ZO2020-00004:** Ms. Chubb – Yes to all criteria with stipulation regarding (garage) height  
 Mr. Hennessey – Yes to all criteria with stipulation the garage be no more than 24ft. in height  
 Mr. Hopkinson - Yes to all criteria  
 Ms. Plumley – Yes to all criteria

(5-0-0) The motion carried.

## **VARIANCE GRANTED**

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

## **NEW HEARING(S)**

### **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. 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.

The applicant Brian Daniluk came forward to discuss his request to locate a shed within the Wetland Conservation District ('WCD'). He noted he owned approximately two acres; however, approximately one acre was either in the WCD or buffer zone. When told the Board when he purchased the property in 2011 there was a shed located deeper in the WCD than what he was requesting. He said he was paying taxes for the previous shed, but the Town wasn't aware of it. He informed the proposed shed would be located on the lawn area he currently maintained and added the WCD portion of the lot was mostly brush area. He described his lot which contained a lot of uneven land and an irrigation system in other parts of the yard (also within the WCD). The proposed shed will be located approximately 34ft. from Mr. Daniluk's house and close to an existing driveway turnaround.

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

Ms. Chubb inquired what lawn equipment would be stored in the proposed shed. Mr. Daniluk replied he currently had a John Deere riding lawn mower currently in his garage. He would like to use the shed for the lawn mower and storage because the house didn't have a lot of storage.

Mr. Hopkinson wanted to know if there were other locations on the property to locate the shed that wouldn't be within the buffer zone. Mr. Daniluk replied the bulk of his property was in the buffer zone or wetlands. Mr. Hopkinson understood one acre was in the buffer zone but also understood there was an acre outside the buffer. Mr. Daniluk explained there was an irrigation system in front and to the side of his house. Mr. Kearney asked if there were other location on the property for the shed to be placed that would fall outside the buffer zone. Mr. Daniluk said there wasn't another location with decent land; there was virtually no

area in the rear of the lot that would be any different than the proposed location. He noted at the time he purchased the home there was an old shed (rotted out) further into the WCD that he removed. The proposed location is closer to the house than the previous shed structure.

Mr. Hennessey inquired what would be stored in the shed aside from the (John Deere) tractor. Mr. Daniluk replied lawn tools, such as a weed whacker, leaf blower etc. Mr. Hennessey asked if gasoline would be stored. Mr. Daniluk answered no; other than what was in the lawn mower and other equipment. Mr. Hennessey was concerned with (storing) lawn chemicals and gasoline because the location was in the WCD buffer. He said any chemicals in the shed would pose a threat to the WCD area. If a variance is approved, he saw no way for the Town to enforce any other stipulation and advised Mr. Daniluk he was responsible for the wetlands. He said under no circumstance should any chemicals be stored in the proposed shed and preferred any gasoline used for the tractor (and equipment) be stored in his garage. Mr. Daniluk noted he wouldn't be keeping any gasoline in the shed, except what was contained in the equipment itself. He wouldn't be storing lawn chemicals because he had a service maintain his lawn.

Mr. Kearney opened the discussion to public input. No one came forward. He stated his agreement with Mr. Hennessey about the site, as it had developed, left the owner with no option to do anything. Mr. Hennessey said they were weighing the owner's right to use their property with the threat to the wetlands, which is the whole idea of the WCD.

Ms. Chubb saw there was a lot of land in the front of the lot. She said it may not be as attractive, the Board had seen some attractive looking sheds that were visible from the street. She would feel more comfortable locating the shed closer to the house. She said even if the lawn tractor was drained of fluid it may still leak. She understood the applicant wanted the equipment out of their garage; however, she believed there had to be a better location. She understood the hardship but worried about the greater effect of having lawn equipment in a shed. She was also concerned about enforcement (by the Town). Mr. Hennessey didn't see anywhere on the lot that the location wouldn't be in the buffer. Mr. Daniluk noted the proposed location was approximately 20ft. from the driveway where he parked his car. He noted the proposed location was approximately 3ft. higher than the actual wetlands. Ms. Chubb asked for clarification of the driveway location. Using the submitted plan, Mr. Daniluk pointed out the location. Ms. Chubb asked how close the proposed shed would be to the existing driveway. Mr. Daniluk replied the shed would be approximately 14ft. from the driveway turnaround. Ms. Chubb asked if crushed gravel would be under the shed. Mr. Daniluk answered yes; crushed stone to prevent animals from living underneath.

Mr. Kearney wrestled with the right of an owner to use their land and the protection of the WCD. He asked if there were spots on the property that were outside the buffer zone for the shed to be located. Mr. Daniluk replied any other spot would be on top of the existing irrigation system. He noted on the land on the left side of the property was uneven land. Mr. Kearney asked for the distance of the proposed shed to the WCD buffer. Mr. Daniluk said it was approximately 20ft. in. He displayed the plan and showed the WCD line; the proposed shed would be approximately 30ft. from the corner of his home. Ms. Beauregard explained the WCD included the wetland; there was a 50ft. buffer area.

Ms. Plumley understood the proposed area for the shed was currently lawn. Mr. Daniluk answered yes; it was flat lawn he currently mowed. Ms. Plumley also understood the applicant had a service maintain the lawn with fertilizer, grub killer etc. so chemicals were already being applied to the area. Mr. Daniluk answered yes; he showed the edge of the tree-lined area.

Mr. Kearney asked Mr. Daniluk if he was currently cutting/fertilizing the WCD. Mr. Daniluk answered yes. He explained visually his back lawn was good land; most of the WCD was brush. Mr. Kearney stated there should be no chemicals put within the 50ft. buffer zone.

Mr. Hennessey wanted to know the age of Mr. Daniluk's home. Mr. Daniluk replied it was built in 1995 or 1996. Mr. Hennessey asked if there were any markers posted on the trees indicating 'do not cut'. Mr. Daniluk answered no; when he moved in the area behind his house looked like back lawn, so he took care of it. He said it was good grass. Mr. Hennessey suggested the Board conduct a site walk and invite the Conservation Commission to join them. He commented he had a shed on his parcel that was located at the front of his home. He said it wouldn't be the 'end of the world' to relocate the proposed shed to try and protect the wetlands. He added the applicant should not be applying chemicals and the company doing so should probably be fined for doing so. At the least he reiterated his suggestion for a site walk. He said the Board heard a verbal description of what was on the ground and knew that the submitted sketch of the proposal wasn't accurate.

**MOTION** (Hennessey/Chubb) To conduct a site walk.

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

A site walk was scheduled for February 15, 2020 beginning at 9am.

The case was date specified to March 9, 2020.

**Case #ZO2020-00006**

**Map 22 Lot 8-31**

**C & T BEAUREGARD LAND HOLDINGS, LLC - 91 Main Street - Seeking Variances to Article III, Sections 307-8.C, 307-12, Table 1 to permit the construction of two 34ft. x 84ft buildings on an undersized lot and to allow the side setbacks to be 30ft +/- on the east side of building #1 and 28ft +/- on the west side of building #2 (holding existing northwest building corner) where 42ft. is required with a proposed building height of 21ft.**

Ms. Plumley 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.

Coming forward to discuss the Case were the applicants Tim Beauregard and Chad Beauregard along with their representative Shayne Gendron of Herbert Associates. Mr. Gendron provided the Board with a brief history of the site. He stated a few years ago C & T Beauregard were approved to operate and sell equipment. There is an existing building and 'tented' structure the applicants have been working out of (selling trucks/heavy equipment). Using the displayed plan and photographs (of the existing structures), Mr. Gendron described why the site didn't work for them. Mr. Gendron stated the applicants would like to set up a nice site, clean it up and provide parking. He mentioned they were previously in front of the Zoning Board (and granted relief for a building) and also in front of the Planning Board who asked the applicant to get an engineer involved to create a working site plan and make sure the buildings were located correctly. Mr. Gendron explained the applicant would like to get rid of and rebuild both buildings through a phased project. Each new building will be 34ftx84ft; one will have a small office area (16ftx34ft). He showed a building rendering, which would basically be a steel structure with high doors so equipment could easily go inside to be worked on (out of the weather). Mr. Gendron believed the proposal would be a good thing for the Town as it would clean the site up with better aesthetics, landscaping and proper parking. He noted the applicants were currently operating within a business district and already had a variance to do so. The change will be to increase the intensity of the operation because the building will be bigger; they are requesting relief as the lot was under 60,000SF for a commercial lot. The other variance requests were for setbacks. He added if the variances are granted, they will go back in front of the Planning Board for site plan review.



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

#### PUBLIC INPUT

Mr. Al Demers, 109 Main Street stated the applicants purchased the property in 2016 and kept coming in for variances. He pointed out the Town had rules. He was concerned with drainage since Beaver Brook was approximately 300ft. from the site. He pointed out old trucks leak oil. Mr. Demers told the Board when it snows out the vehicles are cleaned; however, when they are all started up the diesel makes the area smell like a bus station outside. He didn't want to have to smell all the diesel trucks. He then spoke about the turning radius for trucks accessing the site. Because the location entrance is within approximately 50ft of the intersection the road often gets blocked by vehicles accessing the site. Mr. Demers pointed out the applicant knew the property was undersized when they purchase it and used the example that they 'bought a Toyota and were trying to make a Cadillac out of it'. He recalled from a previous variance (2016) that the applicants weren't supposed to be working (on vehicles) on site. He stated they were working in the daytime and nighttime. He didn't believe there were any hours of operation stipulated. Mr. Demers felt the applicant didn't meet the five criteria.

Mr. Hennessey asked the status of the Town's MS4 ('Municipal Separate Storm Sewer System') regulations. Ms. Beauregard replied it was in progress. Mr. Hennessey commented he was more than a little concerned given the change in use of the business. He said the MS4 stipulated massive fines from the Environmental Protection Agency ('EPA'); he was terrified given the location of the site and type of business (being conducted). He agreed with the abutter's testimony about the 2016 variance indicating there wasn't going to be work done on the vehicles. He believed the site's proximity to Beaver Brook was a 'time bomb' for the Town as it was an interstate waterway; the Corps of Engineers is monitoring the water quality as it enters Dracut, MA. He reiterated the EPA was watching the quality of stormwater discharge in Pelham. Ms. Beauregard noted the Illicit Discharge Ordinance was coming up for vote on the Town ballot in March.

In reading the previous approval from 2016 Ms. Chubb knew the business was mostly just sales. Subsequently, the applicant came back in front of the Board and told them they would be doing a lot of repairs. With the last approval the applicant had to go to the Planning Board. In theory, she believed they were still operating under their prior variance because nothing had been constructed. During their last hearing the Zoning Board suggested that the Planning Board set a limit to the number of vehicles and hours of operation. She agreed with the abutter (Mr. Demers) that there were concerns even though it was a commercial district. In terms of Mr. Hennessey's comments, she believed those concerns were for the Planning Board as the Zoning Board previously gave the applicant approval for a bigger building.

Mr. Hennessey inquired if the Town had hired a person to enforce the MS4, stormwater discharge. He explained there were Federal Laws in effect. Massachusetts was required to be in compliance a year ago and now New Hampshire is required to do so. He noted every single point of discharge in Town that ultimately ends up flowing into Beaver Brook has to be accounted for and include a mitigation plan. He wanted guidance from the Planning Department with recommendations on a site (like the applicant's property) that is close to Beaver Brook that might have stormwater discharge into an interstate waterway. He said he would hate to approve a variance if it might make the Town susceptible to a Federal lawsuit.

Regarding the proposed buildings, Mr. Kearney questioned if there were accommodations for the collection of material from vehicles being washed off, handling fluids etc. Mr. Gendron replied there had to be. He said they weren't side-stepping the Planning Board by requesting a variance. He pointed out they were in front of the Zoning Board for the building size and setbacks. They would be meeting with the Planning Board; the Town's review engineer has already been on site and would review the proposed drainage. He stated the pre- and post-drainage had to match; they couldn't send additional water off site. In response to the abutter's concerns, Mr. Gendron noted the applicant wasn't working on vehicles other than those

pertaining to the business in preparation for them to be sold. Currently the business was working in the tent structure that has gravel underneath. The proposal is to put everything into a building with a concrete slab floor; this will contain everything. Also, with work being done inside the noise will be cut down. Mr. Gendron said the remaining issues were for the Planning Board and understood drainage, intersection geometry and other aspects would be reviewed. He stated the 'use' of the site wasn't changing; the applicant wanted to clean up the site and do something nice.

Ms. Plumley heard the applicant indicate with the larger building the 'intensity' of what they were doing would increase. She asked what that entailed. Mr. Gendron replied the building was larger, so it was considered more intense. He said when the Planning Department reviewed the plan, they indicated it needed to go to the Zoning Board. Ms. Beauregard noted it was a request for the expansion of a non-conforming use. Ms. Plumley asked if the work hours would increase. Mr. Gendron answered no; the same sales area would be used. He didn't believe the applicant could put any additional trucks on the site. They weren't requesting an expansion of that aspect; the proposal was to make the building slightly larger.

Ms. Chubb asked the Board to make a recommendation to the Planning Board to limit hours of operation and look into density, lighting, general aesthetics as well as ask them to develop a plan to meet the conditions of the MS4. She wanted to acknowledge the abutter's concerns and have a plan put in place.

**MOTION** (Chubb/Hennessey) To ask the Planning Board to look at items such as: limiting the hours of operation, lot density, lighting, general aesthetics and planning for handling waste fluids and any other environmental issues caused by current regulations and regulations that may come.

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

Mr. Gendron understood the concerns and told the Board they would receive a 'happy letter' (letter of satisfaction) from the Planning Board's engineering review firm (Keach Nordstrom) (during Planning Board review).

Mr. Hennessey believed 'the rubber band had been stretched too far' with the case. He said when the applicant first came in the business was going to be mostly internet sales and limited on site work on the equipment. The second time the applicant came in the Board worked with the Planning Board and now the applicant is requesting two very large buildings on the cusp of massive changes for the Town being required to deal with wastewater treatment / stormwater discharge. Mr. Hennessey felt the proposal was a very large expansion of a non-conforming use and would be voting against it.

In Mr. Kearney view, the increased scope was related to the prosperity of the business. He felt if the applicant had funds in the beginning and brought the current proposal forward the Board would have welcomed it. He said the Board should be mindful of what may come in the future but didn't feel it should preclude them from listening to and voting on the case. He pointed out the applicant had the ultimate responsibility for maintaining the overflow, runoff and fluids. He felt having an enclosed facility was more advantageous than the current situation.

Ms. Chubb didn't see the request as being much different from what was requested last year. She liked the proposal for two tasteful buildings versus one large building. She believed the buildings would look like something that belonged in a commercial district. She said she didn't know when the existing building was constructed and didn't know what may currently be going on inside from an environmental standpoint. She wanted to know what it was that Mr. Hennessey couldn't support. Mr. Hennessey replied he didn't know of a single commercial or industrial site in Town that had as much land/lot coverage as the applicant's lot. He said there was too much going on at the site; it was a very visible lot with close proximity to Beaver Brook. He added it was a huge expansion/too much expansion of a non-conforming site. He believed the

lot was too small for what the applicants were trying to do. He said he blamed himself (for the previous approval); the Board didn't put enough controls when the applicant's first came in front of them. He said the Board was originally told the business would mainly be internet sales with limited hours and wouldn't be doing what they were currently doing. Ms. Chubb inquired if the Board could have put limits (on the original request) on having just internet sales. Mr. Hennessey replied it would be the Planning Board; however, the Zoning Board didn't put any controls as it wasn't presented for the business to have the current number of vehicles on the site. He said information wasn't presented. Ms. Chubb didn't see how the Board had any more power than they did months ago. Mr. Hennessey replied this non-conforming site was having an expansion of use and felt at some point he had to vote against it. He believed (the request) was too much on a small lot. Ms. Chubb questioned what/why. Mr. Hennessey replied he felt the applicant was trying to do too much on too small of a lot.

Mr. Gendron stated they take direction from the Board. They would like to clean the site up and do some parking. He said the proposed site plan included handicap parking and was a real site plan that would 'dress up' the lot and make it nice for the Town. He said they would work with the Board and offered to listen to suggestions and come back at a subsequent meeting rather than be denied a variance. Mr. Gendron reiterated the applicant wanted to do something nice for the Town.

Ms. Chubb stated one of the abutter's concerns was large trucks coming onto the site. Mr. Chad Beauregard replied they had a tractor trailer that hauled equipment but believed the tractor trailers coming in and out were associated with other businesses in the area. He said they didn't have anything delivered via tractor trailer and wasn't sure what the abutter was referring to. Ms. Chubb asked what was being brought in by other businesses. Mr. Chad Beauregard replied the business across the street (lumber yard) had deliveries brought in tractor trailer. Mr. Gendron believed the trucks were coming by the site. Ms. Chubb asked if there was any turnaround space on the lot for vehicles, so they won't need to turn in the street. Using the displayed plan, Mr. Chad Beauregard showed how vehicles could access and turn around on the site.

With the proposed new buildings, Mr. Kearney questioned if the display space would stay the same. Mr. Tim Beauregard replied the display space would be a little smaller because they are going to plant shrubbery within that display area. The landscaping will be within the existing display area. Mr. Gendron pointed out the Town had been to the site on approximately 3-4 different occasions to look at the site and make sure the owners weren't using more display area than they should be. Everything has been in compliance; the owners haven't had any issues. Mr. Chad Beauregard commented the Planning Board had asked them to put together a plan for how waste oil/antifreeze is handled. He said a plan was submitted to the Planning Board that followed the New Hampshire Department of Environmental Services regulations. He noted the Planning Board was very happy with the submitted information for how waste oil etc. is dealt with.

With the new building, Mr. Kearney asked if work currently being done outside would now be done inside. Mr. Chad Beauregard answered yes. Mr. Kearney believed (having the work done inside) would help cut down on noise, smell etc.

Ms. Chubb reviewed the file from the previous approval (2019) which was a request for one 34ftx84ft metal building; the current request is for two (34ftx84ft) buildings side-by-side. Mr. Gendron said previously they were going to take down the white (tent) building but now they would be removing both existing structures and building something new (as depicted in the displayed photograph). Ms. Chubb asked for the size of the existing brick building. Mr. Gendron replied it was approximately 35ftx61ft (including the concrete apron/deck). Ms. Chubb asked for the existing square footage. Mr. Gendron replied the two buildings together would be approximately 5,712SF (2,856SF each – one is already approved). The existing brick building is 2,135SF; the proposal showed a difference of approximately 721SF.

If the new buildings are approved, Mr. Hennessey questioned if the applicants would be doing less work outside. Mr. Gendron answered yes. He pointed out currently everything was being done within a tented

building that didn't provide any noise cancellation. Mr. Hennessey asked if there would be fewer trucks/cranes etc. on display on the outside. Mr. Tim Beauregard replied the only display space they would lose is where they would be adding the greenery/shrubbery. Mr. Gendron believed (the outside display) would stay pretty much consistent with what was currently there now. Mr. Hennessey stated there was no restriction on it, which was his issue since the beginning. Mr. Kearney understood from testimony the display area would shrink because of the addition of shrubbery. Mr. Gendron answered yes.

**BALLOT VOTE**  
**#ZO2020-00006:**

- Mr. Kearney – Yes to all criteria
- Ms. Chubb – Yes to all criteria with request to Planning Board
- Mr. Hennessey – No to all criteria
- Mr. Hopkinson - Yes to all criteria
- Ms. Plumley – Yes to all criteria with recommend Planning Board look at lighting, limiting hours stipulation

(4-1-0) The motion carried.

**VARIANCE GRANTED**

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

**MINUTES REVIEW**

**January 13, 2020**

**MOTION** (Hennessey/Hopkinson) To approve the meeting minutes of January 13, 2020 as amended.

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

**SITE WALK – February 15, 2020 beginning at 9am**

Case #ZO2020-00005 - Map 28 Lot 2-1-6 - DANILUK, Brian - 19 Pond View Road

**DATE SPECIFIED CASE(S) - March 9, 2020**

Case #ZO2019-00026 - Map 18 Lot 12-16 - MAKO DEVELOPMENT LLC - Old Gage Hill Road

Case #ZO2020-00005 - Map 28 Lot 2-1-6 - DANILUK, Brian - 19 Pond View Road

**ADJOURNMENT**

**MOTION** (Chubb/Hennessey) To adjourn the meeting.

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

The meeting was adjourned at approximately 9:05pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary