

APPROVED

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT
October 17, 2022**

Chairman Dave Hennessey called the meeting to order at approximately 7:00 pm.

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT ROLL CALL: David Hennessey
Jim Bergeron
David Wing
John Westwood
Jeff Caira
Alternate Shaun Hamilton
Alternate Ken Stanvick
Planning Assistant Kerry Karalekas
Recording Secretary Jordyn Isabelle

ABSENT: Planning Director/Zoning Administrator Jennifer Beauregard

Mr. Hennessey welcomed Mr. Ken Stanvick to the Zoning Board of adjustment.

MINUTES

August 18, 2022

MOTION: (Wing/Westwood) To approve the August 8, 2022, meeting minutes as written.

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

September 17, 2022

Mr. Hennessey recused himself from discussing these minutes as he was not in attendance for the entirety of the meeting.

Mr. Wing asked the Recording Secretary to add his comments to Case #ZO2022-00017.

APPEAL FROM ADMINISTRATIVE DECISION

CASE #ZO2022-00007(2)

Map 31 Lot 11-269

CAMPBELL, Ronald & Ellen – 80 So. Shore Drive – Under RSA 674:41 (II): Where on September 19, 2022, the Board of Selectman voted not to issue the requested Building Permit.

Mr. Hennessey explained that this was an appeal from an Administrative Decision. Mr. Wing read the list of abutters aloud. There was no person whose name was not called that is an abutter or has a statutory interest in the case.

Mr. Hennessey informed that there were letters from Mitchell and Christine Kamal of 79 So. Shore Drive and Julia Steed Mawson of 17 So. Shore Drive asking the Board to deny the appeal. He explained that this is an appeal of the decision of the Board of Selectmen, that because the property is being built on a private road, they are claiming jurisdiction on it. He continued that the Board would consider only the Board of Selectmen's decision to deny construction on the private road.

Atty. Bernard Campbell came forward to represent the applicant; he explained that he had no relation to the applicant. He read aloud from RSA 671-41, *"From and after the time when a planning board shall expressly have been granted the authority to approve or disapprove plats by a municipality, as described in RSA 674:35, no building shall be erected on any lot within any part of the municipality nor shall a building permit be issued for the erection of a building unless the street giving access to the lot upon which such building is proposed to be placed."* He continued that So. Shore Drive is a private road not maintained by the Town. He explained that the RSA focuses on access related to road access to whatever lot is in question. He continued reading, *"is a private road, provided that: (1) The local governing body, after review and comment by the planning board, has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof."* He stated that numerous permits had been issued on this side of So. Shore Drive, including a complete renovation and reconstruction of the house immediately across the street from this property. He read from the RSA that when *"the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and when the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets, the applicant for such permit may appeal from the decision of the administrative officer having charge of the issuance of permits to the zoning board of adjustment in any municipality which has adopted zoning regulations."* Mr. Bernard then went through the criteria of the statutory appeal, noting that enforcement of the Board of Selectmen's decision would pose an unnecessary hardship on the lot. He continued that when this statute is brought forth, it is usually about small roads, often dirt roads, with limited to no existing houses on the road, which is not the case on So. Shore Drive. The Board of Selectmen decided that the road was insufficient to support a structure on this property, even though they attempted to point out that building permits had already been issued on the road. Mr. Campbell stated that the applicant has already received state approval for a septic design and a shoreland permit. He stated that there was no discussion of concerns with access to the property at the Selectmen meeting, specifically no concerns about emergency services being able to access the property. He added that this lot would not interfere with access to surrounding undeveloped lots either. Mr. Campbell asserted that the structure was directly across the street from this house. He continued that this lot would not block or interfere with access to lots around this lot if those were to be developed. He stated that issuance of a building permit would not alter an official Town map (as Pelham does not have one), would not interfere with the master plan, would not result in hardship to future purchasers, would not cause an undue financial impact on the community, and public safety response would be comparable to other residential lots in Town. Mr. Campbell stated that he counted roughly 35-45 year-round structures on this section of the road, and if anything, another house would help lower the maintenance costs per resident on the road. Mr. Campbell stated it was unclear why the Selectmen had chosen to deny a building permit, especially as a new house was being built on the road that did not go before the Zoning Board or the Selectmen.

Mr. Hennessey asked if there was a representative for the Selectmen in attendance to speak on the case to help inform the Board of the Selectmen's decision. There was no one from the Selectmen present willing to speak on the case.

Mr. Stanvick asked if this was brought to the attention of the Conservation Commission, given the concerns over vernal pools and the WCD. Mr. Campbell replied that this was discussed and decided by the variance granted and not appealed by anyone. He highlighted that those concerns are irrelevant to the discussion tonight; the focus is on access to the road. He reiterated that the discussion is about if the Board thinks that development on the road would be contrary to the criteria of if it would affect the master plan and the official Town map and if it would cause an undue financial burden on the Town or future purchasers.

Mr. Hennessey informed that the Board and the Conservation Commission went on a site walk of the lot. Mr. Hennessey reported that there is no statutory obligation for the Conservation Commission to weigh in on Zoning Board cases, though they often ask for their opinion. Mr. Hennessey continued that part of the Selectmen's decision was informed by advice from the Planning Board. Mr. Hennessey stated that the Board looked at the lot and that there was a lengthy discussion at the time of the hearing.

Mr. Hennessey opened the discussion to the Public.

Mr. Chris Waterworth of 77 So. Shore Drive came forward to address the Board, representing the Little Island Pond Realty Corporation. He stated that he did not believe that the vernal pool was looked at previously by the Board. Mr. Waterworth noted that the original site plan proposed a two-bedroom home with a two-bedroom septic system, though the plan brought forth to the Selectmen showed three bedrooms and three bathrooms, believing that to be too much of a load on the septic system. He noted that the first time this was mentioned was at the Selectmen meeting, noting that now the design shows a two-bedroom home with an office. He stated he would be shocked if there was a lack of oversight in such a way that the Town would verbally tell him to change those things. He noted that the corporation is not interested in how someone uses their home as it is nobody's business, but they should follow their site plan of a two-bedroom house. He stated that he believed the septic system would be overloaded, which is the primary concern as the Board of Selectmen also discussed the overloading in the area of So. Shore Drive. He noted that the State approved septic design and shoreland permit were based on a two-bedroom design, not a three-bedroom design. He stated that there had been no transparency in this process. Mr. Waterworth explained that there was talk about a discussion with the corporation regarding blending back into their area and cutting down live trees, noting that their bylaws are designed to conserve that land. He explained that in their bylaws, they are not allowed to cut any trees, only the first 75 feet. He stated that the applicant would not be allowed to use their property to gain access to his well and for an emergency easement and that the corporation voted not to allow that. Mr. Waterworth continued that the wetland scientist who signed off on the plan was the same one who created the site plan, meaning there were no checks and balances. He stated that wetlands run from the corporation's land into the Campbell's property, regardless of what's been stated. Mr. Waterworth asked that the Board not override the decision of the Board of Selectmen in this matter. Mr. Caira asked about the bylaws regarding the cutting of trees. Mr. Waterworth showed the Board a copy of the bylaws stating the rule of no cutting further than 75 feet from the common boundary line.

Ms. Christine Kamal and Mr. Mitch Kamal of 79 So. Shore Drive came forward to address the Board. She stated that in reference to her home, there was a pre-existing structure on the lot they renovated. She stated she appreciated the hardship of the applicant and thought there had been no discussion regarding the hardship the abutters have already incurred, noting that it does not have to do with the applicant at this time. She informed that her septic failed without ever using their house because of the water levels and flooding on the lot, which travels to the applicant's lot. She stated she is concerned that if a house is built, the vernal pools in the area will grow, and flooding will worsen. Mr. Kamal stated that the main concerns of the Planning Board that helped the Selectmen make their decision were the soil saturation and the possibility of the septic system failing.

Ms. Julia Steed Mawson of 17 So. Shore Drive came forward to address the Board. She informed that she is a biologist and an environmental educator, explaining that she feels well informed to speak about issues

surrounding the lake. She stated that she understood that the owner has a right to use his land, but it needs to be done with rules and regulations and with the good of the neighbors in mind. She explained that being on the shared resource of the lake and the road makes their situation different from most others in the Town. She stated that her first concern is over the term "vacant lot," as there is no structure on the lot but a viable forest woodland, which has important ecological functions, including flooding prevention. She continued that it also provides homes for wildlife and helps in climate mitigation. She stated that a report done for the Town eight years ago noted that flooding needed to be more of an issue that the Town needed to be concerned about. She also asked the Board to consider the lake's context and how it has aged ten years in a situation that should have taken hundreds of years. She presented photos of cyanobacteria blooms in the pond in recent years due to climate and nutrient loading. She informed that the nutrient loading is happening because of the increased development across the lake. Mr. Hennessey stated that those were issues relevant to the variance already voted on, only the validity of the Selectmen not to grant the building permit.

Ms. Adrienne Keane of 63 So. Shore Drive came forward to address the Board. She stated that she was speaking as the previous president of the Little Island Pond Realty Corporation. She stated that she was at the site walk when the Selectmen went. She noted that their primary concern was the lack of an easement for the Campbells to access their well after the house was built, explaining that the easement would come from the Little Island Pond Realty Corporation, which they voted against. She explained that the Campbells would need access from their land to deliver their equipment to build the house. She reiterated the concerns mentioned above regarding flooding in the area.

Mr. Hennessey closed the discussion to the Public and brought it back to the Board.

Mr. Campbell stated they were not prepared to discuss issues related to drainage or vernal pools, as those are not germane to the issues of access to the road. He asserted that the official home design is a two-bedroom house with a study for the applicant. He stated that the inspectors would ensure the house was being used as a two-bedroom home. He reiterated that the property has a state-approved septic design and shoreland permit, which would protect the lake better than grandfathered lots. Mr. Campbell stated that the applicant did approach Little Island Pond Realty Corporation to ask for access to build the home, though their vender has assured them that they can build without encroaching on any other properties. He stated that the issues of the well are not germane to tonight's discussion, though he does have a letter from at least one company that asserts they would have no issue accessing the well on this site based on the design. He stated that the discussion with the Planning Board and Selectmen was about their problems with how the Zoning Board grants variances, not about the road itself. He asserted that the statute is clear in that a building permit will not be issued for the erection of a building unless there is a street giving access. He stated they contended that the discussion had gotten off track and did not pertain to the access of the road. He stated that he did not hear a single concern about access on the road come up from anyone thus far because it does not exist.

Mr. Hennessey stated that it was his understanding that the Selectmen had the authority to deny a permit on a private road regardless of access. He informed that when the case first came before the Board, it was noted in the record that they had to get approval from the Selectmen. He stated that Zoning Board granted the variance and sustained it based on the five criteria. He stated that he needed Mr. Campbell to confirm, as a land use lawyer, that the Selectmen are restricted in deciding these cases based on access and not on anything proposed by the Planning Board. Mr. Campbell replied that it was his opinion that *"the permitting process on RSA 674-41, which specifies that no building permit on any lot shall be issued for the erection of a building, unless the street giving access to the lot upon which said building is proposed to be placed."* He stated that the lot is on a street accepted by the local legislative body, they would waive their liability, and other building permits have been issued on the road, including a new building. He continued that they've provided evidence that since 2010, there are at least three new houses in that section of the road that have been built.

Mr. Hennessey stated that a problem he had was that they were citing new construction on So. Shore Drive, but to his knowledge, the only new construction on the road happened before this law went into effect. He added that during his time on the Board, they typically granted variances based on health and safety, trying to modernize them to protect health and safety. He stated that he wished he had representation from the Selectmen to help him understand their decision.

Mr. Campbell stated that the lot across the street, at 79 So. Shore Drive had access to the road. He asked if there was a significant change in access from the 45-50 feet from 79 So. Shore Drive to 80 So. Shore Drive. He asserted that there is no change in access; it is the same as 79 So. Shore Drive.

Mr. Hennessey explained that the Board would be voting on whether they approve the decision of the Selectmen or not.

Mr. Hamilton stated that they need to close the door on nonconforming lots sooner or later, especially as they've shown evidence that it impacts the lake.

Mr. Westwood stated he is comfortable with their previous votes on this case. He stated that this vote was not common sense for him. He stated that he believed he would uphold the appeal to overturn the decision of the Selectmen.

Mr. Bergeron stated that he is leery of overturning the decision of the Selectmen, as they may have more information and a more overarching view of the situation compared to the Zoning Board. He agreed that he wished a representative from the Selectmen was in attendance.

Mr. Wing stated that there was compelling testimony for both sides of the argument. He stated that, in his opinion, the Planning Board and the Selectmen typically get a lot more information than the Zoning Board does; as more information is gathered, the further the process goes. He stated that he would vote not to overturn the Selectmen's decision.

Mr. Caira stated that he agreed with what other members had stated, especially since the Selectmen did not give much information to them regarding their decision. He stated he would also vote not to overturn the decision of the Selectmen.

Mr. Stanvick stated that while he could not vote on the case, he agreed that he would vote not to overturn the decision of the Selectmen.

Mr. Hennessey stated that he believed the Board was correct in granting the variance and turning down the appeals on the variance. He continued that he would defer to the Selectmen's decision, as they operate under a different set of criteria and rules than the Zoning Board.

CASE #ZO2022-00007(2)

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| ROLL CALL VOTE: | Mr. Westwood | – | NO |
| | Mr. Wing | – | NO |
| | Mr. Bergeron | – | NO |
| | Mr. Hennessey | – | NO |
| | Mr. Caira | – | NO |

APPEAL OF ADMINISTRATIVE DECISION DENIED. THE DECISION MADE BY THE SELECTMEN NOT TO GRANT A BUILDING PERMIT STANDS.

CONTINUED CASES**CASE #ZO2022-00018****Map 23 Lots 11-343 & 11-344**

16 Springdale Realty Trust – 16 Springdale Lane & Springdale Lane – Seeking a Variance concerning Article III, Section(s) 307-8C, 307-12, 307-12 Table of Dimensional Requirements, 307-13, 307-14 & Article VII, Section(s) 307-37, 307-39, 307-40 of the Zoning Ordinance to permit construction of a replacement Single family dwelling on Map 23 Lot 11-343 where this property is approximately 4,625 +/- sf. in size, with the new home proposed 3' off the western lot line, 1' from The Springdale Lane ROW, a 12' easterly sideline and 44' from the pond, with a proposed deck 36' off the pond, and to allow construction of a detached garage on Map 23 Lot 11-344 with the structure proposed to have a 15' westerly side lot line setback, 25' rear lot line setback, 8' to the easterly side lot line and 18' from the Springdale Lane ROW on a lot of approximately 4,342 sf. in size. Both of these lots have 0' of frontage on a Town road where a minimum lot size of 1 acre and a minimum of 200' of frontage with a minimum front setback of 30' and a 15' side/rear setback and a 50' lakeside setback is required in the Residential District and to allow development of the lot in accordance with RSA:41.

It was asserted that the abutters read at the last meeting.

Mr. Maynard informed that the lot is in the residential district. He explained that the waterside lot was developed with a residential building; he reported that the impervious surface on the lot is currently 13.6%. Mr. Maynard informed that the back lot, Map 23 Lot 11-344, has a shed-type building with a 6% impervious surface. Mr. Maynard continued that the adjacent lot to this is Girl Scout property. He explained that the applicant is looking to redevelop the home on the water lot to a new year-round home, bringing the impervious surface to 29.9%. He continued that the applicant was also looking to construct a new garage on the back property, bringing the impervious surface on that lot to 29.9%. Mr. Maynard stated that the new home would get a new clean-solution septic system and a new well. He informed that the client owned both lots on the same deed and would be willing to put a deed restriction to consider both properties as one so that there is no potential for someone to build a home on the back lot in the future.

Mr. Maynard then read the five criteria into the record.

Mr. Hennessey asked how large the garage would be. Mr. Maynard replied that it would be 24' x 24'. He explained that the house was not large but rather a modular home. He explained that while these are not large structures, the lots are small, roughly 4,000 square feet each. Mr. Maynard explained that the Town considers the two lots as separate pieces of property, but the applicant is willing to agree that this will be considered one residential property – the house and the detached garage. He noted that the property directly adjacent to these lots is developed similarly.

Mr. Hennessey brought up the change in the involuntary merger law, explaining that there was a window for people to appeal involuntary lot mergers, though now anyone can appeal merged lots at any time. He stated that he worried that if this were to be approved and there was a house on one lot and a garage on another, this would cause an issue if there were two separate owners. He stated he felt that this needed legal opinion as a prerequisite stating support that these two lots can be legally merged. Mr. Maynard replied that the two lots would not be merged but would rather have a deed restriction on the back lot to consider them one property. Mr. Hennessey stated that could be added as a condition of approval.

Mr. Wing asked about the height of the structure of the home. Mr. Maynard estimated roughly 24 feet on the street side of the property. Mr. Hennessey asked if they would accept a restriction to keep the height under 30 feet. Mr. Maynard replied that he was.

Mr. Caira stated that he needed clarification about there being two separate structures on two individual lots. Mr. Maynard explained that one structure would be a garage and one a new house that would be moved as further back from the lake as they could. Mr. Caira asked if it should be two variance requests – one for each lot. Mr. Maynard stated that because both lots are on one deed and the client is willing to accept a deed restriction to consider them one property, he wrote it as a request for one variance. Mr. Caira asked for clarification on a paper road that was mentioned that runs between the two lots. Mr. Maynard replied that the paper road comes off a tee in Springdale Lane. Mr. Maynard explained that he believed a deed restriction would hold more weight than a voluntary lot merger due to the change in the law.

Mr. Hennessey asked if the lots were on a Class VI or private road. Mr. Maynard replied that since there is an existing home on the lot, the presumption is that emergency services need to get there to service the house now, meaning he would not need Selectmen approval for reconstruction of the house. Mr. Hennessey replied that the director of the Municipal Association believes that there needs to be Selectmen approval on private roads. Mr. Wing asked if that still held true if the structure was torn down. Mr. Maynard replied that it did.

Mr. Hennessey opened the discussion to the Public. As no one from the Public came forward, the discussion was closed and brought back to the Board.

Mr. Maynard explained that the applicant has been in the area for quite a while and knows all of his neighbors. He continued that the applicant spoke with his neighbors before this meeting to explain his request.

Mr. Wing stated it was surprising that not a single abutter came to speak on the case, which is unusual in this area. He stated that his only concern would be the need for Selectmen approval.

Mr. Bergeron stated that his concern was with the extension of the nonconformity and the addition of the building on the back lot. He stated that he felt this went beyond the purpose and intent of the zoning ordinance, which clearly states to prevent overcrowding of the land. He continued that section 307 C discusses extensions of nonconformity. He stated that he believed the amount of overextension of the nonconforming use goes beyond the spirit and intent of the zoning law. Mr. Westwood noted that he was also worried about nonconformity and agreed.

Mr. Hennessey stated that he did not disagree with Mr. Bergeron. He continued that it is becoming more acceptable to use cost analysis to determine variances. He explained that if someone has to put in a new septic system, especially a clean system, the property must be of a certain size and value to make it worthwhile. He stated that the Board had granted many variances like this to allow people to redevelop run-down homes on the lake and put modern septic systems in to protect the lake.

MOTION: (Wing/Westwood) That the Map 23 Lot 11-343 and 11-344 be considered as one lot as a deed restriction.

VOTE: (3-2-0) The motion carried.

CASE #ZO2022-00018

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| ROLL CALL VOTE: | Mr. Westwood | – | 5 “Yes,” final vote YES |
| | Mr. Wing | – | 1 “No,” final vote NO |

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| Mr. Bergeron | – | 5 “No,” final vote NO |
| Mr. Hennessey | – | 5 “Yes,” final vote YES with the deed restriction |
| Mr. Caira | – | 3 “No,” final vote NO |

VARIANCE DENIED

DISCUSSION OF VOTE/FINDING OF FACTS

Mr. Bergeron explained that he felt the request did not meet the spirit and intent of the ordinance and that there was too much extension of the nonconformity. Mr. Caira agreed.

Mr. Hennessey stated that he felt this would improve the property and protect the lake in granting this variance, which was his reason for voting in the affirmative. He added that he did not feel it was an excessive request and that it would fit in with the other lots around the lake.

Case #ZO2022-00019

Map 24 Lot 12-75

PULTAR, Lisa & Shawn – Little Island Park – Seeking a Variance concerning Article III, Section(s) 307-12, 307-14 of the Zoning Ordinance to permit construction of a new single-family dwelling on a lot of approximately 12,784 +/- SF, in size with 0' of frontage on a Town road where a minimum lot size of 1 acre and a minimum of 200' of frontage is required in the Residential District and to allow the development of the lot in accordance with RSA 674:41

It was noted that the abutters were read into the record at the previous meeting.

Mr. Joe Maynard came forward to represent the applicants. He informed that the lot is in the residential district on a private road. He continued that the applicant's brother owns the property adjacent to hers where the easement for her lot would be. Mr. Maynard informed that the lot is 250 feet from the pond, meaning no shoreland permit is required for building on the lot. He stated that the lot meets all the setback requirements for a new home and that this would include a new clean solution septic system and a new well. The applicants are asking for a variance for the lot size and frontage.

Mr. Hennessey stated that it was made excruciatingly clear that the applicant will need Selectmen approval on this.

Mr. Maynard then read the five criteria for the variance into the record. Mr. Maynard informed that the Town owns several coffee lots behind this lot. Mr. Maynard explained that the applicant had inquired about purchasing some of that land in the past to create a bigger lot to build on, but she was informed that the Town is not releasing any of those lots.

Mr. Hennessey stated that this discussion could benefit from a site walk. Mr. Bergeron stated that he was familiar with the property but would be willing to go on a site walk to help inform other members. Mr. Hennessey noted that he also knew the area but wanted to see the uniqueness of the lot. Mr. Caira stated that he was unfamiliar with the area and wanted to see the lot.

Mr. Bergeron asked why the applicant left out 307-8 regarding nonconforming uses. Mr. Maynard replied that it would not be a nonconforming use of the lot. Mr. Bergeron stated that the nonconforming use could also be the land and the property and the activity that goes on within the property.

Mr. Hennessey opened the discussion to the Public.

Mr. Michael Gleason of 9 Little Island Park came forward to address the Board. He stated that he had been neighbors with the Pultars for years and this it would be great for her to build a house on the lot.

Mr. Mark Pultar of 17 Little Island Park came forward to address the Board. He informed that his family has been on the pond since 1935, explaining that he is the applicant's brother, who owns the lot across the street from her. He stated they've lived on the lake their whole lives and hoped the Board would allow the applicant to live on the lake.

Mr. Hennessey closed the discussion to the Public and brought it back to the Board.

Mr. Hennessey informed that this case would be the first case at the next meeting.

SITE WALK – SATURDAY, OCTOBER 22, AT 9:00 am

CASE #ZO2022-00020

Map 24 Lot(s) 12-67, 12-68, 12-69 & 12-70

GLEASON, Michael – 7, 9, and two unaddressed lots on Little Island Park – Seeking a Variance concerning: Article III, Section(s) 307-7, 307-8C, 307-12 Table 1 Dimensional Requirements, 307-14 of the Zoning Ordinance to permit the 4 nonconforming subject lots to be reconfigured into 2 nonconforming lots, each with less than an acre, on a private road. Applicant wishes to demolish the existing house on lot 24-12-69 and rebuild in the same footprint but add a second floor, on the newly configured parcel consisting of added square footage from lots 24-12-67 & 24-12-70 to make the new lot 0.371 acre. Existing lot 24-12-68 will also have added square footage from 24-12-67 & 24-12-70 to make the new lot 0.215 acre.

Mr. Gleason came forward to address the Board.

Mr. Wing read the list of abutters aloud. There was no person whose name was not called that is an abutter or has a statutory interest in the case.

Mr. Bergeron recused himself from the case. Mr. Hennessey appointed Mr. Hamilton to vote in place of Mr. Bergeron.

Mr. Gleason read the five criteria for the variance into the record.

Mr. Hennessey asked how high the house would be. Mr. Gleason responded that it would be 24 feet tall. Mr. Hennessey asked if there was a waterfront on the property. Mr. Gleason replied that there was not and that he was over 200 feet from the pond, so he did not need a shoreland permit. Mr. Gleason informed that he also had his State approved septic design.

Mr. Hennessey opened the discussion to the Public.

Ms. Lisa Pultar of 78 Merrimack Ave, Dracut, MA, came forward to address the Board. She explained that their families have grown up together. She stated that it is their dream to carry on the Pultar and Gleason name on the lake.

Mr. Mike Pultar of 17 Little Island Park came forward to address the Board. He stated that it is nice to see the younger generation building the cottages into homes again. He noted that the building on the lot had been abandoned for 20 years, and it would be good for the community to redevelop it. He stated that the

house across the street is two stories high, so this property would not block any lake views. He asserted his support for the applicant.

Mr. Hennessey closed the discussion to the Public.

Mr. Hennessey asked for a site walk of the property.

MOTION: (Wing/Westwood) To go on a site walk of the property on Saturday, October 22, 2022.

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

CASE #ZO2022-00022

Map 27 Lot 2-82-9

GRINLEY, Jeffrey & Nicole – 41 Rolling Ridge Lane – Seeking a Variance Concerning Article III, Section 307-12 Table 1 Dimensional Requirements & Article XV, Section 307-106 of the Zoning Ordinance to permit placement of a 12' x 16' shed 2' off the right side lot line, where 15' is required.

Mr. Jeff Grinley of 41 Rolling Ridge Lane came forward to address the Board.

Mr. Wing read the list of abutters aloud. There was no person whose name was not called that is an abutter or has a statutory interest in the case.

Mr. Grinley explained that he was looking to put a 12 x 16 foot shed on his lot that would encroach on his setbacks. He explained that the lot behind him is vacant Town land and to the right is an abutter. He noted many trees there, so the abutters may never see the shed.

Mr. Grinley read the five criteria into the record.

Mr. Hennessey opened the discussion up to the Public. As no one from the Public came forward, the discussion was brought back to the Board.

Mr. Bergeron asked if the lot was part of a conservation subdivision from the past. Ms. Karalekas stated that it was likely, given the size of the lots. Mr. Hennessey noted that it was nice that the applicant spoke with his neighbors, seeking their approval.

Mr. Stanvick asked what the applicant was planning to store in the shed. Mr. Grinley replied with lawn equipment and toys. Mr. Stanvick asked if he would keep any nontypical equipment. Mr. Grinley replied that he would not.

Mr. Bergeron asked if there was a walking trail on the backside of the subdivision. Mr. Grinley replied that he believed there was but noted that he did not think it was ever used or cleared as a trail. Mr. Hennessey stated that there is a potential for an ATV trail in that location, noting that the trail has not yet been developed and may just be used as a secondary walking trail.

Mr. Caira asked if the applicant had a shed now. The applicant replied that he did not. Mr. Caira asked if that was the flattest part of the lot for the shed. Mr. Grinley replied that it was the flattest part of the lot, except for the exact middle of the lot, which would take away the usable lawn space. Mr. Caira asked what type of base the applicant was going to use. The applicant replied that he was most likely going to use stone.

CASE #ZO2022-00022

ROLL CALL VOTE:

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| Mr. Westwood | – | 5 Yes; final vote YES |
| Mr. Wing | – | 5 Yes; final vote YES |
| Mr. Bergeron | – | 5 Yes; final vote YES |
| Mr. Hennessey | – | 5 Yes; final vote YES |
| Mr. Caira | – | 5 Yes; final vote YES |

VARIANCE APPROVED

Mr. Hennessey explained the 30-day right to appeal.

Case #ZO2022-00023**Map 14 Lot 3-51**

WELCH, Matthew – 33 Brookview Drive – Seeking a Special Exception concerning Article XII, Section 307-76, III of the Zoning Ordinance to permit Light Industry/Light Manufacturing, a General Home Occupation, in a Residential Zone.

Mr. Christopher Drescher came forward to represent Mr. Welch, the applicant. He explained to the Board that the applicant was seeking a special exception to allow a home occupation for a small metal fabrication business out of an existing garage.

Mr. Wing read the list of abutters aloud. There was no person whose name was not called that is an abutter or has a statutory interest in the case.

Mr. Hennessey informed that the applicant had previously come before the Board to apply for a variance and asked the applicant to express how this application differed from the variance request. Mr. Drescher read aloud the definition of a general home occupation under the Town ordinance: “*general home occupation is an accessory use of a home or accessory structure for the purpose of conducting nonagricultural business activity by a resident of that home that meets the following conditions of this special exception.*” He explained that what the applicant does is very unique and specialized metalworking operation that is small, quiet, and isolated. He continued that most of what the applicant does is with 3D printing.

Mr. Drescher then read aloud the criteria for the special exception into the record. He emphasized that the applicant welcomed any reasonable conditions on the home occupation necessary to protect the neighborhood's residential character and appease the neighbors to the best of his ability.

Mr. Hennessey stated that the definitions being used in the application have changed from light manufacturing to fabrication. He stated he needed clarification on the difference between those two words. He asked for an explanation of the difference, as he was unsure what was different from the variance request. Mr. Drescher replied that he could not find a definition of industrial in the Town ordinance. He continued that industrial, to him, means a large-scale operation. He explained that the applicant is conducting a very small-scale business. Mr. Drescher stated that the applicant would be open to a “sunset clause” to build a client base to move his operation elsewhere.

Mr. Welch stated that he was initially told he needed a variance for industrial and manufacturing. He stated that he did not consult a lawyer before applying for the variance. He informed that once he was at the meeting for the variance request, he realized the severity of what a variance would mean to the neighborhood. He explained that he did not want a variance to run with the land once he left the property,

and he understood why the neighborhood would oppose that request. He explained that he felt the special exception is a more appropriate clause of the zoning ordinance for him to apply for because he is not planning to do anything large-scale. He emphasized that he is the only employee and wants to help his business get off the ground. Mr. Welch stated that the clauses and restrictions that the Board could put on his business could be enough to satisfy the neighbors, especially as the special exception expires within two years.

Mr. Hennessey stated that the notice to abutters stated "light industrial" but would note that the applicant preferred the term "fabrication." Mr. Drescher replied that they did not want to give people the wrong idea about what the applicant was doing on the lot.

Mr. Stanvick asked what chemicals were being used that would not be considered standard for a homeowner. Mr. Welch replied that the only thing would be welding gases, which is argon. He noted that argon is an inert gas, meaning it does not react with anything else, though you would be unlikely to find it in an average house. He noted that the other gas used is an argon and CO₂ mix. Mr. Stanvick asked Mr. Welch about the 3D printing that was mentioned. Mr. Welch replied that his primary customer base is a 3D printing company which he makes parts for. Mr. Stanvick asked about external items that would be used, such as a dumpster. Mr. Welch replied that there would be no external items on the lot and that everything would be maintained within the garage.

Mr. Caira asked about the air conditioning put into the garage. Mr. Welch stated that he put air conditioning into the garage so that he could keep the doors and windows closed to help contain the noise. He added that he noted the abutter concern over fumes, so he bought a fume extractor to filter any potential fumes.

Mr. Wing asked how discarded metal is collected and disposed of. Mr. Welch replied that he puts it all in 5-gallon buckets that he takes to a scrap yard in Nashua.

Mr. Hennessey opened the discussion to the Public.

Mr. Bob Taplin of 31 Brookview Drive came forward to address the Board. He noted that he is a direct abutter to the east of the applicant. He informed that the garage where the applicant would conduct his business is only 20 feet from his property line. He reminded that the variance the applicant requested was unanimously denied on July 11, 2022. He stated that he believed the case should not move forward, as the applicant had already forfeited his 30-day right to appeal for the variance decision he applied for, and now he was bringing in the same request under a special exception. He asserted that a light industrial, light manufacturing, or machine shop should only be allowed in the industrial zone per the Town's zoning laws. Mr. Taplin also believed the request should be under a variance, not a special exception for a minor home business, because it would change the zoning from residential to industrial. He read from Article XII section 307-16 of the zoning ordinance, "*light industry is defined as a business designated in the industrial district.*" Mr. Taplin also objected to specific criteria of the special exception, as it does not address the impact on surrounding property values, especially as most of the Board believed that allowing the business would lower surrounding property values. Mr. Taplin stated that condition one was not met, as the occupation would definitely change the characteristics of the neighborhood because there would now be an industrial machine shop in a residential zone, and they would lose the quiet tranquility, rural character, and peace of a residential neighborhood. He read a definition of a machine shop as "*a facility with equipment and supplies for machines; a process where parts are cut, fabricated, and finished to prepare them for use.*" He stated that machine shops are used in the creation of new parts as well as repairs of existing equipment parts. He reiterated that this is not a business that should be allowed in a residential district. Mr. Taplin stated that condition two was not met, as, according to the Pelham Assessor Database, the proposed location of the business is well over 49% of the gross living space and would change the residential character of the property. Mr. Taplin stated that condition seven was not met because he had already heard loud noises of

grinding, banging, compressor sounds, and pneumatic sounds, even though the applicant had not yet been granted a special exception. He stated that he only believed the noises would worsen if the special exception were granted. Mr. Taplin stated that condition nine was not met, as there have been numerous occasions where trailer trucks and other box trucks delivered material that would not commonly be seen in a residential area. He stated that condition twelve was not met, as the building is not compatible with any other building in the neighborhood because of its size and commercial-grade metal structure. He concluded that no business of this type should be allowed in a residential zone and that it may start a precedent for other industrial businesses to be put into the neighborhood. He stated that no business that would lower property values should be allowed in a residential neighborhood.

Ms. Sheila Taplin of 31 Brookview Drive came forward to address the Board. She reiterated that the garage he would be working out of is 20 feet from her property line, noting that it is closer to her property line than to the applicant's house. She said this all started in 2019 when he got a building permit for a non-commercial building. She asked how someone could apply for a variance, get denied, and then apply for the same thing under a different name of a special exception. She stated that under Section V Article 307-16 Districts Defined; it specifically stated that *"the district one is established to provide light industrial development, warehousing, limited business, and customary accessory in structure."* She continued that it is stated in the ordinance that light industry and manufacturing are only permitted in the industrial zone. She noted another concern for her was the difference between the variance and the special exception. She continued that she needed to understand why the special exception did not include the protection of property values that the variance does. Mr. Hennessey replied that if every condition of a special exception is met, they must approve it. He added that the State sets the criteria. Ms. Taplin agreed that she felt conditions one and seven were not met. Ms. Taplin read aloud a definition of metal fabrication, stating, *"metal fabrication is the process of manufacturing sheet metal and other metals to make them conform to a specific shape. As an Industry, metal fabrication has a vast range of applications."* She asserted that this business would change the neighborhood's character and is incompatible with surrounding neighborhoods. She added that since Mr. Welch uses a mask when working, there must be some form of toxic emissions or fumes, which she is concerned about escaping the garage. Ms. Taplin then shared a video she took from her residence of the noise from the garage that she could hear. She asserted this was after the applicant put in his noise abatement measures. She continued that her concern is that if this is approved, that type of noise would happen more. She added that her pool is very close to the applicant's garage. She added that she also did not believe that condition nine was met, as there have been multiple deliveries to the location. She stated that the garage is almost as big as her house, highlighting how it is incompatible with the rest of the neighborhood.

Mr. Taplin added that the code enforcement officer informed him that the trailer truck that was seen was for a delivery for a work truck for the building. He asserted that the delivery would not have been made without a work truck for the building. He stated that the applicant also has a forklift. He noted that that shows him that the intent is that larger vehicles will be going to the lot.

Mr. Dan Daigle of 11 Heritage Road came forward to address the Board. He stated that he agreed with all the previous comments. He showed a video of himself grinding wood to provide the Board context. He asked if a site walk could be conducted while the applicant was working. He expressed that he did not support the request for a special exception.

Ms. Irene Atkinson of 10 Heritage Road came forward to address the Board. She stated that this would change the character of a residential neighborhood, especially as the neighborhood is all single-family homes. She noted that no matter what the applicant calls it, it is still a machine shop that grinds metal, makes noise, and emits dust and metal chips. She stated that oils might be used, that special gloves must be worn, and that special hazardous containers must be used to transport the metal chips. She noted another concern is that if this is approved, more industrial businesses would be approved in residential

neighborhoods. She added that this would decrease their property values. Ms. Atkinson stated that the purpose and intent of the special exception is to create a harmonious balance between the applicant and the abutters. She stated that it is her feeling that this would only benefit the applicant and hurt the abutters.

Ms. Kris-Ann Amato of 25 Brookview Drive came forward to address the Board. She stated that she opposed this request being approved. She stated that when the variance request was denied, it was her impression that the applicant would have to stop working at the address. She stated that this did not happen. Mr. Hennessey stated that the Board could not enforce the rules, only the Code Enforcement Officer. He urged residents that if they see a problem, to call the Code Enforcement Officer in the Planning Department so that he can go out and investigate the issue. She asked about restrictions regarding the date, working hours, and things of that nature. Mr. Hennessey stated that they typically do not put many, if any, restrictions on special exceptions, as the Planning Board normally does that when reviewing the site plan. She stated she sees poor character on behalf of the applicant, as he has not followed the rules thus far. Mr. Hennessey noted that he would not ascribe bad motives to those coming to the Board. Ms. Amato stated that she agreed with what other abutters had stated and opposed the request. Mr. Amato asked if the applicant uses aluminum dust, as that is flammable.

Ms. Mary Viera of 6 Heritage Road came forward to address the Board. She stated that this was something other than a home-based business. She stated she had had several home-based businesses, which does not compare to a machine shop and metal fabrication. She stated that when the Taplin's try to sell their property, their property value would certainly be diminished. Mr. Hennessey noted that they do not consider property values in special exceptions.

Mr. Jim Blanchette of 27 Brookview Drive came forward to address the Board. He stated that he could appreciate someone wanting to start a business, but an industrial business should not be in that neighborhood. He stated that most retired people are in their yards daily and that the noises and gasses emitted are not for the neighborhood.

Attorney Campbell stated they would welcome a site walk if it would help the Board decide. He added that the transmission delivery on the trailer truck was for the applicant's personal truck, noting that it was out of the applicant's hands that it was delivered by the trailer truck. Mr. Campbell stated that the code enforcement officer had already spoken to the applicant and that he could not continue to operate if the special exception is not granted.

Mr. Hennessey closed the discussion to the Public and brought it back to the Board.

Mr. Hennessey stated that he was still stuck on the difference between manufacturing and fabrication. He stated that if fabrication is not different from manufacturing, then he would need a variance, which was already denied. He stated that if they were different, then they could treat it as a different case. Mr. Hennessey asked the Board if they should consider the request for light industrial or something else.

Mr. Wing stated that at a previous meeting, it was determined that taking a product and turning it into another product would be considered light industrial. Mr. Hennessey stated his agreement.

Mr. Hennessey explained that if it were to be a nonunanimous vote, then he would ask both sides of the vote to state why they voted in the affirmative or negative. He stated that if it were unanimous, they would summarize.

Mr. Bergeron asked if they were going to discuss a site walk. Mr. Hennessey stated that he is familiar with the neighborhood and does not think a site walk is necessary. He explained he was more concerned with whether it was a general or a secondary business, whether the Board could give a special exception, or

whether the applicant needed a variance. Mr. Bergeron stated that if this were a variance, it would run with the land; with a special exception, there would be more restrictions that could be put on, including only one employee, no signs, no outdoor storage, no dumpster, no equipment, etc. Mr. Bergeron stated that the most significant issue seems to be the sound; he suggested doing the site walk so that the Board could hear the sound from the garage.

Mr. Hennessey stated he felt that this case would need a variance as it is light industrial work. He stated that it might have been different if the request for a special exception had come in first, but nothing had changed from the variance request.

MOTION: (Bergeron/Caira) To conduct a site walk on the property.

VOTE: (2-3-0) The motion failed.

Mr. Caira stated that he looks at the idea of fabrication differently. He stated that he looked at the size of the building and what he was doing there. He stated that he did not believe that a 24 x 40 foot area is a big area to work around.

Mr. Hennessey stated that someone had mentioned precedent. He noted that precedence isn't in the law. He stated that 20 x 40 feet is bigger than his house and believes that it is an indication that this is more than a side business. Mr. Welch stated that it is not a side business; it is his main business and primary income.

Mr. Stanvick stated that while he was not at the first hearing regarding the variance, he felt that the issue had already been decided. Mr. Hennessey replied that the request was coming in on a different rubric this time compared to the variance request. He added that changing the name of the request does not change what is being done.

CASE #ZO2022-00014

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| ROLL CALL VOTE: | Mr. Westwood | – | YES |
| | Mr. Wing | – | NO |
| | Mr. Bergeron | – | YES, Has to meet the noise ordinance criteria |
| | Mr. Hennessey | – | NO |
| | Mr. Caira | – | YES |

SPECIAL EXCEPTION APPROVED.

Mr. Hennessey explained the 30-day right to appeal.

DISCUSSION OF VOTE/FINDINGS OF FACT

Mr. Bergeron stated that as he went through the criteria, the only one that may have yet to be met was the noise level that would come out of the business. He stated they did not approve of the site walk, so he voted yes. Mr. Westwood noted that he felt all the criteria for a special exception were met completely. He explained that there was testimony that noise could not be heard when the doors and windows were closed. Mr. Caira stated that while abutters did come forward, a Town Official is on record stating that he did not hear excessive noise from the site. He added that there are no signs and that he drives by the property daily, noting that it is always neatly kept.

Mr. Wing stated that he voted no due to the noise level concerns brought forth by the abutters. Mr. Hennessey noted that he voted against it, as nothing has changed for him from the variance request.

DATE SPECIFIED CASE(S) – November 17, 2022

Case #ZO2022-00019 – Map 24 Lot 12-75 – PULTAR, Lisa & Shawn – Little Island Park

Case #ZO2022-00020 – Map 24 Lot(s) 12-67, 12-68, 12-69, & 12-70 – GLEASON, Michael – 7, 9, and two unaddressed lots on Little Island Park

SITE WALKS (S) – October 22, 2022

Case #ZO2022-00019 – Map 24 Lot 12-75 – PULTAR, Lisa & Shawn – Little Island Park

Case #ZO2022-00020 – Map 24 Lot(s) 12-67, 12-68, 12-69, & 12-70 – GLEASON, Michael – 7, 9, and two unaddressed lots on Little Island Park

ADJOURNMENT

MOTION: (Bergeron/Westwood) To adjourn the meeting.

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

The meeting was adjourned at approximately 10:43 pm.

Respectfully submitted,
Jordyn M. Isabelle
Recording Secretary