

**TOWN OF PELHAM  
ZONING BOARD OF ADJUSTMENT  
April 10, 2023**

Chairman Dave Hennessey called the meeting to order at approximately 7:05 pm.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**PRESENT ROLL CALL:** David Hennessey  
David Wing  
John Westwood  
Danielle Masse-Quinn  
Alternate Shaun Hamilton  
Alternate Ken Stanvick  
Alternate Matthew Welch  
Planning Director/Zoning Administrator Jennifer Beauregard

**ABSENT:** Recording Secretary Cassidy Pollard

**MINUTES**

**February 13, 2023**

**MOTION:** (Masse-Quinn/Westwood) To approve the March 13, 2023, meeting minutes as amended.

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

**ELECTION OF OFFICERS**

**Chairman**

**MOTION:** (Hennessey/Masse-Quinn) To nominate David Wing as Chairman of the Board.

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

**Vice Chairman**

**MOTION:** (Masse-Quinn/Wing) To nominate David Hennessey as Vice Chairman of the Board.

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

**Secretary**

**MOTION:** (Hennessey/Wing) To nominate Danielle Masse-Quinn as Secretary of the Board.

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

**REQUEST FOR REHEARING****CASE #ZO2022-00018(2)****Map 23 Lot 11-343 & 11-334**

**16 Springdale Lane Realty Trust – 16 Springdale Lane & an unaddressed lot - Rehearing of a previously denied 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' lake side setback is required in the Residential District and to allow development of the lot in accordance with RSA:41.**

Mr. Wing appointed Mr. Stanvick to vote. Mr. Wing asked the members if anyone believed that they should rehear this matter based on any issues that were raised. He asked if the Board felt that there's some new evidence being presented, or if anyone felt that they've erred in some case such that they would need to be reheard.

**DISCUSSION**

Mr. Westwood stated that he doesn't see that there are any major changes that would have the Board redo this one. He explained that he had gone over this case very carefully and would not be for rehearing it. Mr. Stanvick and Ms. Masse-Quinn agreed with Mr. Westwood. Mr. Hennessey stated that there was nothing new and that he voted in favor of the applicant when this was first before them. He explained that he stands by his vote, but that he's not sure that there is anything new and concurs with what has been said. Mr. Wing stated that he doesn't see anything new that is being presented and felt that the Board discussed this case at length in both February and October.

**MOTION:** (Masse-Quinn/Stanvick) To deny the request for rehearing.

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

**CONTINUED HEARINGS****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.**

Applicant withdrew their request; the Board did not hear the case.

**CASE #ZO2023-00007**

**Map 10 Lot 13-73**

**HARRIS PELHAM INN INC. – Rte. 38/Bridge Street – Seeking a Variance concerning: Article III Section: 307-12 Table 1, Dimensional Requirements, of the Zoning Ordinance to permit: The construction of a single-family dwelling on a lot for which a Variance was granted on June 9, 2014, but never exercised, containing 20,000 sq.ft. where 1 acre is required.**

Ms. Masse-Quinn read the site walk minutes from March 25, 2023, into the record.

**MOTION:** (Hennessey/Stavick) To accept the March 25, 2023, site walk minutes.

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

Mr. Joe Maynard of Benchmark LLC approached the Board with Mr. David Harvey of DMH Homes who is purchasing this lot from the Harris family.

He explained that this piece of property received a variance back in 2014 for the exact same application that is before the Board tonight. He stated that the lot has frontage along Bridge Street and that there is a State approved curb cut for the driveway location. He explained that there is a State approved septic system and is designed for a three-bedroom house on this lot. He stated that the property meets the frontage and all the setbacks and that the only thing it's deficient in and doesn't meet is the one-acre lot size that's required in the Zoning Ordinance. He explained that at the site walk they could see that the land slopes away from the street that they have some material to bring into the property. He stated its clean fill from an excavation that he'll be conducting soon on another property. He explained that this material would be brought to this property to raise the grade and level out the property. He stated that he would be happy to answer any questions that the Board may have.

Mr. Wing appointed Mr. Hamilton to sit in on the case and vote.

Mr. Stavick asked if it's a condition of the purchase and sale that the building lot get approved. Mr. Maynard replied that he didn't think it was a condition of the P&S. Mr. Stavick asked if they were going to purchase the lot, whether it gets approved or not.

Ms. Masse-Quinn asked Mr. Maynard if he was there representing 10 Harris Road. He replied that he originally represented the Harris family when he did the application in 2014. He explained that when Mr. Harvey went into P&S on this, the Harris family gave him a letter of authorization to act on their behalf of this application and that he is technically being paid by DMH. Ms. Masse-Quinn stated that according to the registry the property had already been bought on March 8th, 2023, and that Mr. Harvey owned the property for 34 days now. Mr. Harvey replied that that was correct.

Ms. Masse-Quinn asked if the two parties were related, 10 Harris Road and Harris Pelham Inn. Mr. Maynard replied that they were not and there was no relationship at. Ms. Masse-Quinn asked Mr. Maynard when he came in front of the Board of Adjustment on May 12, 2014, and June 9th, 2014, if he was there on behalf

of Mr. Harris from Harris Pelham Inn originally for the variance that he's back before them for. Mr. Maynard stated that he was. Ms. Masse-Quinn stated that according to the Zoning Board of Adjustment Meeting Minutes from May 12, 2014, Mr. Maynard stated that lot 13-73 was "created prior to 1971 and was a residual piece of land dating back to the early 1900s". She asked if that was correct and if that still stood. Mr. Maynard replied that it does. He explained that this piece of property went across Bridge Street and when the alignment of Bridge Street came in in the 1950s, it bisected that lot and that is when, to his understanding, the Harris Family purchased the property. Ms. Masse-Quinn asked when Mr. Maynard represented the Harris Pelham Inn and when they purchased lots 13-73 and 13-74 on March 9th, 1990, was lot 13-73 a conforming lot or non-conforming lot. Mr. Maynard replied that it was a non-conforming lot and that it's been a non-conforming lot since it was created in 1950 something. Ms. Masse-Quinn explained that she did a little research on this and that when she refers to their current use assessment lien release form with the registry of deeds, it's dated May 5th, 1986, recording book 3585 page 81, and back in 1983 under the description of land it describes tax lot 13-73 as a one-acre parcel, which would make it conforming lot. Mr. Maynard replied that it never was and doesn't know what it says that it was a one-acre piece of property. He explained that this lot has been in this configuration since the 1950s, and that the lot beside this is a little over four-acres and has a duplex on it. Ms. Masse-Quinn stated that it was originally 10-acres then went down to six on the duplex lot. Mr. Maynard explained that as far as he knew when he was doing the work on it that it was always a four-acre lot and doesn't know when the other piece came out of it. Ms. Masse-Quinn asked if Mr. Maynard was the engineer on the duplex lot 13-75. Mr. Maynard stated that he was. Ms. Masse-Quinn stated that when she looks at the plan that's recorded with the registry of deeds under plan number 38521, it shows that lot 13-73, Harris Pelham Inn has what's called a loading well radius easement to tax map 17 lot 13-73 which is now map 10 lot 13-73 and that it's a restrictive easement. Mr. Maynard stated that was correct and explained that it's a restrictive easement for the benefit of the lot in question. He went on to explain that what the State of New Hampshire says when there is a well and the radius overlaps a neighboring property there are one of two things that can be done. He stated that one thing is that they would either have protection for that radius on that lot, which is what they have with that easement that was granted or two they would have to file what's called a well release form. He explained that because that easement was granted to this property, he doesn't have to file a release form because the neighboring lot can't put a septic or well in that area. Ms. Masse-Quinn stated that in order to create an easement you need a written agreement between two record owners. Mr. Maynard stated there is a record easement. Ms. Masse-Quinn asked if Mr. Harris was the record owner of this lot. Mr. Maynard stated that Mr. Harris was the record owner of the smaller lot and on the large lot there was an easement written and it was signed by all parties. Ms. Masse-Quinn asked how Mr. Harris would be able to get himself involved in an easement if this wasn't a one-acre parcel. Mr. Maynard stated that he was not clear about what Ms. Masse-Quinn was saying as that lot was never a one-acre parcel. He stated that he doesn't understand how the Town's records can indicate it's a certain size, and it happens quite often that it's not always that size. He explained that maybe it was something where the property wasn't formally surveyed before that record came in to be, but this lot has never been a one-acre lot since 1950, when the highway came through. Ms. Masse-Quinn explained that in order to create an easement, a restrictive easement like this, you would need two record owners, and it needs to be a written agreement. She went on to explain that in order to make it legal and to establish some type of vested rights, it needs to be recorded with the registry. Mr. Maynard replied that the plan is recorded and that the document as far as he knew was done and given to attorneys at the time of closing, but he has not formally followed up.

Ms. Masse-Quinn stated that once two parties enter into an easement and once you have an easement it then designates that piece of property is non-buildable. Mr. Maynard replied that it creates an easement that is non-buildable for the purpose of whatever it is for.

Ms. Masse-Quinn stated that as a rule, the easement should be recorded with the registry of deeds and asked if the easement was recorded.

Mr. Maynard replied that he gave the easement to the attorneys at the time of the closing when the duplex was closed on 5-6 years ago. Ms. Masse-Quinn stated it was in 2014. Mr. Maynard stated that in 2014 all the parties signed that document. He explained that he notarized it for the homeowners of the unit at that point in time and gave all the documents to the attorney at the close.

Ms. Masse-Quinn explained that when she pulled the warranty deed of the new owner, Mr. Harvey, it doesn't specify on the actual deed an easement so that tells her it's not recorded with the registry of deeds. Mr. Maynard stated that he'll have to follow up on that.

Ms. Masse-Quinn stated that she was trying to figure out if the hardship runs with the land or if the hardship was created by a person. She explained that through her research, she believes that the hardship was created by a person. Mr. Maynard stated that he doesn't understand why she would say the hardship is created by a person when the lot hasn't been an acre since it was created when the highway went in.

Ms. Masse-Quinn explained that she is stating this based off facts that she found with the registry of deeds. She stated that under this current use assessment lien form that is in reference to the previous seller of the property who sold it to his client, the Harris Pelham Inn. She explained that it would be in reference to the family of Mr. Alessandro Marrano who passed away and his daughter inherited the properties. She explained that when Mr. Maynard's client came to buy the property on May 9<sup>th</sup>, 1990, that the current assessment form states that it was one acre. Mr. Maynard replied that he was not sure why it says that, but that he did not survey the property until 2014 when he was doing the duplex property next door. He stated that when the work was done to do a formal survey of the lot that it was not an acre and hasn't been an acre since at least the 1950s. Ms. Masse-Quinn stated that she was confused as to how a record owner could actually agree to an easement on that property if it wasn't an acre and was no record owner. Mr. Maynard stated that he was confused as to why she was saying there is no record owner. Ms. Masse-Quinn stated that it takes two parties and two record owners to make an easement. She asked how could a record owner give an easement agreement to a piece of property when he doesn't own it. Mr. Maynard stated that you can't give yourself an easement, but that neighbor can give you one.

Ms. Masse-Quinn stated that Dream Builders agreed to give an easement, but they didn't own that part of the lot. Mr. Maynard confirmed that they owned that entire track that went around this lot and that Dream Builders bought that entire piece of property. He stated that it had frontage on Bridge Street, and it had frontage on Young's Crossing. He explained that it came across the back and that it came up behind this piece of property and that there's a common lot line between the two, so Dream Builders owns that area behind it, and they gave the easement to the Harris's. He stated that Dream Builders gave this easement to the Harris's for sewer loading and well radius.

Mr. Hennessey stated that based on Ms. Masse-Quinn's comments it appears that the easement was never recorded and should be recorded since a variance had been granted on the duplex lot.

**MOTION:** (Hennessey/Hamilton) To record the easement at the registry of deeds if the variance is granted.

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

Mr. Wing asked Ms. Beauregard how the discrepancy regarding the acreage would be handled. Ms. Beauregard stated that the recording of the plan that Mr. Maynard presents to the registry would fix the discrepancy. Mr. Maynard stated that there is a recorded plan for the neighboring lot and that he could put a plan on record for this lot as well being that he did the survey but never recorded it. He stated that this lot was from a piece across the street and wasn't part of that lot at the time, so that's where this land comes from. Mr. Hennessey stated that he suspected that that's where that acre came from. He explained that there was an abutter present at the site walk who spoke to some of the members and talked about the triangular pieces and the jigsaw puzzle that they were. He stated he wasn't sure if the lot that the abutter is on was connected to this lot at the time, but that they were all triangular. He explained that on the Town's records and in the assessors' records, it shows the triangular piece that is being described, but he doesn't believe it shows it as an acre. The assessors' records may have it as an acre as those things happen all the time. Ms. Masse-Quinn stated that the tax card shows it as a non-conforming lot, but neither lot shows the record of the easement. Mr. Hennessey stated that yes, the easement needs to be recorded. Ms. Masse-Quinn agreed and stated that the easement is really what creates the vested use and what distinguishes who is going to have the property. Mr. Maynard stated that it's not who owns it, but it's just the purpose of the easement. He explained that it wasn't like this property could go on that lot and build something, because that's not what the purpose of this easement was. He stated that the purpose of the easement was to provide protection for the well radius over the lot. Mr. Hennessey stated that he believes that the assessors' records are showing this lot correctly. Ms. Masse-Quinn disagreed stating that when she looks back at this lot of record even with the original owner before the Harris Pelham Inn, in the legal description it talks about ten acres divided between two or three triangles and then it does classify this one under the current use assessment as a one-acre lot. She stated that it shows map 13 lot 73 which is now map 10 lot 13-73 as one acre and also matches the legal description. Ms. Beauregard stated that she was concerned with going down this road with ZBA members and research and that they would probably not want to discuss this in public.

Mr. Stanvick asked what the tax records show and if it's one acre. Mr. Maynard replied that it is showing as 0.47 acres on the tax card right now.

Mr. Hamilton asked with this discrepancy with the acreage it would need to get straightened out, because if it's showing as an acre and it is actually an acre then they wouldn't need to get a variance as it would be a conforming lot. Mr. Maynard replied that it is not an acre as he surveyed it.

Mr. Wing explained that he believes Mr. Maynard and that it is a non-conforming lot. He stated that if the record is updated and he believes it will be then the tax map will be updated to the correct acreage.

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

## **DISCUSSION**

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

Mr. Hamilton stated that he agrees on both that the variance would not be contrary to the public interest, and that the spirit of the ordinance has been observed.

Mr. Stanvick stated that he would disagree with that position. He explained that the reason why there are stipulations in terms of lot size is to protect the public interest and to make sure there is appropriate land use and sees it as being contrary to the public interest. He stated that the Ordinance is pretty clear in what is required to put a house and what size lot you need. He explained that it is contrary to the public interest and its not observing the spirit of the ordinance. He stated that if there was something there originally which there wasn't, it's just a blank piece of property he doesn't see it as observing the spirit of the ordinance.

Mr. Westwood stated that his was a tough one as he understands where things sit, but he doesn't see how this would change what they're voting on. He explained that they really don't have the right to grant his unless there is a hardship on it and unless the hardship was so long ago but then it was inactive. He stated that he doesn't think that they could approve this, and it would be a problem for him.

Ms. Masse-Quinn agreed with Mr. Stanvick as it is contrary to public interest. She stated that she doesn't believe that the spirit of the ordinance is observed and that it would alter the essential character of the neighborhood. She explained that most of the abutting lots on tax map 10 range from 1.5 starting with lot 13-78-2 to 3.25 acres at lot 13-75 which is now the duplex lot with the majority of the reminding surrounding lots within the two acre or more range. She stated that when you look at 308-7 non-conforming uses, it states that any non-conforming use may continue in its present use, and it is important to note that lot 13-73 currently has no use as it's a wood lot. She explained that the location of the lot also poses a safety concern as she didn't attend the site walk as she didn't want to get in her car and run across Bridge Street. She stated that she read the previous minutes and has concerns about the driveway and someone trying to pull out of that driveway. She explained that it is important to note that it's located on the State Highway New Hampshire route 38, with speed limits of about 40-50mph. She stated that the Town is currently working on the current Master Plan and under accident data from 2018-2021 there were a total of 918 recorded accidents on Pelham roadways over those four years with four resulting in fatalities and 265 resulted in injuries, six of which involved pedestrians and three involving bicycles. She explained that there are three roadways in Pelham that accounted for 50% of all accidents and Bridge Street is the first one with a total of 311 accidents which is 34%. She stated that 314 accidents is almost like an accident a day.

Mr. Hennessey stated that back in 2014 he had his reservations about the sightlines in particular. He stated that he wasn't sure if they did a site walk, but that the Board did look at the sightlines as well as the Technical Review Committee. He explained that he was surprised that the sight line on this lot is particularly good. He stated that Ms. Masse-Quinn was right about the accidents on route 38, most of which come out of Ledge Road because the sightlines there are so horrible, and that area constitutes a vast majority of the accidents. He explained that this lot has very good sightlines and that the Highway Safety Committee said it was okay and that there is currently an approval for the driveway from the State. He stated that he agreed that the sightlines were a concern but that it has been answered. He explained that this is a lot of record and that the gentleman that joined on the site walk is on a lot very similar to his on the other side and that he has a triangular lot as well that was changed and altered by the State like this lot was did when they ramrodded route 38 through there. He stated this this has been a lot of record for a very long time, there are no wetlands and not even a wetlands setback and its on high dry land. He explained that the variance is not contrary to the public interest because it is in the public interest to allow people to develop the land if it poses no public threat to safety, highway, wetland incursion etc. He stated that he believes that the man has a right to put a house on that property. He explained that the spirit of the ordinance is observed because of what is across the street and in that general area that is part of the neighborhood. Ms. Masse-Quinn added that the lot he's talking about is 13-76 which is the other triangle lot which is 1.5 acres which is a big difference between a 20,000sqft lot. Mr. Hennessey added that the frontage of that lot is much smaller than

the frontage on this lot and that he is comfortable with his vote in 2014 to grant this variance and is still comfortable with this because it still is in conformance with the nature of that neighborhood.

Mr. Welch echoed the sentiments of Mr. Stanvick and Ms. Masse-Quinn in that it is contrary to the Zoning Ordinance because the Town set fourth that one acre minimum requirement to give people space and make sure that houses aren't on top of each other.

Mr. Wing stated that it is a small non-conforming lot that seems to have been pre-existing. He explained that the whole reason for the Zoning Board is to act as the safety valve for instances where lots are undersized, where lots don't have sufficient frontage. He stated that the main questions they ask are does it alter the essential character or does it provide a problem for safety or for welfare. He explained that in this case the safety issue has been addressed.

*3. Substantial justice is done because:*

Mr. Welch stated that substantial justice would be done if they granted the variance because although he doesn't agree with the lot size, et cetera, he would see no disadvantage to the public that would outweigh the advantage to the owner.

Mr. Hennessey stated that substantial justice is done because this has been a lot of record and was reaffirmed as a buildable lot in 2014 with the ZBA and the change in the rules. He explained that prior to that change, variances ran with the land and if in perpetuity he had the right to build on that property based on the variance, but that changed. Ms. Beauregard stated that the rule had changed in 2014 to the two-year expiration, so if he had been approved a little bit sooner then the variance would have ran with the land. Mr. Hennessey stated substantial justice would include his prior vote from 2014 and he sees no change from when it was approved back in 2014. He explained that if they had found a spring on the lot and it was wet or if the Highway Safety Committee stated that it was too dangerous because of the increased traffic on route 38 then he would go with that, but nothing has changed.

Ms. Masse-Quinn stated that based on her research she would disagree with Mr. Hennessey because if the easement was disclosed to the ZBA in 2014, it may have weighed in or changed things. She explained that through her research this lot seemed to be a one-acre lot, so substantial justice would not be done.

Mr. Westwood stated that he agrees with Ms. Masse-Quinn and that he has a problem with the changes that have happened but that he also hears Mr. Hennessey's point.

Mr. Stanvick stated that he agrees with what has been said by the two previous members. He explained that he thought that the ruling that took place back in 2014 had no bearing on the decision that they're talking about and making today. Mr. Hennessey stated that he was right, but that the arguments he heard in 2014 are the arguments that he remembers because he was the only one on that Board that is on this Board. He explained that what was done in 2014 would have no bearing on what the Board would decide but as a person who did vote back in 2014 he has to think back to how he voted and the reasons he voted.

Mr. Hamilton stated that he agrees with Mr. Hennessey in that he doesn't see any major dramatic changes to this property or surrounding area since 2014. He explained that the variance was granted at one point and with no major changes in place and the use not changing since it is going to be used for the same purpose



as it was originally granted the variance for in 2014, he would say that substantial justice would be done by granting the variance.

Mr. Wing stated that substantial justice would be done. He explained that there was an interest in the lot, but it was not built upon. He stated that just reading through the record it looks like permits were obtained and that there was some activity going on, but it just wasn't completed.

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

Ms. Masse-Quinn stated that there is currently nothing on the lot, however if there was a house put there, she believes that it would diminish the existing abutters properties. She explained that there would be this non-conforming lot with a brand-new house on it where all the other lots have an acre and a half or two acre lots with older homes on them and she believes it would kind of devalue those older homes.

Mr. Stanvick stated that the value of the surrounding properties would be diminished because the land has value. He explained that if you diminish the size of that particular lot the value of the land of the remaining lots would go down.

Mr. Hamilton stated that he believes the value could only go up and would absolutely disagree that it's going to diminish the value of other properties. He explained that it can only increase the value of the properties by having another building in the area because right now it's just a wooded lot that is just there.

Mr. Hennessey stated that in his personal opinion the controlling factor on the values of the properties along that road is not the fact that a brand new house built to modern standards is going to be built there, but that the defining control on those values is route 38 and it's the speed of the cars, and it's the milieu that its in that will not have a bit of difference as to the values of the other properties. He explained that he didn't believe a house going there is the controlling factor and that it has a width of effect on the value and doesn't think that this would diminish the neighboring property values. He stated that development and all that can be uplifting to neighboring values would and not diminish property values.

Mr. Wing agreed with Mr. Hennessey and Mr. Hamilton that the property values would not be diminished. He stated that neighboring homes typically only appreciate in value with other homes nearby.

*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. Hennessey stated that this is a lot of record and in looking at the history of the lot when the road went through this property was carved up and was left with a lot that was undersized at the time in the 1950s. He explained that this is a piece of land that the owner had every right to believe could be built on at some point with some things that had to be done. He stated that one of these things would be that they would have to bring in a lot of fill and that fill would be expensive and that is the reason he assumes it was never built on. He explained that they were granted a variance in 2014 and the Board that he was on in 2014

said that they met the criteria and now with it being 2023 he doesn't see what has changed. He stated that he believes that this property has the right to be built on and it doesn't harm the neighborhood or the values. He stated that he believes that the applicant had a justifiable expectation that we would regrant this variance.

Mr. Welch stated that in the Zoning Ordinance it states that land can continue in its current use and where there is no current use it's just like any other undersized lot in Town. He explained that the Zoning Ordinance and the criteria in it is there for a reason and that yes this is an undersized lot, but there is no hardship because there is no use.

Ms. Masse-Quinn stated that there is no use on this property. She explained that through her research she believes that it was an acre lot, and that the easement would be the only reason there would be a hardship if any, but she agrees with Mr. Welch that there is no use on the property.

Mr. Westwood stated that this is a difficult case but that he doesn't believe the Board would be doing their job if they approved this.

Mr. Stanvick stated that he agrees with Mr. Welch as there is nothing there now. He explained that when this was being talked about and being purchased that they knew what the existing requirements were for lot size and everything else so this wouldn't come as a surprise. He stated that when you buy a piece of land or something you should know what the restrictions are and live within the bounds of those restrictions. He explained that there is nothing currently on it and that what happened in 2014 is what happened in 2014 and doesn't have a bearing on what's going on in 2023. He stated that he doesn't support the idea that this is worth accepting or granting.

Mr. Hamilton stated that Mr. Stanvick was correct and that it is not a surprise, and it doesn't have a use but just like everything it can have a use. He explained that there are numerous portions of this town that are non-conforming in land and use. Mr. Stanvick asked if the Board wanted to make it more non-conforming. Mr. Hamilton replied that it's not and that the whole point of the ZBA is to take non-conforming lots and grant variances and make it so that uses can be made of the property so that is a hardship. He stated that this gentleman bought a piece of property, and he wants to put a house on it and he doesn't see an issue with that. Mr. Stanvick replied that there are certain rules that they are there to enforce whether they like it or not. He stated that there is a minimum lot size and that they need to be able to take the position to enforce those requirements. He explained that he doesn't believe it's their job to grant variances when people come before them. He stated that he believes it's their job to scrutinize those that do and grant variances on a limited basis. Ms. Masse-Quinn added that this area does not have any other non-conforming lot near it as all other lots are 1 ½, 2, and 3.5 acre lots so to establish a use on a non-conforming lot where everything else is conforming around it wouldn't be right.

Mr. Hennessey explained that non-conforming doesn't just mean lot size and as you go down the road the whole road has non-conforming uses including home businesses, car sales, lots that don't meet setback requirements of today. He stated that to focus on the fact that these lots have an acre, acre and a half of land belies the point that some of them are 10-15' off the roadway, that some of them have frontage to their neighbors that is within 50-75'. He explained that looking at the road he would venture to say that the majority of the homes that were built before 1970 are non-conforming under today's zoning. He stated that disagrees and doesn't think that every lot should be on a one-acre lot with 200' of frontage with a setback of 30', that this neighborhood is not a one-acre square like all the modern subdivision. Ms. Masse-Quinn stated that when she looks at the first seven lots around the home they are all over an acre and that she is not looking at the frontage.

Mr. Stanvick stated that he cannot fix the sins of the past and that that's not a justification to continue to so. He stated that he believes that it is the responsibility of this Board to be looking at not repeating those mistakes going forward. He stated that they have to draw a line and that their job should be to read the regulations and read what's in place today and react to it.

Mr. Wing stated that he believes that the hardship is self-imposed and that the lot was not developed when it was purchased. He explained that it is substandard in size and there is no use, so the hardship is self-imposed.

**FINDING OF FACTS:**

- The lot is currently undeveloped.
- The hardship is self-imposed.
- No vested use on the lot.
- Safety concerns with cars pulling out on Route 38.
- Other lots in the area are greater than 1-acre.

**ROLL CALL VOTE:** Mr. Hamilton— 5 yesses, final vote “YES”  
Mr. Westwood— three noes, 2 yesses, final vote “NO”  
Ms. Masse-Quinn— 5 noes, final vote “NO”  
Mr. Hennessey — 5 yesses, final vote “YES”  
Mr. Wing— 3 yesses, 2 noes final vote “NO”

(2-3-0) The motion failed.

Variance was denied. Mr. Wing reminded the applicant that there is a 30-day right to appeal.

**CASE #ZO2023-0008**

**Map 23 Lot 11-343**

**16 Springdale Lane Realty Trust – 16 Springdale Lane – Seeking a Variance concerning: Article III Section(s) 307-8C, 307-12, 307-12 Table 1, 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 a lot that 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 setback, and 44' from Little Island Pond, with a proposed deck 36' off the pond. This lot has 0' of frontage on a town road where a minimum lot size of 1 acre and a minimum of 200' of frontage is required, with a minimum front setback of 30' and a 15' minimum side/rear setback, and 50' lake side setback is required in the Residential District.**

Abutters were read into the record at the last meeting.

Mr. Hennessey explained that he was the Chair at the last meeting and that he basically threw this out at the last meeting because there was an appeal, so they didn't want to hear the case at that time. Ms. Beauregard replied that the Board sent her to find out more information, which she provided to them in their packets and that's why they've continued the case to this meeting. Mr. Hennessey explained that that's why the Board is hearing this now and that the first decision of the Board and of the Chair is would this constitute a new application and do they hear it. He stated that they've had some legal counsel given to them and if that is to be discussed then they would have to break and go into executive session.

He explained that if everyone had read it and had digested it, they could proceed or they could go into executive session. Mr. Wing asked the members and the alternates if there was a need to discuss this matter in a nonpublic session or if they had all read it and had formed an opinion. Ms. Beauregard explained to the board that this case was regarding 16 Springdale Realty Trust and that their packets contained some legal advice from the town attorney. She stated that if they needed to discuss this legal advice then they would need to do that in a non-public session. Mr. Wing explained to the board that it was four pages long and that they got it from Ms. Beauregard in their packets. He stated that on the third page there was some advice from the town attorney and asked that they not share publicly. Mr. Hennessey explained to the Board that they were not bound to accept that legal advice as it is just advice. Mr. Wing expressed that he believes it would be appropriate for the Board to hear the case. Mr. Welch and Mr. Westwood agreed with Mr. Wing. Mr. Hennessey and Ms. Masse-Quinn agreed that they were okay with hearing the case. Mr. Wing appointed Mr. Welch to vote on the case.

Mr. Wing asked Mr. Maynard if there was anything he would like to add from the last meeting. Mr. Maynard explained that this was never discussed at the last meeting as the Board wanted to get some legal counsel, and that he hadn't read the five criteria yet.

Mr. Maynard explained that this piece of property is down on Little Island Pond at the end of Springdale Lane on tax map 23 lot 11-343. He stated that the lot falls in the Town's residential district and is developed with an older residential building. He explained that that building sits about a foot off the Girl Scout Land, which is to the west of this lot. He stated that it's about 31 feet from the pond and that it's 16 feet to the southeasterly lot line with about 51 feet to the paper right away, known as Springdale Lane. He explained that the current impervious coverage of the property is about 13.6%. He stated that this is the last lot at this end of the road and that the road does not continue through to the Girl Scouts Land and it just dead ends at the stonewall. He explained that the property that's to the east has a single-family dwelling on it with a detached garage. He stated that the detached garage was granted a variance as an after the fact variance, meaning it was already constructed when they came to the Board and asked for relief for it. He explained that they are proposing to raze the existing home and build a new home on the lot. He stated that this new building would be 24' 10" wide, 37' 3" deep and would have an 18' x 24' deck on the lakeside of the home and a 6' x 24' porch on the street side. He explained that they are proposing to move the building 3' from the Girl Scout land, 10' off the right of way, 12' off the south easterly lot line with the home 44' from the pond and the deck that they're proposing on the front of the structure at 36' to the pond under post development scenario. He stated that impervious coverage goes to 29.9%. He explained that he's designed a septic system for this lot and that it's a clean solution system. He stated that it meets all the Towns ordinances and the States ordinances. He explained that it is not yet approved because subsurface will not approve a septic design unless you have shoreline approval. He stated that they held off on shoreline approval because of the conflict with the second lot that is not part of this application. Ms. Masse-Quinn asked what the square footage of the existing structure is. Mr. Maynard explained that it's shown on his plan and that it's roughly 440 square feet. Ms. Masse-Quinn asked what the square footage of the proposed structure would be. Mr. Maynard stated that he included the overhang of the porch that is on the street side of the house which puts the house footprint at 1,210sqft and that the deck adds an additional 166sqft. Ms. Masse-Quinn asked how big the porch would be and how big the structure itself would be. Mr. Maynard stated that the porch itself is 6' x 24' so 144sqft for the porch. He explained that the new proposed structure would be over 1,200sqft. Ms. Masse-Quinn stated that of the surrounding abutters the highest square footage of non-conformity is at 12 Springdale Lane with only 960sqft. Mr. Maynard stated that he wasn't sure about that and that he would have to double check. Ms. Masse-Quinn stated that according to the last meeting minutes the home on 12 Springdale Lane was roughly 960sqft in size which was pulled off the tax

card at the time and that the new home he is proposing would be exceeding the abutting lot and have biggest square footage non-conforming in that area. Mr. Maynard replied that there is a newer house right before this one on the right side of the road that is bigger than this one. Ms. Masse-Quinn asked what that square footage was. Mr. Maynard replied that that house did receive a variance and was constructed but doesn't come up on the property tax records. Ms. Masse-Quinn stated that regardless of the size of that house, this newly proposed house would be three times the existing square footage. Mr. Maynard stated that was correct. Ms. Masse-Quinn stated that she found that to be interesting because as she also sits on the Planning Board, she has seen the party that he is representing at those meetings many times in reference to Little Island Pond. She explained that on December 5, 2022, he had come in front of the Planning Board and stated "that if someone proposed to build a house with the same footprint as the house next to it, it is smaller, so it fits in and it's a reasonable size. There would be no risk to the pond." She stated that she is surprised that the applicant is looking to be the biggest square footage home over there and that his statement would hold true if he stuck with the original 440sqft or the 960sqft of the abutting home on 12 Springdale Lane. Mr. Maynard stated that he did not represent the neighboring lot when they came in front of the Board. Ms. Masse-Quinn stated from the February 13<sup>th</sup>, 2023, meeting minutes, "Mr. Maynard explained that the house before at 12 Springdale Lane also had a home on it and the home is 960sqft in size.", and that was his comparable. Mr. Maynard replied that he also used an equation when they talked about impervious covers of the neighboring lot and that they had a much higher impervious coverage than this lot and that this lot is bigger than the one next to it. He explained that it is his understanding that under the Building Code that 1,000sqft is the minimum size of a house at this point in time and that would be roughly the size of an ADU. Ms. Masse-Quinn stated that if this house was built it would be going over that by 200 more square feet and would be the bigger house over there. Mr. Maynard replied that it wasn't a living area and that taking into the equation the porch and deck isn't living area. Ms. Masse-Quinn replied that it is considered a living area and knows that from having her own property on Little Island Pond. Ms. Beauregard explained that according to the Building Code it would not be considered a living area and that a porch or garage would not be considered as such. She stated that for ADU's it's the living area exclusive of entryways and porches. Ms. Masse-Quinn asked if those areas would count as square footage to the new proposed structure. Ms. Beauregard replied that it would be part of the footprint and Mr. Maynard added that it would be part of the impervious coverage. He stated that there is no calculation for building coverage in the Town of Pelham and that it's State mandated by Shoreline Protection. Ms. Masse-Quinn asked if there was an update with Highway Safety. Ms. Beauregard replied that the Board has the most recent Highway Safety information in their packets from the last meeting. Ms. Masse-Quinn stated that she saw some public health concern for the safety of the road, tree cutting and widening of the road and if that was going to happen. Mr. Maynard explained that that was the biggest thing that the Fire Department asked for and that his client had talked to residents up and down where that stretch is, and everyone seemed to be in agreement to trim the brush and the trees back. Ms. Masse-Quinn asked who they talked to. Mr. Maynard explained that his client talked to abutters along Springdale Lane. He stated that the area that the Fire Department was concerned about was when you first come in off Webster Ave and turn right to go down Springdale Lane. He explained that there's a number of abutters that have houses on Webster Ave, but their backyards are on Springdale Lane and that his client knocked on doors and talked to people about doing these improvements at the Fire Department had asked for. Ms. Masse-Quinn asked why that would be the responsibility of the abutters when he is the one trying to get a variance to build this new house. Mr. Maynard explain that there are other new houses down there and that Springdale Lane is a private road with no real association associated with it and that his client is looking for a permit to be able to do his work, so he took it upon himself to go knock on doors and bring the information to the neighbors and that is what the Fire Department is asking of them. He stated that it's really an emergency service type of thing. Ms. Beauregard explained that it was the Fire Chief's opinion that if neighbors would agree to widen the area by cleaning up the brush by five feet on

both sides would greatly improve the safety of everybody who lives in the neighborhood not just this particular house and that it would be for everybody who's already there. She stated that he was a little shocked at the condition of the road when he went down there and that the brush overhangs some boulders and that there were dead trees right against the road. She explained that his concern was with a snowstorm and that the rocks where they currently are along with the brush make it so there's not really much room for the Fire Department to get down there currently. She stated that if the applicant could get the neighbors to all agree to do that as part of this application, then it would greatly improve the safety of the entire neighborhood.

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

Mr. Stanvick stated that on the document it says that there are permeable pavers and a maintenance schedule, who assures or how would you assure that this schedule gets maintained and these things actually happen. He asked if it would be built into the deed or how it would work. Mr. Maynard replied that he didn't know if Pelham had an environmental person because typically it would be them. Ms. Beauregard stated that the Town does have an environmental person, but that it would be the State as the State issues the shoreland permit. She explained that the Code Enforcement Officer and not necessarily the Environmental Compliance Specialist, works a lot with DES to make sure that a lot of that is being complied with. Mr. Stanvick asked how that worked because his understanding is very limited but that generally someone makes a complaint and then the Code Enforcement Officer would go out and check on the complaint. Ms. Beauregard explained that that was correct and that he's not out patrolling the area so if he's asking who is going to review their Shoreland Permit then that would really be the State. She stated that if they were to get word that it's not being taken care of then our Code Enforcement Officer would go out. She explained that they are working right now with the Environmental Compliance Specialist to expand her authority, but this is a private road, and they would have very limited authority on a private road. Mr. Stanvick explained that there are a set of requirements to maintain these things and keep them operating the way they are designed to, but that he's not hearing any assurance on who's checking the checker to make sure it happens. Ms. Beauregard stated that that was a good question and that it should be DES who issues the Shoreland Permit. Ms. Masse-Quinn explained that that was her concern as well because there are no checks and balances on a private road. Mr. Stanvick explained that they recently just went through an exercise of finding where all the detention ponds are in Town because they had no idea where they were, yet they were granting building permits based on the fact that they were going to have a detention pond to control the runoff from properties. He stated that these detention ponds need to be maintained and there was no schedule for maintenance and that now that they have an understanding of where they are all located, they are in the process of working up a maintenance schedule and it got him thinking about this particular process and who would be doing that maintenance and checking that. Ms. Beauregard replied that right now it would be the Shoreland Protection Agency, DES. Mr. Stanvick asked if she knew for a fact that the State would come and inspect these. Ms. Beauregard stated that she did not know that for a fact.

Mr. Welch stated that the impervious surface coverage is up to 29.9% and asked if Shoreline Protection recommended 20% or less. Mr. Maynard replied that Shoreline Protection has different thresholds and that 0-20% is one threshold where you don't have to make any drainage improvements. He explained that up to 30% you don't have to do any plantings, but you do have to do drainage improvements and that the drainage improvements only have to handle summertime storm events. He stated that you could go up to 100% impervious coverage, because when you go over 30% as long as the drainage measure is designed to mitigate a ten-year storm event. He explained that the problem with that is that you would end up with a gigantic detention pond or underground vault system in order to meet that requirement for a 30% or over

threshold. He stated that Shoreland does is if you were at 60% or 70% existing impervious coverage, they don't make you bring it down to 30%, you would just have to make it better than what it is. He explained that some of these pre-existing developed lots are in the 60-80% improvement coverage ratio in the state and you could redevelop those lots without having to rip everything out, you would just have to improve upon what you had. Mr. Welch asked if they would be amenable to a stipulation that says the Fire Commissioner or Fire Safety Inspector would have to come and approve the road before the building permit gets approved. Mr. Maynard replied that he believes that they are already stuck with doing that and that they couldn't get a building permit without doing that. Ms. Beauregard stated that that was correct and that even if the variance is granted tonight, if they don't meet the requirements from the Fire Chief then they won't be able to get the building permit.

Mr. Wing asked if the septic was approved or not approved. Mr. Maynard explained that he can't get septic approval until he gets the Shoreline Permit approved. He stated that what happened was when they were denied the last variance, he stopped the Shoreline process because things change and the problem with Shoreline is that the permits are very specific to what you apply for. He explained that if he changed it, he would have to reapply and the fees have gotten quite extensive over the past couple of years so he won't submit for Shoreline until they are through with the Zoning. Mr. Wing stated that there would be a stipulation that he receive shoreline and subsurface approval if this was to be approved. Mr. Maynard stated that shoreline and subsurface approval would be mandated. Mr. Wing asked if they had discussed maximum height. Mr. Maynard stated that they had talked about this in the past and that on the waterside it's a walkout basement and on the other side it's a 1 ½ story house that is under 32' but could be closer to 30'. Mr. Wing stated that in the past the stipulation had been less than 30' but that he could be wrong.

Mr. Hennessey stated that they have approved up to 32' but a lot of it depends on what's behind the house. He asked if there were any sightline abutting properties. Mr. Maynard replied that there is nothing to the west, north, or northeast of the property and that the nearest house is directly abutting us on the easterly lot but the back lots that are behind the neighbor and the next neighbor are vacant land.

Mr. Wing mentioned that there had previously been talk of a hammerhead for a previous prior dwelling. Mr. Maynard replied that as part of the previous application that had the detached garage on the back lot and that was the issue. He explained that as part of the site visit with the Fire Department, Police Department and Highway Department, the parking for this lot is on the back lot and would generally be a hammerhead situation because of the parking on the other side of the road. He stated that right now the road just dead ends at this lot and that there are little pull offs on each side, but once a house is there and people are using the property the parking would be improved upon with a shoreline permit also.

Ms. Masse-Quinn asked if lot 11-342 that the same acreage at .10 acres had a house on it currently. Mr. Maynard replied that there is a house and a detached garage and that it is shown on the plan and that the lot behind them to the northeast is a vacant lot. Ms. Masse-Quinn asked what the square footage of the house next to this lot and if it was 1,232sqft, the same as this proposed one. Mr. Maynard explained that the lot next to this was 14 Springdale Lane. Ms. Beauregard stated that the living area is 1,041sqft and that the gross area is 1,761sqft. Ms. Masse-Quinn asked if that was the lot right next to them. Ms. Beauregard stated that it was 14 Springdale Lane, which is 1/10 of an acre next door to them on map 23 lot 11-342. She explained that the living area total is counting the first floor ¾ story, porch screen finished, and the basement doesn't count as living area is 1,041sqft. Mr. Maynard stated that they also have the detached garage. Ms. Beauregard confirmed that the garage appears to be 308sqft. Mr. Maynard stated that sounded about right since it's not a full two bay garage, but it is a wide garage.

Mr. Wing opened the floor to the public. No one came forward that was in favor or in opposition to this proposal. Mr. Wing closed the floor to the public and reminded the Board that Mr. Welch would be the 5<sup>th</sup> voting member for this case.

Mr. Hennessey stated that a Shoreland permit, State approved septic design, and approval from the Highway Safety Committee is to be received if the variance is granted. Ms. Beauregard stated that she agreed with Mr. Hennessey, but stated that on advice from their attorney that they've decided to start execution and recording the limits of municipal responsibility agreement for rebuilding on a class VI or private roads. She explained that in this case it is a private road, and that Board of Selectmen approval is not required for a replacement home, however they are recommending that they enter into that agreement with the Town. She stated that she would also like to add to the stipulations the items addressed in the Highway Safety Committee letter dated February 10, 2023. Mr. Wing asked for clarification on if the stipulation would be that it require Board of Selectmen approval. Ms. Beauregard stated that it would not require their approval, but as part of the building permit approval, if approved, they would be required to record a limit of municipal responsibility agreement for building on a private road. Mr. Wing asked if the Board wanted to include height. Mr. Hennessey added a maximum height of 32' to the stipulations. Ms. Masse-Quinn asked if the maximum height should be 30' because in the MUZD it's 30'. Ms. Beauregard stated that the MUZD is the only district that has a height stipulation so it's up to this Board on what you decide to make a maximum height as there isn't a requirement in Zoning, but it is typical of this Board to stay under 30' if there are abutters behind the property that could impede sight to the water. Mr. Hennessey stated that there is no one behind them, it's unbuilt so that's why he believes it should be 32'. Mr. Wing asked if 30' was acceptable. Mr. Maynard replied that he didn't have the plans in front of him but that he was adding the math up saying that 24' plus whatever the peak is, is going to be closer to 30' but it might just be over so he rather them say 32' and he'll stay under that. Mr. Hennessey stated that the property slopes down toward the water so anything behind it would be higher. Mr. Wing stated that the applicant owns the property directly behind him, so he is okay with 32'.

**MOTION:** (Hennessey/Welch) That the following stipulations be satisfied if the variance is approved:

- Maximum height of 32' from road grade.
- Receipt of State Approved Septic Design.
- Receipt of NHDES Shoreland Permit.
- Items in Highway Safety Committee letter dated February 10, 2023, being satisfied prior to obtaining building permit.
- Execution and recording of a Limits of Municipal Liability agree for building on a private road.

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

### **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 stated that he believes it's not contrary to the public interest because improving upon the structures around the lake and getting up to date septic's and drainage requirements and everything in place



is only going to improve the health of the lake and the overall health and safety of everybody who comes in contact with it so he is a yes on one and two.

Mr. Hennessey concurs with Mr. Welch's statement.

Ms. Masse-Quinn stated that she didn't disagree with what was just said, but that she is struggling over the fact that it's over 1,000sqft on such a small lot so she is concerned with how it's going to affect the lake. She explained that there have been people in front of the Boards saying that the lake is being affected right now and that there are other public health concerns that she's concerned with that are going on around the lake as well. She expressed that she doesn't disagree with what was said, but the square footage of the new home is what she is struggling with a bit.

Mr. Hennessey explained that one of the issues that is all over the State is the question as to whether they are going to get into cost analysis. He stated that the courts have held that they shouldn't get involved, yet the new Housing Board is using cost analysis to determine all kinds of things. He explained that the applicant cleverly put into his presentation that the cost of building a property on the shore front is far more expensive than it would be in another location. He stated that it's a fact that it's more expensive and if they are going to invest the money for a clean solution septic system and satisfy Shoreland Protection and go through all those other things then you are driving up the cost of the property they're building up which means they have to protect that investment by getting to a certain size. He expressed that he wasn't advocating that, but that it is an underlying statement that the Housing Board is looking at throughout the State and that he thinks the Board should recognize it even though it's not part of their criteria. He stated that in that spot 1,000-1,200sqft would be treading on very thin ice because there is not any good guidance from the State, so they need to use their own best judgement. He explained that it is his feeling that they justify it because of the additional cost of building on the lake.

Mr. Wing stated that he shares Mr. Hennessey's concern about it and that he looks at it as a trade off with the septic moving back further from the lake, moving the house further away from the boundaries and accepting those concessions in exchange for the size of the home. Ms. Masse-Quinn stated that in reference to the variance not being contrary to the public interest, meaning does it change the character of the neighborhood, asked if a house that is larger than all the other houses on that road wouldn't change the character of the neighborhood. Mr. Wing stated that he couldn't speak to the character of the neighborhood as he didn't attend the site walk but that the other houses to his understanding are also new and that this structure is a stone foundation, a root cellar and he can only see it improving along with the other homes around the lake. He explained that it's changed the character, but that the character of the lake has changed as other homes have been built around it.

Mr. Westwood stated that his only concern is the size of the properties and if that would be a problem or not. He stated that he thinks it could be a major problem if the people that move there are opposed to it, but other than that he is okay with it.

Mr. Hamilton asked if this was a non-conforming lot. Mr. Wing confirmed that it was 1/10 of an acre and that the acreage, frontage, and boundary are non-conforming all around as most other homes are on that lake.

*3. Substantial justice is done because:*

Mr. Wing stated that substantial justice is done and asked if there was an injustice being done to the individual that is not outweighed by a gain to the public. Mr. Westwood replied that there was none that he could see other than the size. Ms. Masse-Quinn agreed.

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

Mr. Hennessey stated that they are improved. Mr. Welch agreed that having a brand-new house compared to a shack with a cesspool would increase the neighboring property values. Mr. Wing concurs.

*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:*

*B. 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?*

*C. 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. Stanvick doesn't necessarily see the hardship. Mr. Westwood agreed. Mr. Hennessey stated that if they don't grant the variance then they could still occupy the property as it stands. He stated that it's the building of sticks that the second pig had that can be blown down by the wolf and that the fact of the matter is by upgrading the property to an acceptable and modern septic system and water system he would be improving the whole lake for all the neighbors. He explained that in his opinion it is a hardship to make him stick with ancient in an inferior and uninhabitable house so there is no question that there is a hardship that needs to be met. He stated that one of the ways to do that is by granting the variance so that they can build a modern structure with a modern water and a modern septic system. Mr. Welch agrees with Mr. Hennessey. Mr. Wing concurs stating that the hardship is the existing property and if there isn't a hardship then he doesn't know that any of the properties would be upgraded on the lake and there wouldn't be any drainage systems installed and he views that as the hardship.

**ROLL CALL VOTE:** Mr. Westwood – 5 yesses, final vote “YES”  
 Mr. Welch – 5 yesses, final vote “YES with stipulations”  
 Mr. Hennessey – 5 yesses, final vote “YES”  
 Mr. Wing – 5 yesses, final vote “YES with stipulations”  
 Ms. Masse-Quinn – 5 yesses, final vote “YES with stipulations”

(5-0-0) The motion passes.

**FINDING OF FACTS:**

**MOTION:** (Hennessey/Masse-Quinn) To accept the following finding of facts:

1. Construction of a modern structure and septic system will contribute to the improvement of the health of the pond.
2. All setbacks will be improved, lessening the non-conformities including moving the structure and septic system further away from the pond.

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

Variance was granted. Mr. Wing reminded the applicant that there is a 30-day right to appeal.

## **HEARINGS**

### **CASE# ZO2023-00009**

#### **Map 7 Lot 4-180-22**

**GAGNON, Brett and Gagnon, Paul R. & LaGarde, Yvonne – 24 Benoit Ave. - Seeking a Variance concerning: Article VII Section 307-39 of the Zoning Ordinance to permit removal of 3 trees located in the 50' wetland buffer (WCD) of two different wetland areas, to facilitate the construction of a ground mounted solar array.**

Mr. Hennessey recused himself due to negotiating a land sale with the applicants' parents within the past 15 months and stepped out of the room. Mr. Wing appointed Mr. Stanvick and Mr. Hamilton to vote on this case.

Ms. Masse-Quinn 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. Brett Gagnon approached the Board. He stated his permanent address will be at 24 Benoit Ave, but that he currently resides outside of Pelham for the time being.

He explained that he is building a net zero home full geothermal that includes a solar array. He stated that he is requesting to cut down three large trees that are just barely within the wetland district in order to get a better skylight for that solar array.

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

Mr. Gagnon stated the while he was in the audience, he researched and found that every 1-kilowatt hour of electricity produced amounts to 0.846 pounds of carbon saved. He explained that a general 9-kilowatt system produces 10,000 kilowatt hours a year and that's approximately 8,500 pounds of CO2 saved. He stated that one tree only captures 48 pounds of CO2 and with three trees that would capture only 100-200 pounds of CO2 so the solar array will outweigh the benefits of the trees currently. He mentioned that in the Zoning Ordinance 307-118 it references that Pelham fosters good stewardship of the environment and it further goes on to say which encourages access to sunlight, so in the same token that is what he is trying to accomplish.

Mr. Stanvick stated that this case does have a WCD impact and asked the Board to take no action on this until this matter is brought before the Conservation Commission for their recommendations and opinions on the subject. Mr. Wing asked if it should be a stipulation of the variance or if they should make a motion to postpone until then. Mr. Stanvick stated that he recommends that it be postponed until the Conservation Commission has had a ruling on it particularly because some of the statements that were made were made as a member of the Conservation Commission and as someone who is knowledgeable when it comes to things like solar panels. He also explained that given the relationship that the applicant has with a member of the Conservation Commission, and one of the comments that they have is death by 1000 cuts when people start to violate and encroach on wetlands. He stated that he thinks it's only reasonable and in good taste to have that matter brought before the Conservation Commission, so that they can at least render an opinion or recommendation to the ZBA.

Mr. Welch asked if they could handle that by doing a joint site walk with the Conservation Commission. Mr. Stanvick replied that they could have a joint site walk, but that wasn't his recommendation. Mr. Welch stated that that's how they've handled it on similar cases where they've done the joint site walk and postponed the ruling to the next meeting. Mr. Stanvick recommended that they take a different approach and have the Conservation Commission have a conversation with the applicant and then based upon that discussion make a recommendation to this Board.

Mr. Wing stated that the clock is officially ticking because the case has been read into the record. He explained that he has no objection to having input from the Conservation Commission. Mr. Stanvick stated that the Conservation Commission has a meeting this Wednesday and if the applicant could come in and talk to the people on the Conservation Commission and have that discussion.

Mr. Gagnon expressed that the stumps will not be removed. Mr. Stanvick stated that he didn't want to get into a discussion but there are other issues rather than leaving the stumps there and explained that vernal pools have a concern in terms of the amount of sunlight that's allowed to enter the area. He reiterated that he didn't believe that this was the place to have that discussion and that he could speak to the appropriate people if there is a clock running, he should be able to satisfy it. He asked what the time frame was on this. Ms. Beauregard stated that she believes it's at least 60 but it could be 90 days now. Mr. Stanvick replied that the clock doesn't seem like there's that degree of urgency. Mr. Wing stated that the urgency is that this Board only meets once a month and that he doesn't want this to go to Conservation and not hear about it for a month and then suddenly they're waiting two months out. He stated that he is only impressing upon the Conservation Commission the importance and urgency of getting this back to this Board. Mr. Stanvick asked if the applicant was amendable to coming in on Wednesday. Mr. Gagnon replied he was it if that's what this Board required.

**MOTION:** (Stanvick/Masse-Quinn) To request the opinion and recommendations from the Conservation Commission.

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

Ms. Beauregard stated that they would contact the secretary as there is still time to get Mr. Gagnon on the agenda as long as they got in touch with her tomorrow. She stated that there is only a 24-hour notice for posting the Conservation agenda. She explained that the Board would then case specify this to the May 8<sup>th</sup> meeting. Mr. Wing confirmed stated that he would be the first case to be heard on May 8<sup>th</sup>.

Mr. Wing opened the floor to the public for anyone in favor of this proposal.

Ms. Jamie Boyd of 70 Valley Hill Road approached the Board. She asked the applicant if he'd be willing to plant as many trees as he intends to cut down since he is going to be altering a wetland.

My name is Jamie Boyd. I live at 70 Valley Hill. I own that lot there. This should be very quick. You've already got into some of it, so I. Just wanted to. Ask the applicant if you'd be willing to plant as many trees as you tend to cut down. Since you are going to be altering a wetland. Mr. Gagnon responded that he doesn't see why he wouldn't and that he would just have to find the proper place for it. He added that he is very environmentally friendly, and he does everything he possibly can to be so. Ms. Boyd explained that Mr. Gagnon mentioned off setting his carbon so maybe he should replace what he's taken. Mr. Gagnon replied

that he plans on planting shrubs all around the property so depending on the stipulations of how big and that sort of thing, he was already planning to do something like that.

Mr. Wing opened the floor to anyone who opposed this proposal. No one came forward to address the Board.

**CASE DATE SPECIFIED TO MAY 8, 2023**

**ZO2023-00010**

**Map 16 Lot 8-41-A**

**JACOBS, Robert (owner), MOSES, Jonathan & O'MALLY, Scott (applicants) – 703 Bridge Street – Seeking a Variance concerning: Article III Section 307-7 & Article V Section 307-18, Table 2 of the Zoning Ordinance to permit operation of a firewood business in the Residential District during the hours of 9am – 2pm, Monday – Friday (no weekends). This would include the storage of logs, processing of logs into firewood, and the storage thereof. There will be no customer pick up or foot traffic, wood will be delivered direct to customer.**

Mr. Hennessey rejoined the Board.

Ms. Masse-Quinn 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. Wing recused himself from the case as one of the abutters is a good friend of his daughter. Mr. Hennessey acted as the Chair for this case.

Mr. Jonathan Moses of 703 Bridge Street and Mr. Scott O'Malley of 103 Cluff Crossing Road, Salem, NH approached the Board.

Mr. Moses explained that they were requesting a variance to operate a firewood processing area on the property that would not involve foot traffic or pickups or anything of that nature. He stated that there would be no additional traffic and that they would be operating between hours that have been agreed upon with the neighbors.

Mr. Moses read the five criteria of a variance into the record.

Mr. Hennessey appointed Mr. Welch and Mr. Stanvick to vote on this case.

Mr. Hennessey asked if there was anything else the applicants would like to add. Mr. O'Malley stated that his daughter and granddaughter resided there currently, and that the business was started with family in mind. He explained that it's a family run business, family owned and operated by the two of them. He stated that they are looking to become part of the community and to make the property look presentable so that they can take pride in their business. He explained that in order to do that they would need the blessing of the Town and that's why they're in front of the Board to have them see what they need to do to make the property look presentable and add value and to be part of the community as well.

Mr. Hennessey asked if the applicants knew that they would have to go before the Planning Board for a Site Plan, both stated that they knew. Mr. Hennessey stated that he understood that they had spoken to the

Planning Department regarding zoning and why they would have to be there in front of the Board and if they understood why. The applicants stated that they did.

Mr. Stanvick asked if the business was currently in operation.

Mr. O'Malley stated that it was. He explained that there is a secondary yard on the right side of the home that is about 200sqft and that's where the business started, and they have now outgrown that yard. Mr. Stanvick asked if the Code Enforcement Officer that came by and talked to them had asked them to cease and desist while this application was being processed. Mr. O'Malley stated that he did not ask them to stop and told them to keep on working and gave them instructions on what to do and two hours later they were at Town Hall to start the process. Mr. Stanvick asked how long they had been operating prior to the Code Enforcement Officer taking notice. Mr. O'Malley replied about a year in that specific location. Mr. Stanvick stated that it was about a year before the Code Enforcement Officer finally noticed. Mr. O'Malley replied yes because it was just getting bigger than what they had expected so it became more noticeable from the street and that's basically what happened.

Mr. Hennessey stated that they had had a case before them that got into some contention among them as to whether this kind of usage was under industrial, commercial or what have you. He explained that he wasn't trying to defend the Code Enforcement Officer, but there are lines between those, and he believes that that's what he was looking to do to define the differences in a home business between a hobbyist and a commercial service. He stated that ultimately the applicants agreed with him that this is a commercial venture and that's why they're here.

Mr. Hamilton asked if the red building to the right of this property is a business where he rebuilds lawnmowers and things like that and if that was an existing business next door to them. The applicants replied that that was correct. Mr. Hamilton asked if that business operated on a regular basis. The applicants replied that it did. Mr. Hamilton stated that there are existing businesses near the property so that is not like a true residential neighborhood. Mr. Hennessey stated that the operation next door had been there for quite a while. Mr. Stanvick asked if that operation was a legitimate operation in that area. Mr. O'Malley stated that the neighboring business does New Hampshire inspection stickers so he would assume it is legitimate. Mr. Stanvick asked the question because this is in the residential area where they have this proposed business and then there is this other business that has been in operation for a while. Ms. Beauregard stated that the business next to the applicants is a legitimate business that predated zoning and have been there for many years. She explained that since then they had subdivided the lots which includes this lot, they the applicants are on now and that they did get the proper approvals through the Planning and Zoning Board. Mr. Hennessey added that he's been here for 26 years and have been using him since then.

Mr. Stanvick explained that what the size of the applicant's business was versus when you drive by now looks like an extremely large operation and doesn't look like a mom and pop business. He stated that it took up a large area and was extremely visible from route 38. He explained that the idea of this being in a residential area and being a mom-and-pop business may need to be reconsidered because it is very visible, and it does take up quite a bit of area on that lot and it looks a bit disheveled to him. Mr. O'Malley stated that they did spend a significant amount of the day today cleaning that up and that the reason it looked so disheveled was because of the weather and the amount of wood that they were getting at a time. He explained that their intention is to take pride in their business and to keep their yard clean and orderly and to have it be something that they can be proud of. He stated that when people drive by, they want them to look and say that it's a nice little business with some nice signage out front. He explained that they've

already put some wood chips out front to level off the land and that they have discussed putting up a fence with their neighbors. Mr. Stanvick asked if any of what they had discussed with their neighbors was in writing. Mr. O'Malley explained that it was and that they've put an entire packet together of exactly what they plan on doing. Mr. Hennessey explained that the procedure is that they are going to have to go before the Planning Board and agree to a Site Plan that the Planning Board approves that will then be enforced by the Planning Department. Ms. Beauregard explained to Mr. Stanvick that the packet that he has is where they wrote down what they are willing to do and this Board could recommend some of those stipulations and if its approved and moves on to the Planning Board then they could also add in screening, hours of operation and those kinds of things. Mr. O'Malley explained that that information was all in the plan, the hours of operation, screening plans are all in the plans that they turned in to the Board. Mr. Stanvick asked what this location was currently zones as. Mr. O'Malley stated that it was residential.

Mr. Westwood stated that his only concern was with the sound something like this makes. He explained that there aren't a lot of houses right there but if all of a sudden something changed with the neighbors then that could be really dysfunctional. He asked if they would have chain saws and splitters going and even though it ends at 2:00pm every day do they believe it would it be a problem. Mr. O'Malley stated that they've spoken with the neighbors behind them and to the side of them and have told them that they aren't going to be doing any work on the weekends and if anything, if would just be loading deliveries so there would be no noise at all on the weekends. He explained that as far as the 9:00-2:00 operating hours the saws and splitters won't be running constantly during those times. He stated that they have to cut the logs, move them, then split them and that as they go, they build walls of firewood which stops a lot of the noise from getting out of the yard as well. Mr. Moses stated that they have made it clear to their neighbors that they are open to adjusting and that if anyone has a problem with anything they can talk to them about it and that's been their attitude the whole time. Mr. O'Malley added that they are open to criticism and that if anyone opposed something and came to them, they would want to be good neighbors about it.

Mr. Stanvick asked what their containment plan for contamination was, as there is oil and gasoline involved. Mr. O'Malley stated that they have oil pans as far as changing the oil goes and that they have capped gallon oil cans for the recycled oil and that they bring them to tractor supply. He explained that as far as gasoline goes, they have the proper sized funnels, proper sized gas tanks and they make sure to overfill them and make it a slow process. He stated that contamination would be very minimal. Mr. Stanvick stated that spillage is not intended but when you look at those processes it almost goes without saying that some sort of spill will happen. Mr. O'Malley stated that there is an abundance of sawdust in the yard and that if anything were to happen, they would immediately put sawdust on it to stop the absorption. Mr. Stanvick stated that they were fairly close to a wetland and asked if there was a creek behind the operation. Mr. Moses stated that there is a behind their property but not on their property. He explained that they would be open to stipulations if they wanted them to check with environmental or something of that nature they wouldn't be opposed to doing so if that is a stipulation that the Board wanted to see. Mr. O'Malley added that everything on the ground there is basically just wood chips and kindling and pieces of wood that are not contaminated by anything.

Mr. Hennessey explained that the Board can make stipulations and recommendations to the Planning Board for their Site Plan and can attach those to their approval or as a reason for disapproval.

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

**DISCUSSION**

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

Mr. Hamilton stated that he doesn't believe it would be contrary to the public interest. He explained that they seem like they're pretty amicable to accommodate their neighbors and that the lack of people here makes him believe that there isn't anybody who is going to oppose their business and their operation provided that they follow the guidelines.

Mr. Stanvick stated that it is contrary to the public interest as it is very visible with the way that it currently stands. He explained that it was done in a way that they are now asking for forgiveness and that's an issue for a residential area to begin with. He stated that he didn't think it would be in the best public interest to establish a business and doesn't think there is a good argument to be made because of the guy's next door having done this for a long time and being okay with it. He explained that the Town agreed to a lot of things years ago when there were a lot of things in operation like junkyards, which have done their best to pull with the environment and those continue to take place. He stated that his issue is that it's not in the best public interest.

Mr. Westwood explained that he doesn't have a problem with this other than the mess it makes but he doesn't have any major issues with this.

Ms. Masse-Quinn stated that she doesn't have too many issues with this and that where it is located there are other uses going on in the area so it would not be contrary to the public interest.

Mr. Welch stated that he also doesn't believe that this would be contrary to the public interest as they are two lots away from the B5 Commercial district so they are right on the edge of where this would have been okay. He explained that there are other businesses immediately adjacent to this and that there is another wood processing business further up Bridge Street that's further into the residential area than these guys are. Mr. Stanvick asked if that business was operating legally. Mr. Welch replied that someone had mentioned earlier that they had received a variance for their business.

Mr. Hennessey stated that wood processing falls into the interstices of zoning as it can be a home business, or it could be a full blown commercial venture and it can be an industrial zone. He explained that it becomes a matter of judgement not only for the Board but for enforcement and the courts. He stated that it is a fluid situation and that it's tempting to corral this and get some rules of the road going in and some regulation and some understanding by both these folks and the Board as to what is allowed and what is not, and all in all it is a good thing. He explained that that is why he believes criteria one and two are met, not because they want a whole bunch of sawmills in Town, but to really figure out what kind of sawmills belong to industrial, to home occupations and something in-between as a commercial venture.

*3. Substantial justice is done because:*

Mr. Welch explained that he believes substantial justice is done because they've been in operation for a year and it's not like anyone reported them, the Code Enforcement Officer just happened upon them, so it doesn't appear to be bothering any of the neighbors or the general public.



Ms. Masse-Quinn stated that feels that substantial justice is met as there really hasn't been a complaint and she doesn't see any abutters in here opposing it or saying anything about it.

Mr. Stanvick explained that there is a zoning regulation that says this is meant to be residential for a bunch of reasons and that close is good in horseshoes and hand grenades, but there is an ordinance that states what goes on in commercial zones and what goes on in residential. He stated that he doesn't believe that this is a mom-and-pop business, but it is a substantial operation and it's very visible. He explained that he's driven by this a dozen times a day and never thought about the fact that it could be operating illegally and doesn't know if the neighborhood had thought about it in those terms. He stated that it has a fairly large footprint and until recently it was a very disheveled operation, and the bottom line is that it's a residential neighborhood.

Mr. Hennessey explained to Mr. Stanvick that he has voted against some businesses on Route 38 using some of the same arguments that he has and lost and what came to fruition was that they stayed unsightly and that he didn't make the stipulations he should've made as a member. He stated that he wasn't saying that these folks are going to do that because they've given the Board some assurances, but he would like to hear what ideas Mr. Stanvick has if this gets approved and what he would recommend to the Planning Board.

Mr. Hamilton explained that at the onset of the business it was a mom-and-pop business, but because of the growth, which is fantastic, it did get bigger and out of control and this is what they are trying to corral now by going through the proper channels to make some changes, put some screening up and take the neighbors and the neighborhood into consideration. He stated that it is two properties away from being in the business zone and that he understands the Town has rules and regulations but the only thing etched in stone were the ten commandments but there are shades of gray in those regulations. Mr. Hennessey stated that the purpose of the ZBA is to look at the people coming before us and if appropriate grant the exceptions that we call variances and that's the reason that this Board exists. Mr. Stanvick stated that it should be an exception and not a large course of action because if he looks back at this Board to 2022 the number of variances that come before them and were granted far exceeded those that were denied. He explained that one could question if they were really doing the job that they are intending to do. Mr. Hennessey stated that was valid and that is what the Board argues with every case in front of them. He explained that the Simplex case would absolutely apply here. He explained that it was a use case up in Portsmouth and the courts held in a landmark case that it's not just what is written out in the regulations and that you have to look at what is and what is the situation. He stated that you look at the site and then you look up the street and you look around at the road and at the traffic and what the people are doing in that area and is it residential. He explained that the court says that's part of the Boards job and that they have to look at it as is and not as just what's on the paper. He stated that this is a tough case and it's more than just following the rules and regulations of the Zoning Ordinance. Mr. Stanvick stated that he doesn't disagree with Mr. Hennessey but if he uses the 80-20 rule, and if it's 80% its not 100% but its close enough to be considered the case. He explained that when you get into the subjectivity aspect of it and the interpretation that it has to be done on sound facts. Mr. Hennessey replied that that was why they do the five criteria as opposed to emotions and that's why they're doing this.

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

Mr. Welch stated that they are not diminished because there are other businesses adjacent and it seems to be on theme with what's going on, on Route 38.

Ms. Masse-Quinn stated that she was on the fence with this one because it is in the residential zone so it makes you wonder if that would affect the values of the houses around that area. She explained that there are other uses going on in the area, but she would say that the value is diminished because it is a commercial use in the residential zone.

Mr. Westwood stated that he believes stipulations would be good to not diminish the values of the surrounding properties.

Mr. Stanvick stated that he has a real concern with this because the business next door has been very discreet in its operation and didn't have a big footprint or visibility factor like this business. He explained that it's not in the interest of a residential neighborhood and wouldn't want that in his backyard. He stated that he moved into a residential neighborhood for the fact that it's going to be residential and not people building businesses.

Mr. Hamilton stated that he didn't believe it would diminished the values of the surrounding properties.

Mr. Hennessey stated that on the application it stated that there had been a commercial use there before. Mr. Stanvick asked what the use was before. Ms. Beauregard stated that it had been one parcel before with multiple houses and the business. Mr. Hennessey added that they subdivided it to allow residential to be separated out. Mr. Stanvick stated that the point was that they subdivided it to be residential to separate the two. Mr. Hennessey agreed but stated that it was one parcel and that there was commercial and industrial use on the whole parcel. Mr. Stanvick stated that it was two separate parcels.

*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?*

*D. 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. Hennessey asked if they would be imposing a hardship if they were to pull the plug on the applicants who have been in business for a year.

Mr. Welch stated that he was struggling with the hardship aspect because it does come back to it being self-created. He explained that if they were to shut them down, they would be taking away the livelihood that they've built over the last year, but he doesn't think it's a hardship of the land.

Ms. Masse-Quinn stated that she was also struggling on this one. She asked if it was commercially zoned when the applicants had first set up shop. Mr. Hennessey stated that the whole site was a commercially zoned parcel that was carved out for residential use on this section. Ms. Masse-Quinn asked if it was residential when they established use of what they're doing right now as their family business. Ms. Beauregard explained that the purpose of the subdividing of the lots was to sell off some of the property and maintain the business use on one of the parcels. Mr. Hennessey stated that he remembered the case and that the whole site was a pre-existing non-conforming commercial use of fixing tractors and the like. He explained that there were two homes on the site, and they wanted to separate those out, which is the

background on this lot. He stated that it was not commercial, but it was abutting a commercial lot and that 90% of the people driving by probably never noticed it had changed because it didn't change appearance the only thing that changed was the uses of the lots are the variances. Ms. Beauregard added that the other lot that has the business on it still has two houses on it and is a mixed use and they just subdivided off this lot.

Mr. Westwood stated that he doesn't think there is a hardship unless it's the people that are driving by that see all the wood in a residential.

Mr. Stanvick stated that this is a self-imposed hardship. He explained that when you build a business you should know what is allowed and what isn't allowed in a certain area, and this is defined as being a residential area and he believes that this is a self-imposed hardship.

Mr. Hamilton agreed that this is a self-imposed hardship.

Mr. Hennessey expressed that his reaction to this is if only everybody knew everything they were supposed to know and explained that ignorance is no excuse for violating the law. Mr. Stanvick asked if they could not go down that road because if he was going to go off and invest in a piece of property, he would want to know all the particulars about it. He stated that so many times people have come to the Board saying that they didn't know and that's fine, but they should look into it.

**MOTION:** (Stanvick/Masse-Quinn) That the following stipulations be satisfied if the variance is approved:

- Hours of operation from 9:00am - 2:00pm Monday through Friday. No weekends.

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

The Board also offers the following recommendations to the Planning Board:

- The appearance of the operation should be cleaned up.
- Any environmental aspects of the operation should be looked at, including plans for spill mitigation.
- Level of noise should be looked at and mitigated ad the Planning Board deems appropriate.

**FINDING OF FACTS:**

- The property appears to sit within the commercial district and has commercial uses in close proximity.
- The property was once part of a parcel that contained a commercial use.
- The Planning Board will be able to impose reasonable conditions on the property such as screening, appearance, noise control, etc.

**ROLL CALL VOTE:** Mr. Westwood – 5 yesses, final vote “YES”  
Ms. Masse-Quinn – 5 yesses, final vote “YES with stipulations”  
Mr. Welch – 5 yesses, final vote “YES with stipulations”  
Mr. Hennessey – 5 yesses, final vote “YES”  
Mr. Stanvick– 5 noes, final vote “NO”

(4-1-0) The motion passes.

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

Mr. Wing rejoined the Board. He informed the Board that there is the New Hampshire Land Use Webinar on April 29<sup>th</sup> and encourages all members new and old to attend. Ms. Beauregard stated that she would send out an email so that members can register.

**DATE SPECIFIED CASE(S) – May 8, 2023**

*Case #ZO2023-00009 – Map 7 Lot 4-180-22 GAGNON, Brett and Gagnon, Paul R. & LaGarde, Yvonne – 24 Benoit Ave*

**ADJOURNMENT**

**MOTION:** (Masse-Quinn/Hamilton) To adjourn the meeting.

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

The meeting was adjourned at approximately 10:29 pm.

Respectfully submitted,  
Cassidy Pollard  
Recording Secretary