

**TOWN OF PELHAM  
ZONING BOARD OF ADJUSTMENT  
February 13, 2023**

Chairman Dave Hennessey called the meeting to order at approximately 7:01 pm.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**PRESENT ROLL CALL:** David Hennessey  
Jim Bergeron  
David Wing  
Jeff Cairra  
John Westwood  
Alternate Ken Stanvick  
Alternate Jason Goucher  
Alternate Matthew Welch  
Planning Director/Zoning Administrator Jennifer Beauregard  
Recording Secretary Cassidy Pollard

**ABSENT:** Alternate Shaun Hamilton

**MINUTES**

**January 9, 2023**

**MOTION:** (Wing/Cairra) To approve the January 9, 2023 meeting minutes as amended.

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

**REQUEST FOR REHEARING**

**CASE #ZO2022-00024**

**Map 30 Lot 11-152**

**THISSELL, Troy – 8 Gaston Street – Seeking a Variance concerning: Article III Section 307-7, 307-12 & 307-14 & Article V Section 307.19.A of the Zoning Ordinance to permit construction of a 24' x 24' 2-story garage on a pre-existing non-conforming lot that contains 3,274 SF where 43,560 SF is required and maintains 127' of frontage where 200' is required. The garage will also have a 3' setback from Gaston Road and a 5' setback from Campbell Road where 30' is required, and an 8' side/rear setback where 15' is required. Relief is also sought to permit the construction of a free-standing garage which is not customary, secondary, or incidental to any permitted principal use.**

Mr. Hennessey informed the public that requests for rehearing are based solely on the merits as submitted to the Board. He explained that the applicant and attorney submitted a number of reasons why they believe the Board was wrong to deny the case. He stated that it is up to the Board to decide if their arguments are meritorious enough for them to rehear it. Mr. Hennessey explained that the requests for rehearing are not

public hearings, meaning that there would be no public input. He stated expressed that those who were not there for the original vote, should not be voting or discussing this case.

### **DISCUSSION**

Mr. Wing stated that he doesn't believe the Board should rehear the case. He believes that the finding of facts were well thought out and well put together. He stated that he doesn't see any new evidence that would make him change his mind. Mr. Caira agreed with Mr. Wing stating that there is a lot of relief going on and that there were lots of talk about public safety and emergency issues and feels that the Board executed it properly. Mr. Bergeron concurred and stated that he doesn't see where the Board may have erred legally in their decision. He stated that the Board named several reasons why the variance didn't meet the five criteria, one of which being that a vested use had never been established. He believes that the Board did a good job and that the decision they made will hold. Mr. Westwood agreed with what has been said and would want the Board to maintain the decision that they made. Mr. Hennessey asked Mr. Stanvick if he had an opinion on this case. Mr. Stanvick replied that he would agree with what he had heard and doesn't see anything compelling to change the decision. Mr. Hennessey agreed with what the members of the Board have said. He believes that they thoroughly went through this case and paid attention to what the abutters thought, and that Mr. Wing did a great job laying of the findings of fact.

### **FINDING OF FACTS:**

- The Board felt they discussed the case thoroughly at the initial hearing.
- The Board did not find there was any new information submitted that they didn't consider.

**MOTION:** (Wing/Westwood) To not rehear the case.

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

### **APPEAL FROM AN ADMINISTRATIVE DECISION**

**CASE #ZO2023-00003**

**Map 6 Lot 4-175-1**

**PAWTUCKET ROAD LAND HOLDINGS, LLC – 32 A & B Valley Hill Road -APPEAL FROM AN ADMINISTRATIVE DECISION concerning: Article VII Wetland Conservation District, Section 307-39 Permitted Uses, of the Zoning Ordinance and the Code Compliance Official's Notice of Violation and Cease and Desist Order dated December 7, 2022 which states the owner filled in 2 jurisdictional wetlands and removed the 50 foot buffers.**

Mr. Bergeron recused himself from this case and Mr. Hennessey appoint Mr. Goucher to vote.

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

John Bisson from the law firm Cronin, Bisson & Zalinsky approached the Board. Mr. Bisson stated that he was there to continue the matter to the next meeting. He stated that the reason for the continuance was that his office has been in communication with Code Enforcement Officer John Lozowski and that DES has been looking at the underlying issues and that he expects a report back from DES in the not-too-distant

future. He continued that it is his understanding that DES is going to reach out to the Town to discuss the findings of the wetlands at issue in this case. He stated that it would be most productive to ask the Board to come back in a month so that they could continue to their conversations with the Code Enforcement Officer and DES with the hopes that they can get this issue resolved.

Mr. Hennessey stated that he had a letter from Ms. Beauregard confirming that Mr. Lozowski would go along with an extension. He explained that if there was no objection from the members of the Board then they should grant the extension to let them work out an agreement. He asked Ms. Beauregard for clarification on the letter as it stated that Mr. Lozowski would be extending his order to March 1<sup>st</sup>, which is prior to their next meeting. He asked Ms. Beauregard if they were extending the Cease-and-Desist Order to March 1<sup>st</sup> or to the next meeting. She replied that Mr. Lozowski was there but that it was her understanding that it was March 1<sup>st</sup>, and that if they were to come to an agreement by March 1<sup>st</sup>, then they would be at an impasse by the time they meet before this Board.

Mr. Hennessey invited Mr. Lozowski to approach the Board. Mr. Hennessey asked Mr. Lozowski if he was extending his order to March 1<sup>st</sup> or to the next meeting. Mr. Lozowski confirmed that it was until March 1<sup>st</sup> because he's looking for a meeting sooner rather than later with the engineer of Mr. Bisson's client, the Town's engineer, and the Planning Director to come up with a solution. He stated that he didn't want this to drag out much further than that. He explained that he asked permission from the Town Administrator to extend it to March 1<sup>st</sup>. He stated that he could ask for permission to extend it further as he doesn't see and issue with it.

**MOTION:** (Caira/Wing) To extend hearing to the next meeting.

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

**CASE DATE SPECIFIED TO MARCH 13, 2023.**

Mr. Bergeron rejoined the Board.

### **CONTINUED HEARINGS**

**CASE #ZO2023-00001**

**Map 22 Lot 8-26**

**BONUGLI, Vincent – 160 Main Street – Seeking a Variance concerning: Article VII Section 307-37 & 307-39 & Article III Sections 307-8 C & 307-12, Table 1 of the Zoning Ordinance to permit: A 18'10" x 48'4" addition that consists of a garage with living space above, on a lot with less than 1 acre and less than 200' of frontage, that encroaches on the WCD and lot line setbacks. The building is proposed 26.1' from the front property line where 30' is required and the right rear corner of the proposed building is 14.6' from the side lot line where 15' is required and 44.7' from the edge of wetland where 50' (WCD) is required.**

Mr. Hennessey apologized to the applicant for not making the site walk. He stated that the abutters had been read at the last meeting and that a site walk was done that he did not attend but that he has been by the applicant's house and that he knows what is being talked about. He asked applicant if he had any comments. Mr. Bonugli expressed that he thought the variance should be approved because he feels that he is only asking for a minimal amount of relief on the setbacks and WCD buffer. He stated that he did make a

compromise with conservation on site about not maintain a certain area of his property to give more of a buffer zone for the stream.

Mr. Wing explained that the compromise that was worked out between the Conservation Commission and Mr. Bonugli is in the packet the Board received. Mr. Wing read the letter from Conservation into the record. See attachment A. Mr. Hennessey asked Mr. Stanvick who is an alternate on the Board and who also sits on the Conservation Commission if that was his understanding of the compromise. Mr. Stanvick replied that it was. He explained that when they got to the site and observed what was going on, it wasn't clear to the homeowner what could or couldn't be done in the WCD. He stated that once he explained the situation that it was a spontaneous agreement that they could get this done. Mr. Hennessey stated that it was his understanding that Conservation voted 5-0 in favor of this proposal. He explained that there is no statutory relationship with the Conservation Commission, however they always welcome their input on cases like this where wetlands are involved. He stated that in this case there was a formal vote on this proposal.

Mr. Hennessey opened the floor to the public. No one came forward that was in favor or in opposition to this proposal.

Mr. Welch stated that he had a question about the septic design. He explained that it was talked about at the last meeting as well as the site walk and noted that as part of the addition there would be an addition of bedrooms. He asked Mr. Bonguli if his current home was two-bedrooms. Mr. Bonguli replied that it was. Mr. Welch stated that the plans he sees for the new septic are for a two-bedroom septic. Mr. Bonguli stated that there is a discrepancy with that and he will be fighting it. He stated that he has three different plans and that the septic is actually designed for three-bedrooms. He explained that one was approved and that two of them were denied. He stated that the septic is for three-bedrooms but for some reason it wouldn't be approved for three-bedrooms. Mr. Welch asked if Mr. Bonguli knew why that was. Mr. Bonguli responded that he wasn't given an answer and is going to fight the denied designs. He stated that in the meantime he would eliminate a bedroom from the main house and turn it into a den and add a master bedroom in the addition.

Mr. Hennessey explained that they could stipulate that the applicant could not have more than two-bedrooms in the house. He stated that they could also stipulate that final approval of the variance be conditional upon receiving a three-bedroom septic design. Mr. Bonguli questioned if he could eliminate one of the current bedrooms and explained that what makes a bedroom a bedroom is a closet. Ms. Beauregard agreed and added that it also being used as a bedroom would make it a bedroom. She stated that the Planning Department would stipulate any building permit regardless of the variance or not that it is not to exceed the number of bedrooms that the septic design has. Ms. Beauregard offered a third option to the Chair suggesting that the house can not contain anymore than two-bedrooms until additional approval is received from the state. Mr. Hennessey asked Mr. Bonguli if that would be okay with him. Mr. Bonguli replied that it would be.

**MOTION:** (Welch/Westwood) That the house is not to exceed the number of bedrooms on the State Approved Septic Design

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

Mr. Hennessey closed the floor to the public. He stated that they would be going through the variance voting slips as a means of structuring the finding of facts. He informed the Board that alternates could participate in discussion but could not vote.

## **DISCUSSION**

- 1. & 2. The variance will not be contrary to the public interest because; and the spirit of the ordinance is observed because:*

Mr. Wing stated that in his observations it wouldn't be contrary to the public interest. He explained that it doesn't alter the character of the neighborhood and that with the consensus of the Conservation Commission it doesn't seem to pose a health or safety violation. Mr. Caira agreed and stated that the biggest concern for him was the Conservation Commission and that they really helped a lot on this case. Mr. Welch stated that the biggest reason for continuing this case to this meeting was so Conservation could come out and get a look because the encroachment in the WCD was the biggest concern of the Board. He explained that having their unanimous approval of this proposal would indicate that we should let them proceed. Mr. Bergeron explained that this lot is an older lot of record that is smaller than an acre and preexisted zoning. He stated that the impact to the WCD is only 5' 4". He expressed that the most important fact of this case is that the land is surrounded by Town owned land on the east and the south so there is no injustice that would be done to a neighbor or an abutter. He stated that he doesn't believe that the spirit or intent of the ordinance would be hurt by this proposal. Mr. Westwood stated that he would agree with everything that has been said. He stated that the Board did a great job from the start with this case and doesn't see a reason why they shouldn't vote yes for this proposal. Mr. Stanvick stated that this was a win-win for everyone, for the property owner as well as the Town. Mr. Goucher agreed stating that he doesn't see anything wrong with the project in any way.

- 3. Substantial justice is done because:*

Mr. Goucher stated that he doesn't see a reason to say that its not. Mr. Hennessey stated that Conservation has been terrific. He explained that they are not bound by Conservation, but that the Board does listen to them. He stated that when Conservation comes out with a 5-0 vote in favor of this proposal he sees it as pretty significant.

- 4. The values of surrounding properties are not diminished because:*

Mr. Hennessey stated that he believed that Mr. Bergeron articulated this very well and that most of the land surrounding this property is Town owned. He stated that the Town values aren't unimportant but it's different then somebody's home values being affected. Mr. Bergeron explained to the Mr. Hennessey that the sideline setback is 14.6' where 15' is required so they're talking inches and not feet. He stated that he doesn't believe 4" would affect the Town's property value.

- 5. Owing to special conditions of the property that distinguishes it from other properties in the area, denial of the variance would result in unnecessary hardship because:*

- (A) no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because?*
- (B) If the criteria in subparagraph A above are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from*

*other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Mr. Wing stated that he believes there is a hardship on the property as it is smaller than an acre and it preexisted zoning. He explained that it's close to the wetland which is prohibiting him from fully developing his property. Mr. Westwood stated that usually when people have a problem with what is looking to be done, they usually come forward to object, but no one has come forward to object this proposal. Mr. Bergeron stated that the hardship is obvious as the property is surrounded by Town land so there's no impact to neighboring abutters and that he sees that as being unique.

Mr. Hennessey asked informed that Board that they would be doing a straw vote and that all those in favor should raise their hands. All voting members raised their hands.

#### **FINDING OF FACTS:**

- The Board found that approving this would not be contrary to the public interest.
- Granting of this variance does not alter the character of the neighborhood.
- The Conservation Commission supported this variance unanimously with the agreed upon condition.
- This was a lot of record that pre-existed Zoning Regulations making it smaller.
- The side setback is only short of the required setbacks by inches and the WCD encroachment is only 5'.
- The lot is surrounded by Town land.

**ROLL CALL VOTE:** Mr. Westwood – 5 yesses, final vote “YES”  
Mr. Bergeron – 5 yesses, final vote “YES with stipulations”  
Mr. Hennessey – 5 yesses, final vote “YES”  
Mr. Ciara – 5 yesses, final vote “YES with stipulations”  
Mr. Wing – 5 yesses, final vote “YES with stipulations”

(5-0-0) The motion passes.

Mr. Hennessey reminded the applicant that there is a 30-day right to appeal.

#### **HEARINGS**

**CASE #ZO2023-00004**

**Map 15 Lot 8-66**

**SLAVIN, Carol A. 2013 Revocable Trust – 27 Balcom Road – Seeking a Variance concerning: Article III Sections 307-12, Table 1 & 307-13(A) of the Zoning Ordinance to permit a subdivision of applicant's existing lot containing approximately 1.58 acres into 2 lots, one lot with an existing house containing approx. 0.79 acres where 1 acre is required, and one lot proposed for new construction containing approx. 0.78 acres where 1 acre is required.**

Mr. Hennessey stated that he and the applicant did real estate business together over 45 years ago and didn't see this as a conflict and would not be recusing himself from this case.

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

Mr. David Groff of 79 Bridge Street and Mr. John Slavin approached the Board. Mr. Groff stated that Mr. Slavin's wife is the trustee of the trust that owns the property at 27 Balcom Road which at the apex of the circular end of Balcom Road. He stated that he recognizes that this is an unusual request since it is a conforming lot with a house and they are asking the Board to take that conforming lot and turn it into two non-conforming lots. He stated that despite it being an unusual request he heard a story and decided that he should bring it before the Board. He explained that this lot was created in a subdivision in 1962 and is now 60 years old. He explained that Mr. and Mrs. Slavin have lived there since 1972 and that they are the original owners who have lived there for the past 50 years. He explained how the Slavin's know everyone and like everyone in the neighborhood. He expressed that over the past couple of years Mrs. Slavin has had some medical issues and needs care. He stated that because of that they are looking to downsize while remaining in the neighborhood. He acknowledged that there were other ways to go about this but what the Slavin's want is to build a smaller home on the new lot next to where their current house is and move into that so that they can stay in the neighborhood. He stated that this was the underlying story of why they are asking the Board to create two non-conforming lots. He stated that the request is to take a lot that's a little over 1.5 acres and split it into two almost 0.8 acre lots and that the only variance request is lot size. He explained that the lot has quite a bit of frontage and a enough room to meet the setbacks with no WCD impacts. He informed the Board that there is a new State approved septic design for the new lot in their packets. He reiterated that the only variance request is for lot size and that the requested size wasn't as small as pond lot or a half-acre lot.

Mr. Groff read the five criteria for a variance into the record.

Mr. Hennessey asked for clarification on the essence of the hardship. He read from the variance criteria that the configuration of this lot differs from the other lots in the neighborhood and has extensive frontage on Balcom Road. He stated that this sentence stuck him as unique but wanted to know what makes it different in the neighborhood. Mr. Groff explained that the tax map shows that the lot is 1.6 acres at the apex of the oval and has 520' of frontage which is over 100' more than any of the other lots in the neighborhood. He stated that the lot closest to this is the lot next door which is slightly smaller and has 447' of frontage. He explained that there isn't any land available to expand this lot as all the lot lots are developed with single family homes. He stated that the lots across the street are all impacted by wetlands and that the lot in question has no wetlands on it. Mr. Hennessey explained to Mr. Groff that it is his understanding that in the 20 years that he has been on this Board that they have never really approved making two nonconforming lots out of a conforming lot. Mr. Groff stated that he doesn't remember ever presenting one, but he believes that there may have been a couple granted due to odd circumstances such as a right-of-way. Mr. Hennessey stated that the frontage argument helps a little bit since the separation from the neighbors is at least as great as any of the conforming lots in the subdivision. Mr. Groff stated that was correct. He explained that this isn't a 4,000 or 6,000sqft lot that they are trying to build a house on and that it is a lot with substantial acreage with plenty of room to meet front and side setbacks as well as the well radius making it an unusual circumstance.

Mr. Caira asked Mr. Groff what the square footage of the new house would be. Mr. Slavin responded that it would be about 1,800sqft. Mr. Caira questioned about needing to go to the Planning Board for their approval when he saw in criteria one and two for a variance that the lot has a State approved septic design and Subdivision Approval. Mr. Groff responded that that was correct and that DES needs to grant approvals too that are separate from the Town but that they would need to go in front of the Planning Board for their approval. He stated that it helps to have the approval from the state because that would be a requirement

before anything could be built. Mr. Caira asked if an ADU could be done instead. Mr. Groff brought up a an after the fact detached ADU that he did on Collins Way. He stated that they built a massive garage with an in-law apartment above it that had an elevator in it for the elderly parents which isn't a situation that would work out for the Slavin's who just need a single level.

Mr. Bergeron stated that it is unusual for this Board to set aside Zoning when there are other opportunities. He explained that Mr. Groff mentioned that this lot has enough frontage, but we lot size by soil types and there is a minimum lot size of one acre and those are entirely separate things. He stated that when he looks at the tax map there are over 15 lots in this subdivision and the roads off of it that are well over the size of this lot and there are 12 that are at about an acre and none less. He stated that it would be an anomaly for this Board to try and set aside Zoning for an acreage size when Mr. Caira referred to a detached ADU which would be a viable option for a lot this size. He explained that he would be reluctant to say that this would be something that the Board would get in the custom of doing. Mr. Groff agreed with Mr. Bergeron that there are larger lots, but that those larger lots across the street are impacted by wetlands and that's probably why they were created that way, but this particular lot doesn't have that issue. Mr. Bergeron replied that it still doesn't set aside the one-acre minimum requirement. He explained that the lots across the street broke down to an acre and all conformed to Zoning and that this lot isn't any different. Mr. Groff explained that he doesn't know what they broke down to in 1962 as he didn't look back at the Zoning Ordinance, but he believes it was an acre when it was originally created and has stayed that way until now. He stated that he thinks the only difference is the contiguous square footage and the frontage on the roadway where the driveway comes in. He explained that he think these two changes are really the only changes to the Zoning Ordinance since it came about in the 50's.

Mr. Hennessey opened the discussion up to the Public.

David Wilkerson of 30 Balcom Road came forward to address the Board. Mr. Wilkerson explained that he is the lot directly across the street and that when he looks out his front window, he sees the current house and an area to the right that has trees on it that already looks like its another lot. He stated that that's the area that Mr. Slavin is looking to build. He explained that he doesn't see it as presenting any significant visual difference to what's already there and expressed that it made him think why wasn't there a house there already. He stated that he walks around the loop frequently and that that whole end of the loop is very strange because once you pass Mr. Salvin's driveway there is nothing on the left as you go around. He explained that there is a section belonging to one of the abutters that has a Quonset hut with a deuce-and-a-half on it and then you come to the next house. He stated that it is a strange thing in the neighborhood to not see a house there. He expressed that he doesn't see it as being disadvantageous to the neighbors and that only ones really affected would be the neighbors diagonally across from his house and the unused portion of that belongs to the other direct abutter. He stated that there may be alternatives, but from his observations if he sold his home to move into one of the alternatives in our Town then he would be spending more than what he got for his house to move into it and doesn't see that as a very attractive alternative. He explained that he would cherish the opportunity to keep Mr. and Mrs. Slavin in the neighborhood for as long as they can realizing that neither of them will be there forever, but it is the kind of neighborhood that we want to see in Pelham. He stated that he is very much in support of this if the Board could find a way to make it happen. He explained that variances are variances because you're stepping out of the predefined lines and that he is okay with it as an abutter.

Lucy Wilkerson of 30 Balcom Road came forward to address the Board. Ms. Wilkerson explained that she lives diagonally across the street from the Slavin's and that she can't imagine the neighborhood without



them. She explained that the property and its grounds are immaculate and that if something goes wrong in that house then Mr. Slavin is on it. She stated that they have lived there for 28 years and that the Slavin's are and have always been the perfect neighbors. She explained that everyone on the road knows the Slavin's and with Carol having her medical issues the neighbors at the top of the road would be calling her to see if Carol was alright if they saw an ambulance go down the road. She stated that for them to not be there would be odd and that the location of where they want to put the house is pretty unattractive right now and she wouldn't have a problem with it. She reiterated that they are the type of people that you want to have as a neighbor as they are very conscientious about their property as well as the wellbeing of their neighbors.

Thavary Thach of 32 Balcom Road came forward to address the Board. Ms. Thach explained that she is the next door neighbor of Ms. Wilkerson and is directly across from the Slavins. She stated that she would love to keep them in the neighborhood forever and doesn't want to see them go anywhere. She stated that she agrees with what the other abutters have said and that it is a weird corner that currently looks a bit empty, but if this were to get approved it would fill in that emptiness on the corner. She explained that it is a tight knit street where the neighbors are close and know each other and that her family adores Mr. Slavin.

Mr. Hennessey closed the floor to the Public.

Mr. Stanvick stated that there is no debate as to how good or bad of a neighbor Mr. Slavin is, but his question is that they are going to take an existing conforming lot and recommend to break it into two pieces which is a forever thing. He stated that what they're looking at in the long run is a short term situation with a great neighbor with a lot of support for them to stay where they are, but once the Board creates that nonconforming situation it's going to be there forever. He explained that he is concerned about the short-term impact of this, but more so the long term aspect of it because once the Board decides to make that change it's a permanent change. He stated that neighbors come and go and that people are more transitory in this day and age, so once that situation gets changed, there is now a permanent non-conforming situation left. Mr. Hennessey agreed and stated that that is probably the crux of the issue. He stated that he is familiar with the neighborhood and the property and when they talked about that corner and how they almost expect a house there. He acknowledges that if we grant this variance it runs with the land and in 100 years from now there will be two lots there, but that section of his property does look like it cries for a house. Mr. Stanvick asked for clarification on that because if he sees a section that has trees on it in Pelham, NH it's not an exception but rather an expectation and that he doesn't understand how it begs to have a house there. Mr. Caira informed the Chair that he also hasn't seen the property and can see where Mr. Stanvick is coming from. Mr. Hennessey agreed and explained that this neighborhood is a walking neighborhood and that the reason we have Zoning is based on soils, adequate living space between properties and what have you. He explained that on this particular lot because it doesn't have wetlands, the useable space is equivalent to many of the other homes in that neighborhood. He stated that in some cases we use land area on terms of elevation on terms of size, but the living space on these two lots if we approve the variance would be equivalent to many of the other properties in the neighborhood. He stated that he doesn't believe it affects values, or changes the character of the neighborhood. He stated he hasn't seen Mr. Slavin for 30 years and that he is not friends with Mr. Slavin, but that he knows this neighborhood and it doesn't change the nature of the neighborhood. Mr. Stanvick requested a site walk to see what Mr. Hennessey is talking about.

**MOTION:** (Caira/Welch) To conduct a site walk.

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

The site walk was set for Saturday February 18<sup>th</sup> at 9:00 am.

The case was continued to the March 13<sup>th</sup>, 2023, meeting.

**CASE #ZO2022-00018**

**Map 23 Lots 11-343 & 11-344**

**16 SPRINGDALE LANE REALTY TRUST – 16 Springdale Lane and an unaddressed lot - RE-HEARING – 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, 10' 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' lake side setback is required in the Residential District.**

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

Mr. Joe Maynard from Benchmark, LLC and Joost Verhofstad, one of the owners of 16 Springdale Lane, approached the Board. Mr. Maynard reminded that Board that they were in front of them last fall seeking the same variance. He explained that there are two pieces of property, one on the lake side of the land with an existing structure on it. He stated that that lot is about 4,625sqft in size. He explained that there is a rear lot with a shed or an old privy as well as a gravel parking area. He explained that this lot is about the same size as the lake side lot and that both properties have some impervious coverage. He stated that the lots are at the very end of Springdale Lane. He informed the Board that Springdale Lane is an old 1920's paper road that services a dozen camps of year round and seasonal status. He explained that the abutter to one side is strictly the Girl Scout camp that will probably never be developed in a fashion that would be seen for something in this area. He mentioned that at the last meeting with the Board there was a lot of discussion about overcrowding and the area in general. He stated that there is nothing on the west side of the lot, nothing on the north side of the lot, and nothing on the east side of the back lot. He explained that there is one direct abutter at 14 Springdale Lane which has a home on it that is about 794sqft in size that received a variance in 2016 to rebuild a shed as a garage. He stated that it was granted after the fact, meaning that had already built it, got caught, then came in and saw this Board and received the relief for it. He stated that the garage structure is a little over 300sqft, which puts the neighboring buildings in proximity to their lot lines at almost 1,100sqft. He explained that the house before it at 12 Springdale also has a home on it and that home is 960sqft in size. He explained that the house they are looking to construct is 37'4" x 24'10" for a total of a 920sqft footprint. He stated that they are around the same size of the two closest abutters and that they are not asking for anything bigger than what is in their proximity.

Mr. Maynard explained that the relief they are seeking deals primarily with the building setbacks. He stated that the existing structure on the lake side lot sits 1' off of the Girl Scout land, 31' from the pond, 16' from the southeasterly lot line, and 51' away from the limits of the right-of-way known as Springdale Lane. He explained that they are looking to move this new home further back from the pond and closer to that 50'

setback that the State looks for. He stated that in this proposal they are looking to be 3' off the Girl Scout land. He stated that the property has a perfect slope for a walkout foundation, meaning an 8' foundation wall on the street side and a 4' frost wall on the sides and closest to the pond. He explained that they are looking to be 10' off the paper road and that because they are pulling the house away from the pond and that it is the last house on the road that setback is lessened as they would really be the only ones using that portion of the road. He stated that the closest setback is to the abutter at 14 Springdale Lane which is 14' to the overhang of the roof and 13' to the foundation. He explained that the Town doesn't have any impervious coverage or building coverage to say if the house is too big or too small and that it is in tune with what would have to be built at a minimum to make the value of the land and the cost of the construction viable. He stated that there are Shoreline Protection thresholds with different levels, with impervious coverage up to 20% is one level and 20-30% in another level. He stated that you can go over 30% but the calculations and requirements become extreme and that in this case the front lot is just under that 30% impervious coverage.

Mr. Maynard explained that his client is willing to put a deed restriction between the front and back properties so that they would be considered one lot. He stated that they are also willing to put a stipulation on the rear lot so that it can never be developed as a living unit, which is not the purpose of what they are looking to do on that lot. He explained that they are looking to put a 24' x 24' garage with a workshop above it on that lot. He stated that the garage would meet the 15' setback to the Girl Scout land and meet the rear setback as they are 25' to the rear lot line. He explained that they are looking for relief for the southeasterly lot line as it would be an 8' setback and the front lot line as it would be 18' from the right-of-way. He stated that this lot would have impervious coverage of 29%.

Mr. Maynard explained that the septic system is currently an old cesspool down close to the water and there is an old outhouse or privy on the back property. He stated that as part of this application they would be installing a new clean solution septic system along with a new well. He explained that the new septic would meet all the Town guidelines as well as the State guidelines for setbacks and things of that nature. He explained that their impervious coverage threshold is just under 30% and when you look at the house to the side of them they are at 70% impervious coverage. He explained that the character of what is around this lot is more developed than what they are looking to develop. He stated that the neighboring structure sits around 7' off the common lot line and that the variance that was granted for the garage it stated in their application that they were 30" off the lot line.

Mr. Maynard explained that they would be razing an old home that sits close to the water that currently has a substandard septic system. He stated that a new and improved septic system would be installed and that Shoreline approval would be granted for something like this. He explained that old lake lots have certain developments that don't meet any standards, especially from a drainage perspective where they don't have any measures in place and everything flows right off the lot and into the pond. He stated that in this case they are proposing infiltration for the roof being drip line trenches on both the house and detached garage. He explained that it would not only help the overall flows from the property but it will also mitigate some of them.

Mr. Maynard stated that the last time they came in front of the Board there was talk about not meeting the spirit and intent of the Ordinance, especially in regard to 307-8(C). He explained that 307-8(C) talks about nonconforming uses and extending those uses. He stated that the lot is a 44" wide piece of property that they are trying to build a 24' wide house on. He explained that most of the lots around this pond do not meet most of the standards, especially from a setback perspective.

Mr. Maynard explained that he reached out to Planning Director Beauregard and attended the Highway Safety Committee Meeting where they reviewed this application. He stated that they had another site walk on Springdale Lane on Thursday the 9<sup>th</sup> where the Fire Chief went down had some concerns. He stated that the Fire Chief had a lot of concerns about Springdale Lane itself being that it is about a 12' wide paved surface with trees right off the edge of pavement. He explained that as part of the discussion he sent his client knocking on the doors of neighbors that have Springdale Lane traversing through their lots, particularly those on Webster where there is an easement for Springdale Lane at the back of those lots. He stated that Springdale Lane doesn't have a formal easement and it is more a prescriptive thing meaning it has been there forever and always. He explained that to satisfy the concerns of the Fire Department they had mentioned cutting back the vegetation 4-5' off the edge of pavement on Springdale Lane. He stated that his client knocked on doors and that everyone he had spoken to so far agreed and was okay with him doing this work to help improve the road itself.

Mr. Hennessey asked how they would memorialize an agreement among the neighbors and the client as there is no association and nothing binding that they could be asked to sign. Mr. Maynard explained that when those lots were created 20 years ago, they show Springdale Lane, but what should have happened was that Springdale Lane should have been given a permanent type of easement with specific allowances for improvements to it. He stated that the problem now is if you were to knock on doors and ask people to sign a permanent easement on this, it that you can't just have them sign it, you would have to go to their lender and have them release it from the mortgage. He explained that its one thing to knock on doors and agree to wanting to clean it up and maintain this, but as more and more people are living down on Springdale Lane on a year-round basis that the access way would be maintained a little better than it has been in the past.

Mr. Maynard explained that when he first started working down there about 20 years ago it was a cow path with little camps. He stated that since then, one abutter purchased two or three acres and clear cut the back land. He explained that they subdivided a lot off for his son and were granted approval for him to build a new house for himself down there. He explained that there is some control because it was a condition of his approval to create a hammerhead at the bottom for fire apparatuses. He stated that the hammerhead has not yet been constructed, but the hold up with is has been the moving of utilizes poles that were not within an easement. He explained that the power company came and moved the poles, but that they haven't moved the wires yet. He stated that once those wires are moved then the hammerhead would be constructed and that the plans for that are shown on the subdivision plans when they broke off the acre for his son.

Mr. Hennessey asked Mr. Maynard how he would propose to connect that hammerhead and the approval of the public safety agreement to the proposed variance here. Mr. Maynard replied that it would be subject to being accomplished prior to the certificate of occupancy, because you would be holding them up on their certificate of occupancy if they can't get the things that they promised done they wouldn't be able to get their occupancy permit. Ms. Beauregard mentioned that she believes that's what the condition was on that hammerhead and that that particular house is conditioned on that hammerhead being put it. Mr. Hennessey asked if the Board would attach the same kind of condition to this variance. Ms. Beauregard stated that in addition to the Board approving the variance, the Fire Chief or Fire Department would still have to sign off on a permit as well. Mr. Hennessey stated that whether they make this a stipulation or not, it would still be dependent on the Safety Committee approving it.

Ms. Beauregard stated that it would be the Fire Department signing off on the building permit as well as the CO. She explained that she doesn't believe it is the intent of the Fire Department to take anyone's property within those 5', but rather to clean it up and get any obstructions out of the way. She explained that there are so many obstructions and that especially with snow it just makes the road smaller. She stated that the Fire Chief was concerned with the people already living down on Springdale Lane and with the road being widened and the obstructions being removed that it would greatly improve the safety of the entire neighborhood. Mr. Hennessey asked if the Board would stipulate that that work must be done and that the hammerhead and the widening all has to be there in order to satisfy the Fire Chief.

Mr. Verhofstad explained that he spoke to the owners of the pie shaped lots and the land to be cleaned up is in the back of those lots. He stated that some of the neighbors stated that if he has to do it then that would be fine and others were asking how they could help, and that they were all very supportive. He stated that those neighbors realize that the Fire Department has to be able to get down there and that they are being realistic. He stated that there was no issue with getting permission from those people and that they just need to get organized and get it done.

Mr. Stanvick asked how one would legislate something like this where he sees the initial enthusiasm, but then the question becomes maintenance. He asked how do you insure that the clearing of the brush gets maintained after all of this is done. Mr. Verhofstad replied that the Fire Chief has a lot of power. Mr. Stanvick asked if that was a fact. He stated that once you agree to this situation without a maintenance clause or something built in, can the Fire Chief suddenly decide he doesn't like the road anymore? Mr. Verhofstad replied that that's what he did when he went down there.

Mr. Maynard stated that he believes that this is step one, and that step two would be to go to the Planning Board and then step three would be to go to the Selectmen and then in the end they would have to sign the liability release that needs to be signed when you build on a private road. He stated that there are a lot of other logistics above this that must be gone through.

Mr. Maynard explained that out of all the people that he has worked for down there that Mr. Verhofstad is the first one to take this by the reins and knock on doors and talk to people about actually doing some improvements to Springdale Lane itself. Mr. Maynard stated that one of the houses down there was one of the first houses on the pond in the 1800s. Mr. Verhofstad stated that the house right next to his 14 Springdale Lane is over 120 years old and was the first house on the pond with a similar footprint and similar size lot. Mr. Maynard stated that he believed that it was already established under the prescriptive rules and that the whole gray area in the law deals with the maintaining of prescriptive roads. He stated that he sees it all the time that the more people live down there the better the roads ultimately become.

Ms. Beauregard added that the Fire Chief has never said or alluded to that he would not attempt to go down that road. She stated that if there was an emergency that they would go down that road and that it's a matter of how quickly they can get there, if they can make it without getting stuck, and make it around some of the obstructions. She explained that they would not just decide that they didn't like the road and not go down the road.

Mr. Hennessey explained that they would be improving the neighborhood greatly by getting this done if it gets done. He stated that this would absolutely have to be a condition and that it is a condition whether they its part of this variance or not or if Planning Board imposes it. He stated that in the interest of the Town it is probably in our best interest to go ahead with this.

Mr. Maynard reiterated that he is the first client to start knocking on doors. He stated that the effort it takes just to go through this his client is putting into it. He also mentioned that his client and his wife sit on the Little Island Pond Association.

Mr. Wing read from the Highway Safety Committee meeting minutes that the Fire Chief's recommendation of widening the road by 5' on each side would make a big difference, and asked if they were widening the road by at least 10'. Mr. Maynard responded that they would be cutting the vegetation back 5' from the edge of the pavement. Mr. Wing asked him to describe the vegetation. Mr. Maynard stated that it was a variety of vegetation and goes from a 3" trees to a 20" tree that sit directly adjacent or within that 5'. He explained that there is one tree in particular that has been hit a bunch of times so its dying, so there is probably a couple of decent sized trees that would have to come down. Mr. Wing asked if that would change how much gets absorbed by the soil. Mr. Maynard replied no not necessarily. He stated that from a drainage classification you are going from woods to just grass for the most part and that the coefficient of change between those two would be miniscule. He explained that the soils get much better the further you go down Springdale towards the pond and are all sand and gravel.

Mr. Welch asked about the hammerhead that the neighbor is constructing and if it was binding forever. Ms. Beauregard stated that the neighbor has already agreed to it in terms of his variance that was granted. She explained that as part of his approval for occupancy that is something that has to happen. Mr. Welch stated that he was thinking that if that neighbor sold that property and the next person doesn't want the property being used for this and could a next property owner decide that they don't want that. Ms. Beauregard explained that not if they want to build the plan that was approved, otherwise they would have to come back to this board. Mr. Maynard added that they would have to get it released from the original approval and that it was Planning Board that put that on.

Mr. Maynard reiterated that his client is willing to put a deed restriction on the property that they will be considered one lot and that no development of the back lot for any other reason then the garage will be allowed. He stated that he believes this would hold up better than any kind of approval because the owner is putting the restriction on.

Mr. Maynard read the five criteria for a variance into the record.

Mr. Verhofstad thanked that Board for allowing him the time to give them his perspective on the proposal. He stated that they are trying to build something that is in style with the neighborhood. He explained that the two houses next to him, one of which is 120 years old and the other about 100 years old have bigger footprints than what they are proposing. He stated that is was not one of the McMansions that you would see further up Springdale Lane and that they are trying to fit in with the style of the neighborhood. He explained that the neighbors are very happy, supportive and very willing to participate with everything they want to do. He stated that he and his wife are extremely active with the Little Island Pond Association. He explained that they helped found it and spend an enormous amount of time with them working with the people who do weed control in the area as well as DES. He stated that they are fundraising to do a big watershed analysis to analyze everything that goes into the pond and that it is an expensive project. He explained that they are active as an environmentalists and are members of the National Wildlife, National Parks Foundation and he really believes in preserving what they have on the planet and that they do really care about the pond. He stated that he also wanted to exercise his right to build an acceptable house on this lot and really cares about the feedback because he wants to do this right. He explained that he heard a lot of concerns about overcrowding and that overcrowding is a relative term. He stated that it means one thing

in the city and another thing in a rural area. He explained that when you look at these ponds there have been 50' x 100' lots for over 100 years with houses that are close together which is pretty common. He stated that compared to a lot of the houses on the pond his house has a lot more privacy than most of those houses. He explained that the way the house is situated that the house has a lot of privacy and that it is a two bedroom house like how the houses have been built there for 120 years. He stated that the houses are close together, but its not like the city it is lakeside living. He explained that he wants to do his best to be compliant and meet all norms and standards. He explained that if he is to look at the standards surrounding the ponds, he finds it hard to see how they would be overcrowding because there is a lot of privacy on his lot.

Mr. Hennessey stated that at the last hearing they had for this they had looked at using a cost analysis to look at overcrowding because of the smaller lots and smaller houses. He explained that there is an example of that from the Housing Board with approving workforce housing within this Town. He stated that Mr. Maynard mentioned the cost analysis earlier, it was mentioned the last time they met in front of the Board, but he didn't use it in the hardship argument tonight. Mr. Maynard replied that it has more hardship on its own then if he was to put a value on it, mostly because the lot is substandard and there is no way to buy additional land to make it meet the Ordinance. He stated that the cost goes hand in hand with these pieces of property because they are not the cheapest to develop because they are constantly bringing material out and bringing material in and that the sitework numbers alone expeditiously grow. He explained that the lot itself has the hardship and that he shouldn't need to argue money. Mr. Hennessey asked if he was choosing to not make a cost argument under the hardship. Mr. Maynard responded that he doesn't believe it needs it just because of the size of the lot.

Mr. Bergeron asked Mr. Maynard how big the existing structure is. Mr. Maynard responded that it is roughly 450sqft in size. Mr. Bergeron asked how big the new structure would be. Mr. Maynard responded that it would be 926sqft. Mr. Bergeron asked about the 192' porch on one end and the 138' deck on the other. Mr. Maynard replied that it was living space that he was using in the calculations. Mr. Bergeron stated that he was talking about increasing the nonconformity in area so that would be 1,255sqft. He asked if 450sqft to 1,255sqft is the increase in nonconformity. Mr. Maynard replied that under current building code standards you can't build 455sqft anymore, there is a minimum standard in the building code. Mr. Bergeron stated that there is a lot with no use on it that is to the north of this lot where they are proposing a 24' x 24' garage, which would put the total of the two up to a 2,000sqft increase. Mr. Bergeron stated the Mr. Maynard made a comparison after he stated that information but didn't do a cumulative result of the footage increase of nonconformity. He stated that Mr. Maynard then talked about the abutters and the biggest abutter named was 960sqft. He explained that their proposal is 2,000sqft. Mr. Maynard stated that he was comparing apples to apples and that he was comparing the building footprint and wasn't taking into consideration the decks.

Mr. Bergeron stated that in this case you are going to a lot where there is no use at all and putting a use there that is not vested. He explained that this property is no different than any other piece of property anywhere in this Town that is not developed yet and doesn't have a vested use on it. He stated that the New Hampshire Constitution guarantees you the right to continue in the present form, but its after that that these boards exist to deal with those issues, not to be overly restrictive but to be practical about how we look at these things. He stated that this isn't the only lot that exists down there with nothing on it, and that there are dozens upon dozens of them down there and if we start with this down there then he sees the Board going down a slippery slope. He stated that there is an empty lot where you want to increase the total nonconformity to close to 2,000sqft where the closest nonconformity is 960sqft and he sees that as well beyond

the spirit and intent of 307-8(C). He stated that the other thing he noticed was the lot has slope of 8%. He explained that this nonconformity is over and above what the soil-based requirements of a lot require and regardless of how old it is this lot is no different than any other piece of property that is not developed. Mr. Bergeron explained to the Board that when there is a lot with no vested use on it, that it is no different to him than any other lot whether it be 1,000 acres or 0.1 acres it has potential based on the current Zoning. Mr. Bergeron stated that the other lot is a different animal as it has a use on it and that has to be protected and preserved and be made better. He stated that for those reasons he would probably be resistant to this variance.

Mr. Hennessey opened the floor to the Public. No one came forward to address the Board.

Mr. Maynard expressed that he wanted to address Mr. Bergeron's comments. He explained that his client is making the decision that these two properties will be together forever. He stated that in theory if this variance was to not be granted, he could come in with an application for a house on the lake side and separate application for a house on the other lot. He explained that when you start talking about the spirit and intent of the Ordinance that this is a residential area so he would have to build a residential home and this is a residential thing. He explained that when talking about the size of the structure that they're proposing that Pelham doesn't have a building coverage calculation or an impervious coverage calculation, so we defer to the State and that Shoreland Protection has the caps. Mr. Maynard stated that Mr. Bergeron's issue with this is the expansion in the size of the structure. Mr. Bergeron disagreed and stated that there is a lot like any other lot that isn't developed and doesn't house what you propose to house on it. He stated that Mr. Maynard offered this as a package and the Board can't go outside of what has been offered so that is how he is basing his decision. He stated that there is no innovative land use deal that this Board can cut. He stated that Mr. Maynard proposed something that is 2,000sqft when it is done on a lot that has no structure on it whatsoever which is asking for something that is completely outside of the Zoning interpretation in his perspective.

Mr. Maynard stated that he feels that this is a reasonable application considering the many applications he has done around the pond over the past 30 some odd years. He explained that the house isn't really a huge structure for living space and that the garage on the back lot is just a typical amenity to any kind of home in a residential area. He stated that the garage is almost the same size as the one the neighbor rebuilt as part of his variance in 2016. He explained that the setbacks they are looking for are not a stretch for a lot of that size.

## **DISCUSSION**

1. & 2. *The variance will not be contrary to the public interest because; and the spirit of the ordinance is observed because:*

Mr. Welch explained that at the last meeting and the request for rehearing tonight for the same request, to put a garage on a piece of land that is 0.1 acres that doesn't have anything on it currently. He stated that if we were to shoot that one down and then deny the request for a rehearing where would the justice be in approving this.

Mr. Hennessey referred to the Simplex Case and how it was far more than industrial versus residential. He stated that the Court said is that beyond looking at the Zoning Code, you look at what is. He explained that you look at what is in fact on the ground, what is in front of you. He explained that the truth is that on these ponds there is an environment, it is what you see, and how can you say that it doesn't matter that these



properties are similar surrounding the applicant. Mr. Hennessey stated that he thinks it is germane and that a property that is being proposed on a vacant lot of record that is in concert with what's around it is under our purview.

Mr. Bergeron explained that the Simplex Case that the Chair mentioned has nothing to do with the fact that we base lot size by soil types in this Town. He explained that the Simplex case compared different uses and it is an apple to an orange. He stated that there is an unused lot and there are dozens of them down there. He explained that someone chose from 1920 or 1930 to not develop this lot. He explained that there is a house on the other lot and that has its rights forever. He stated that every other piece of land is not equal in all aspects, and if that's the case then just drop our Zoning and have .1 acre everywhere.

3. *Substantial justice is done because:*

Mr. Wing stated that in the earlier case of Mr. Thissell, Mr. Bergeron made an eloquent comment on substantial justice and that he is reiterating that argument. He explained that the back lot has nothing there now, there is no vested interest in it and it could continue with nothing going forward and it wouldn't change anything. He stated that there would be no injustice to let it go forward.

4. *The values of surrounding properties are not diminished because:*

Mr. Hennessey stated that he would argue that the values of the surrounding properties are not affected by anything that would be built there and that the values are not a question here. Mr. Bergeron agreed with Mr. Hennessey.

5. *Owing to special conditions of the property that distinguishes it from other properties in the area, denial of the variance would result in unnecessary hardship because:*

(A) *no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because?*

(B) *If the criteria in subparagraph A above are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Mr. Wing stated that this is two lots being combined and if you looked at the house on the single lot you could see that hardship, but the empty lot has no hardship as there is nothing there. He explained that if it continues with nothing there then there is no hardship to the land.

Mr. Hennessey asked the Board for a show of hands for those who are voting no in at least on category. Mr. Bergeron, Mr. Wing and Mr. Caira raised their hands.

**FINDING OF FACTS:**

- There is no vested established use on parcel 23-11-344.
- This lot has not been developed and does not meet any of current zoning.

**ROLL CALL VOTE:** Mr. Westwood – 5 yesses, final vote “YES”

Mr. Ciara – 4 noes, 1 yes, final vote “NO”

Mr. Hennessey – 5 yesses, final vote “YES”

Mr. Bergeron – 4 noes, 1 yes, final vote “NO”

Mr. Wing – 3 noes, 2 yesses, final vote “NO”

(2-3-0) The motion fails.

**VARIANCE DENIED.**

Mr. Hennessey reminded the applicant that there is a 30-day right to appeal.

**CASE #ZO2023-00006**

**Map 41 Lot 6-124**

**SHRESH REALTY TRUST, Patel, Trst Avani & Jinalben - 11 Bridge Street – Seeking a Variance concerning: Article III Section: 307-8(c) of the Zoning Ordinance to permit: the expansion of an existing building on a lot in the Industrial Zone that has less than the required 87,120 square feet. The lot has 63,340 square feet. The purpose of the expansion is to add storage space for the storage of dry goods for sale.**

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

Mr. Ben Osgood from Ranger Engineering Group came forward to represent the applicant. Mr. Osgood explained that 11 Bridge Street is on the corner of Cardinal Drive and is an existing two story building he thinks is called Tobacco Junction. He stated that it is a retail business on the first floor and has a managers apartment on the second floor. He stated that the building is 3,175sqft and 1,800sqft is the store itself with 1,375sqft for the managers apartment and the property is a little over 60,000sqft in size. He explained that he is there to ask for a variance for the expansion of the building on a lot that only has 63,340sqft that is located within the Industrial Zone and requires 87,120sqft. He stated that the expansion will be a 920sqft 20’ x 26’ addition to the back of the building to add storage space for dry goods for sale for the existing retail establishment.

Mr. Osgood read the five criteria for a variance into the record.

Mr. Goucher asked Mr. Osgood if the business was Tobacco Junction, because he previously mentioned that he thought it was Tobacco Junction. Mr. Osgood confirmed that the business is Tobacco Junction.

Mr. Stanvick asked Mr. Osgood if the observations made about the current wetland violations were correct. Mr. Osgood responded that the trailers were placed on the ground in violation, and they will be moved. He stated that he believes they are storing the materials that they want to store in this addition. He informed Mr. Stanvick that his client knows that they must be moved. Mr. Stanvick responded that they are in violation to begin with and its not a matter that this addition is going to make it better because they are already in violation of the WCD. Mr. Osgood stated that they will be removed regardless of this variance being approved. Mr. Stanvick asked when they would be removed. Mr. Osgood stated that he did not have a specific timetable. Mr. Stanvick explained that the reason he is concerned is that the WCD is a no cut no disturb area and if you put tractor trailers in there then obviously that ground has to be rearranged to suit those trailers and somebody did that knowing they were in violation. He stated his concern about them already being in the WCD and that when they were put in there they probably knew that they were in

violation but did it anyway. Mr. Osgood stated that he could not speak as to whether his client knew that it was a violation but that he could ask them, but wasn't sure if they would know. Mr. Stanvick stated that in most cases the WCD is clearly marked and if this is an existing violation then the Town Code Enforcer should be out there making them remove those trailers immediately. Mr. Hennessey asked Ms. Beauregard if Code Enforcement has been involved with this case. She explained that they had just become aware of these violations when they received the plan, so they are aware of it now. She stated that the Code Enforcement Officer will give them a timeframe to remove them whether they did it knowingly or unknowingly, either way they will have to be removed.

Mr. Osgood stated that when the property was originally permitted there was a building on the back of the property that was removed and the building was moved forward so it was just a grass area in the back. He explained that he understands the conditions but when people purchase a business things happen. Mr. Stanvick stated that it's called reasonable due diligence that when you purchase a business you understand what the restrictions are. Mr. Osgood agreed and stated that a lot of people don't understand everything in the permits and that things happen but it will get corrected.

Mr. Bergeron asked Ms. Beauregard if this property is already operating under a variance. She stated that it was and that it was granted in 2011. He stated that it was not just a single variance but also a variance for a living quarters above the business. He explained that this building is not only 27,120sqft shy of the required minimum area for Industrial use, it is also operating under two variances. He explained that it would be a tough sell for him to see that it is unique and special in any way and that its not enjoying a use that is reasonable for the property.

Mr. Osgood stated that when his client came in for the original variance that they did get a managers apartment upstairs, it is being used as a managers apartment and there would be no change to that apartment. He explained that the variance request is for an addition for a storage area and that a hardship still exists because as a person advances his business and finds that they need additional space, they still have this lot that is undersized in the Industrial Zone but is being used as a business use. He stated that if a person across the street wanted to put this addition on their business, they wouldn't even have to come here they could just add it on if they had 64,000sqft. He explained that if it was in the Business Zone, they could just go to the Building Inspector whereas here he would like to put an addition on his building, and it requires a variance. He stated that having a variance locks it in forever to a certain layout and that you are entitled to argue that you need more space to run the business to its full potential. Mr. Bergeron agreed to a point, however this business is in the Industrial Zone and is operating under two variances for that district as it is now and is running at its full capacity and does not have a hardship in comparison to the lots around it.

Ms. Beauregard mentioned to the Board that according to the table of dimensional requirements, commercial uses require 60,000sqft and industrial uses require 87,120sqft which is two acres. She believes that Mr. Osgood was saying that it was a commercial use in the Industrial Zone. She stated that she is aware that he received a variance for lot sizing, as it is undersized for an industrial use, but it is being used as a commercial use. Mr. Hennessey stated that commercial uses are allowed in the Industrial Zone, but there is an additional size requirement on that side of the road. Mr. Osgood argued that because this property is on the wrong side of the road, that this property can't be used to its full extent or capacity and that is the hardship. Mr. Bergeron asked what does the Board do with the next person that asks for this, where does it end and where does it start? He stated that it is an interpretation of what is in the Zoning Ordinance and that this Board is allowed to give variances, but this property has already obtained two variances for a dwelling space and a business and that is way more reasonable than anybody in that area. He stated that this property

is enjoying full use of the property as it is in that district. Mr. Osgood explained that this is the first step and that they would need to go to the Planning Board where they would make sure the property is developed properly and reasonably within the regulations of the Town if the Zoning Board feels that there is a hardship. Mr. Bergeron stated that there are a lot of lots on route 38 that are nonconforming even on the 60,000sqft side, so this is not a place he wants to walk because the lots on the other side of the street could use this same argument. Mr. Osgood stated that all other aspects of Zoning are met as far as setbacks go. Mr. Bergeron explained that its currently operating on a variance so they would be putting a variance on top of a variance and they were able to get a very good variance back in 2011, with not only a business but with residential space upstairs which is unheard of.

Mr. Goucher asked if this was more of a business hardship than a personal hardship and if there was someone living upstairs. He stated if there wasn't someone living upstairs couldn't that just be used for storage instead. Mr. Osgood stated that it is a manager's apartment and that is where the person who runs the property for the owners live. Ms. Beauregard stated that in the previous variance it specifically stipulated that it not be used for commercial purposes, but as a managers apartment.

Mr. Hennessey closed the floor to the public.

### **DISCUSSION:**

*1. & 2. The variance will not be contrary to the public interest because; and the spirit of the ordinance is observed because:*

Mr. Hennessey stated that he was on the Board in 2011, and there was a good healthy discussion about the apartment. He explained that from a business perspective he appreciates that additional storage space is needed, however that was a tradeoff. He stated that the Board was more than willing to give that upstairs space where that apartment is for storage, but they wanted the space for the apartment and that was the tradeoff going in. He explained that they would be expanding a space that was argued about 12 years ago and its hard for him to see where the hardship is. He explained that whether it is in the public interest or not, that this is what was granted at the time. Mr. Hennessey stated that it is an undersized lot that already carries multiple variances.

*3. Substantial justice is done because:*

Mr. Wing stated that he appreciated Mr. Hennessey's insight as to what was going on in 2011 as well as Mr. Bergeron's comments earlier meaning that if you look at this much like the prior case saying it was nonconforming and that it was granted some rights to make it more conforming, that was the substantial justice. He stated it wouldn't be an injustice to let it continue forward, but to grant this variance would be an injustice. Mr. Hennessey stated that the variance was carefully granted in 2011 and that the Board outlined the issue of storage by granting the variance on the apartment.

*4. The values of surrounding properties are not diminished because:*

Mr. Hennessey stated that is it hard to argue that anything you could possibly do on that street would diminish any of the surround property values unless it was really bad.

*5. Owing to special conditions of the property that distinguishes it from other properties in the area, denial of the variance would result in unnecessary hardship because:*

*(A) no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because?*

*(B) If the criteria in subparagraph A above are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Mr. Wing stated that the argument that there is hardship isn't there because they already have a variance. He explained that he understands that it is a commercial business in an Industrial Zone, but it was already granted a variance before.

Mr. Hennessey asked the Board to do a straw vote. He asked all those who intend to vote negatively in one of the categories to raise their hands. All voting members raised their hands.

#### **FINDING OF FACTS:**

- This property already received a variance for expanding the business with living space above in 2011.
- This lot is undersized for the Industrial Zone and already carries multiple variances.
- The 2011 variances were carefully granted and at that time the above space was decided to be used as an apartment rather than additional storage space.

**ROLL CALL VOTE:** Mr. Westwood – 5 noes, final vote “NO”  
 Mr. Bergeron – 4 noes, 1 yes, final vote “NO”  
 Mr. Hennessey – 4 noes, 1 yes, final vote “NO”  
 Mr. Ciara – 4 noes, 1 yes, final vote “NO”  
 Mr. Wing – 4 noes, 1 yes, final vote “NO”

(0-5-0) The motion fails.

#### **VARIANCE DENIED.**

Mr. Hennessey reminded the applicant that there is a 30-day right to appeal.

#### **SITE WALK – February 18, 2023**

*CASE #ZO2023-00004 – Map 15 Lot 8-66 – SLAVIN, Carol A. 2013 Revocable Trust – 27 Balcom Road*

#### **DATE SPECIFIED CASE(S) – March 13, 2023**

*CASE #ZO2023-00003 – Map 6 Lot 4-175-1 – PAWTUCKET ROAD LAND HOLDINGS, LLC – 32 A & B Valley Hill Road*

*CASE #ZO2023-00004 – Map 15 Lot 8-66 – SLAVIN, Carol A. 2013 Revocable Trust – 27 Balcom Road*

#### **ADJOURNMENT**

**MOTION:** (Wing/Westwood) To adjourn the meeting.

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

The meeting was adjourned at approximately 10:00 pm.

Respectfully submitted,  
Cassidy Pollard  
Recording Secretary