

TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT
June 12, 2023

Chairman David Wing called the meeting to order at approximately 7:02 pm.

PLEDGE OF ALLEGIANCE

ROLL CALL

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

ABSENT:

Recording Secretary Cassidy Pollard

MINUTES

May 8, 2023

MOTION: (Hennessey/Stanvick) To approve the May 8, 2023, meeting minutes as written.

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

REQUEST FOR REHEARING

Case #ZO2023-00007

Map 10 Lot 13-73

HARRIS PELHAM INN INC. – Rte. 38/Bridge Street – Rehearing of a previously denied 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.

Mr. Wing stated that it is a simple yes or no vote that they will either rehear or not rehear the case. He explained that the criteria to rehear the case would be if there was some new evidence presented that was not presented at the prior meeting or if the Board felt that there was something that they needed to better discuss from the prior meeting.

Mr. Hennessey made a motion to rehear the case. No one seconded the motion.

Mr. Wing asked for a roll call vote to rehear the case.

ROLL CALL VOTE: Mr. Stanvick– “NO”
 Ms. Masse-Quinn– “NO”
 Mr. Hennessey– “YES”
 Mr. Wing– “NO”
 Mr. Westwood– "NO”

(1-4-0) Motion failed.

The request for rehearing was DENIED.

CONTINUED HEARINGS

Case #ZO2023-00011

Map 27 Lot 2-102

HUNT, Judy & COOK, Bill (Owners), Meridian Land Services, Inc (Applicant) – 50 Hinds Lane - Seeking a Variance concerning: Article III Section 307-12 Table 1 of the Zoning Ordinance to permit construction of a single family residential dwelling on an existing non-conforming lot, where the lot does not meet the minimum requirements of 43,560 sq.ft. or 200’ of frontage. This parcel was recently before Planning Board as part of a lot line adjustment, Case #PL2023-00009, where approval was granted on April 17, 2023, to add 0.19 acres from Map 27 Lot 2-101 resulting in a total of 0.32 acres.

Mr. Wing explained that this case was continued from the last meeting. He stated that the abutters and the five criteria for a variance were read into the record at the previous meeting. He explained that the floor was opened to public input for those who were in favor or opposed the variance.

Mr. Bolduc of Meridian Land Services, Inc and the owners Judy Hunt and Bill Cook approached the Board.

Mr. Wing opened the floor to the public. No one came forward that was in favor or in opposition to this proposal. Mr. Wing asked Mr. Bolduc if there was anything further that he would like to add. Mr. Bolduc stated that the information was just as it was presented at the last meeting. Mr. Wing closed the floor to the public.

Ms. Beauregard added that it was confirmed that Hinds Lane is a Town accepted road. Mr. Bolduc asked that if the variance was granted tonight then they wouldn’t need to go back to the Planning Board or to the Select Board. Ms. Beauregard stated that that was correct and that it would strictly be a variance approval and the 30 day right of appeal. Mr. Wing asked if the Planning Board would approve the site plan. Ms. Beauregard stated that they wouldn’t in this case.

DISCUSSION

Mr. Hennessey stated that one of the points that have been made for several meetings and several hearings is that an undersized vacant lot is not vested, and that the owner has self-imposed a defect by not building on the lot that he owns, so therefore the Board should be rejecting all small lots because they have no right to it. He stated that he believes that this point has been a fundamental error on the part of the Zoning Board. He explained that the Zoning Board exists to discuss whether the unique conditions of the lot allow an exception to the Zoning Ordinance. He stated that he feels that there are two exceptions in this case that might mitigate the fact that he does not have enough land to meet the one-acre requirement. He explained that the first is that Mr. Cook has owned this land for a long time, but in addition to that he has made an extra effort to negotiate the purchase of additional land from an abutter and has added what he could. He expressed that in the past the Zoning Board used to make a big deal about the owner coming before them with a small lot and whether it was possible to aggregate more land from an abutter. He stated that they've gotten away from that practice over the years, but in this case the owner volunteered to do that and went and got more land where the Planning Board approved the lot line adjustment. He believes that that mitigates the fact that the land is small because it's all small. He explained that the second issue is the fact that the lot is too small. He stated that it's less than an acre but believes that it's mitigated by the fact that there is 150 acres of Town owned land behind this lot that can never be built on or sold that is protecting the nature of the area. He stated that those two mitigating factors go towards explaining why this lot is unique and why it's in the public interest to approve this variance.

Mr. Stanvick stated that there are Zoning laws in this Town that have been in place for several years now and that they are there for a reason. He explained that this is a self-inflicted hardship as there is nothing on that land today. He stated that he did expand the size of the land, but he is still under the requirement to build a house on that lot. He explained that the Board is here to look at exceptions and those exceptions based upon legal requirements versus subjectivity, then they need to be able to interpret the law and react to the law as it's written and not as they'd like to see it. He expressed that he is not in favor of granting this variance for two reasons. He stated that the first reason being that there are existing Zoning laws which the Board too often ignores out of subjectivity. He explained that secondly this is a self-inflicted hardship where the owner knew the condition of the lot. He stated that he was sure that the applicant knew what the Zoning laws were before and after purchasing the additional land. He thanked them for pursuing the purchase of the land but stated that it had no bearing as it is still an undersized lot with nothing existing on it today.

Ms. Masse-Quinn stated that she agreed with Mr. Stanvick and that the Board needs to apply logic and interpret the law. She explained that just because the Planning Board approved the lot line adjustment it doesn't guarantee that the applicant will be granted a variance. She stated that there is a shed on a 13,939sqft lot, where the state doesn't recognize any lots under 20,000sqft, with a shed that is 10' x 15'. She explained that if the variance was to be approved then the Board would be increasing the non-conformity of the lot to 18,000sqft, which by Zoning they are not supposed to do. She stated that in the Zoning Ordinance under 307-8 Non-Conforming Uses, it clearly states that any non-conforming use may continue in its present use, which the shed is the use in this case. She explained that the Zoning Ordinance goes on to say that any non-conforming use of land or

buildings may not be changed to another non-conforming use and with that she expressed support of Mr. Stanvick and that they need to follow what is in Zoning, to apply the law and be logical about it.

Mr. Westwood stated that he respects both side of the argument and that this case is a hard one. He explained that unlike the Planning Board or other Commissions, the Zoning Board doesn't have the right to vote with their conscience and if they did it would be a yes from him. He stated that the Board has to go by the law and that the law states it needs to be an acre and he would agree with Mr. Stanvick and Ms. Masse-Quinn.

Mr. Wing referred to the Pultar case on Little Island Park from last October or November where some of the Board went on a site walk, but he was unable to attend. He explained that the variance was to construct a single-family dwelling on an undeveloped, non-conforming lot that was less than 13,000sqft. He stated that a member at the time had suggested that there were extenuating circumstances on this lot for which the spirit and intent of the Ordinance would be observed and that he could support the establishment of use on a non-conforming lot. He explained that the Board at the time looked at all the surrounding properties and determined that all but one abutter was owned by the Town of Pelham and that there would be zero chance for expansion. He stated that the intent of the Ordinance would be to manage density and that density would be self-managed in this case except for the addition of the one home. He explained that this particular variance was approved 3 to 2. He stated that when he looks at this case that is currently in front of the Board, he believes that it is somewhat similar to the Pultar case. He explained that there are two surrounding lots, one to the left being a duplex with zero chance for expansion. He stated that the applicant had in fact sought to purchase some of that property from the duplex and bought as much land as he could without bringing the duplex lot into non-conformance. He explained that behind the lot at the 150 acres of Town owned land that there is also zero chance for expansion. He stated that when he looks at this, he can see that there is a case that can be made for the spirit and intent of the Ordinance would be observed and that density will be maintained. He explained that when he looks at the other two or three dozen properties on Hinds Lane that there is only one other non-conforming lot that is less than one acre and has less than 200' of frontage on which a similar use could be established which is at the intersection with Bush Hill Road. He stated that he doesn't believe it would be extenuating circumstances that would support that law because it is completely surrounded by developed lots. He explained that it is his opinion that Hinds Lane seems to have reached its capacity as far as development goes with the exception of the two eleven acre lots on the opposite side of the road where this Board would have no control over what would be built there. He stated that when he looked at this case, he recalled that last case and noted the similarities and believes that the spirit and intent would be observed.

Mr. Stanvick replied that the past doesn't dictate what the Board does going forward and that there was a lot of subjectivity in Mr. Wing's argument. He stated that he believes the role of the ZBA is to look at the regulations that are currently in place today and to rule accordingly. He then asked if the role of the ZBA is to act subjectively and decide on a case-by-case basis which one is okay and which is not okay. He stated that there is no consistency in terms of that logic, and he would

suggest that when the Board looks at these cases, that they look more closely as to what the law says as opposed to how they feel about the specific case.

Mr. Wing stated that he has been to a number of zoning trainings and seminars and that he has read a few PowerPoints and the mere fact that you do not meet the requirements is not looked upon favorably by the courts as to grounds for not approving the variance as they would not be in this room seeking a variance if they met the criteria.

Ms. Masse-Quinn stated that she sees Mr. Wing's point of view, but where this would be creating a substantial new use on the property by increasing the non-conformity by over 1,800qsft near the pond the Board has to really consider their decision. She explained that it is okay to have a use, however the use cannot be significantly increased and that this new use would be a substantial increase. She stated that as far as she was concerned the pond that is about 50' away from this area needs to be protected.

Mr. Hennessey stated that both Mr. Wing and Ms. Masse-Quinn were right, and that the fact is that they are on this Board to review requests for an exception to the rules. He explained that included in the five criteria for a variance is what is the unique aspect of this request versus somebody else coming in. He pointed out that there was a document handed to the Board that is not from the Town Attorney and is not binding. He stated that in the second paragraph on page four says that the purpose of a variance is to protect the constitutional rights of the owner by preventing him or her from being deprived of the viable economic use of the property. He explained that even the Constitution does not provide that every lot regardless of size must support at least one single family home. He stated that on one hand they don't want to take away the right to do anything and on the other hand this should be an exception and not the norm. He explained that the ZBA must determine whether the variance is appropriate at this particular lot. He stated that no, Members cannot come into meetings with the intent of making the same decision every single time somebody comes before them with a small lot. He explained that the ZBA must determine whether the variance is appropriate for this particular lot, taking into account all the facts and circumstances. He provided an example where if an owner of a substandard shorefront lot was denied a variance for a seasonal home because there was no adequate space for the septic system. He stated that the Board gets around that by dumping it on the State and the State telling the Board if the owner can get a septic in there. He explained that there has to be an exception and that it has to be different from other lots in the area. He reiterated that the Board cannot have one answer for every variance request and that it has to be individual to the lot. He stated that he believes that his lot meets that criteria as it is different than other properties that have been before the Board.

Mr. Stanvick stated that he has not heard what this exception is objectively, but he's heard it subjectively. He explained that there is nothing on this property but a shed which was an inappropriate use to begin with. He asked where the objective evidence is to allow a major expansion as he hasn't seen a hardship and believes that it is self-inflicted.

Mr. Hennessey stated that it is not cut and dry and that the most obvious thing that jumps out to him is the idea that there are lot requirements in order to protect the values of the properties around them. He explained that the other reason for lot requirements is to make sure that there is sufficient space so that an owner of a single-family home can enjoy it like other people. Mr. Stanvick stated that this is an undersized lot, and it doesn't have sufficient space. Mr. Hennessey continued that it backs up onto 150 acres of Town owned land that can never be built on and therefore it is different.

Ms. Masse-Quinn explained that it was the second time that she's heard it backs up to a wooded area of 150 acres and that she doesn't think this lot is unique or any different than any other lot that has been divided up just because the Conservation Commission bought the land behind it. She stated that she then looks at if it's part of a vested subdivision and it's not, it just backs up to Town owned land. She explained that there are other properties in Town that back up to Town owned land that are non-conforming and in the same original state maybe with a shed on it. She stated that under 307-8A, that they need to abide the Zoning on this and that this would be increasing the density by 1,800sqft on a 13,000sqft property. She explained that the State doesn't even recognize that as they come in at 20,000sqft for septic loads. She stated that she disagrees and that there are many other lots in Town that are also in the same state as this lot.

Mr. Wing stated that the case on Little Island Park and that these lots are the coffee can lots. He explained that what that owner wanted was a single-family dwelling on a 12,000sqft lot, which is smaller than this lot and didn't have 150 acres behind it. He states that the Board determined that there were maybe six or seven lots around it if less than an acre that would never be developed, and at that time for that Board that was sufficient enough to grant the variance and he uses that as a reference point. He explained that it was on a Class VI Road and would've gone to the Planning Board and would've been required to get Selectmen approval. He stated that that was in November and now it's almost July and he hasn't seen it come back to the Board.

Case #ZO2023-00011

ROLL CALL VOTE:

Mr. Hennessey– 6 yesses, final vote “YES”

Mr. Wing– 6 yesses, final vote “YES”

Ms. Masse-Quinn– 6 noes, final vote “NO”

Mr. Stanvick – 6 noes, final vote “NO”

Mr. Westwood– 5 noes, final vote “NO”

(2-3-0) The variance failed.

FINDING OF FACTS:

1. The granting of the variance would be increasing the non-conformity and creating a new use.
2. The new use is substantial.
3. Section 307-8 of the Pelham Zoning Ordinance states that non-conforming uses may continue in its present use, which the existing shed could remain in its current use, except that any nonconforming use of land or buildings may not be changed substantially.

MOTION: (Masse-Quinn/Stanvick) To accept the finding of facts.

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

Variance was **DENIED**.

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

HEARINGS

Case #ZO2023-00012

Map 10 Lot 13-167-6

PICHASACA ZARUMA, Manuel E. – 1197 Bridge Street – Seeking a Special Exception to Article XII Section 307-76 III of the Zoning Ordinance to permit applicant/owner to conduct his siding business from his home, with no more than 2 registered business use vehicles kept in view, and all other business-related equipment garaged or screened from neighboring view.

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.

Ms. Beauregard informed the Board that a special exception is unlike a variance where a special exception is an allowed use as long as the applicant meets certain criteria. Mr. Wing added that this is a yes or no vote and that there are certain criteria that need to be met and if the criteria are met then they would have to vote yes. Mr. Stanvick asked who validates the criteria or checks to make sure that the criteria is kept up with. He stated that for example he's seen home businesses around Town who have been granted that ability under certain circumstances but have expanded beyond the footprint that was approved. Mr. Wing explained that enforcement would be the responsibility of the Planning Department. Mr. Stanvick replied that he has spoken with Code Enforcement and the enforcement is more of it get brought to their attention then they'll check it out, but they don't actively go looking for those things, so would it be the homeowner or neighbor that would keep it in check. Mr. Wing stated that it would typically be the abutting neighbors. Mr. Stanvick questioned if the Code Enforcement Officer has no responsibility to go out and make sure people are following the rules when these get granted. Ms. Beauregard responded that he would follow up if there's a complaint or any issue that arises, but he is not actively going out and looking for people to break the law. She added that if the Planning Department is aware and the neighbor is concerned, and they let us know then he will go out. Mr. Hennessey added that there have been many cases especially on special exceptions where a competitor for example has stated that they object. He explained that it's not only the abutters but a competitor, or it could be on Route 38, and they see a flagrant violation and then go to Code Enforcement and ask about. He stated it's not just always a ticked off neighbor, but it can also be a member of the general public. Mr. Stanvick explained that the Conservation Commission often makes recommendations to approve or not approve and a lot of the times they put stipulations on plantings and such. He stated that he was curious as to who is responsible to go back and make sure those stipulations are in fact enforced. Mr. Hennessey states that in the case of a special exception it would be the Planning Board and the Conservation Commission is an advisory Board to the Planning Board and they

would have to approve a site plan and that is enforceable. Ms. Beauregard added that it would also be the Planning Department and Code Enforcement. Mr. Wing explained that it is the Planning Department who is in charge of executive function and the law enforcement function and that the Planning Board actually makes the laws or zoning that they enforce.

Mr. David Groff approached the Board along with the Manuel Zaruma and his son. He explained that they have a family business where they do roofing and siding. He stated that they had several vehicles at the property and that there was a complaint made. He explained that Code Enforcement Officer John Lozowski had followed up on the number of vehicles that were out there. He stated that they were directed to come in and apply for a special exception for a general home occupation which does not allow more than two business vehicles to be in view from the neighbors or street. He stated that they've had a design made for a garage in the back of their home. He explained that on the plan that was submitted with the application that the size of the garage is such that they'll be able to store a couple of business vehicles in there and it will be shielded from view. He stated that in addition to that they've also put up a fence along side of the neighboring property that was complaining. He explained that at the end of Route 38 which is right across the street from the new development that is going in there is a fellow that sells wood. He stated that it isn't the guy that is across from the Girl Scout camp, but that he is up a little further. He explained that he had been complaining about the number of vehicles so the Zaruma's put up a fence as well as some shrubs. He stated that they have a plan to construct a garage which they'll need a permit for and will require inspections. He explained that once those inspections are done and if the special exception is granted, they'll be able to park their vehicles in there and there wouldn't be any more problems.

Ms. Beauregard added that they will need to go to the Planning Board as well if this gets approved. Mr. Groff agreed and stated that they would need a Site Plan review which would be the plan that is kept at the Planning Department and asked if it would be recorded. Ms. Beauregard stated that Site Plans don't get recorded but that it would be kept on file. Mr. Groff explained that it would be something that they'd be able to look at a couple of years from now and if somebody was doing something other than what's allowed on the Site Plan then the Town would be able to take some enforcement.

Mr. Stanvick asked which Town agency or agent looks after that enforcement as opposed to a neighbor. Mr. Groff explained that there is a couple of ways that it could come up. He stated that if the house was resold then normally, they have to certify that all their permits are in order and that nothing that they've done had been done without a permit. He stated that people go down and check that in the Planning Department to see if that's true or not and they would have to do some correct action or remove the non-conformity. He explained that another way would be that a neighbor complains about something which would trigger the Code Enforcement Officer John Lozowski to go and take a look. He stated that sometimes if there is an inspection the Building Inspector will notice that something has been done there that they didn't have a permit for, and they'll instruct them to get the appropriate permits.

Mr. Wing stated that he presumes from the plan that the proposed garage will meet all required setbacks. Mr. Groff stated that Ms. Beauregard hadn't told him anything different and that the side and back setbacks are on the plan.

Mr. Wing asked Ms. Beauregard if they should go through the criteria of 307-76. Ms. Beauregard replied that they should. Mr. Hamilton asked if they were building a 28' x 40' garage with six parking spaces. Mr. Groff replied yes that that is the proposal that will go before the Planning Board if this is granted. Mr. Stanvick asked if the property is currently in the business zone. Mr. Groff explained that it is in a residential zone and that is why they are coming in for a special exception for a general home occupation. He stated that a general home occupation is allowed as long as they can meet the criteria for it.

Mr. Wing informed the public that in the Zoning Ordinance in Section 307-76 Article III there are 15 criteria that the Town has established for a general home occupation. He stated that Mr. Groff will address each criteria and presumably they're all going to be satisfied. Mr. Groff explained that this isn't the type of business where there's people coming and going, like a retail or wholesale business. He stated that they just have their equipment there and they got to job sites where they do their roofing or siding and then put the equipment back in the garage. He explained that the only reason that they're coming for this special exception is because they have more than two business vehicles and that's not permitted to be within sight of the road or neighboring properties.

- 1. The occupation is clearly secondary and subordinate to the primary residential use and shall not change the residential character of the neighborhood.***

Mr. Groff explained that it's basically just a big garage behind their house and that there are many examples of those in Town. He stated that there won't be any customers coming or going with this type of business as it's roofing and siding and is done off site.

- 2. It shall not consume more than 49% (forty-nine percent) of the gross residential living space including accessory structures and shall not change the residential character of the property.***

Mr. Groff stated that it's just a garage behind the house.

- 3. A maximum of two on-site non-resident employees.***

Mr. Groff explained that this is a family business so there wouldn't be any on-site non-residential employees.

- 4. Not permitted in a duplex or multi-family dwelling.***

Mr. Groff stated that this is a single-family dwelling and not a duplex or multi-family building.

- 5. One sign which advertises the business is permitted. It shall be unlighted and shall not exceed three square feet.***

Mr. Groff stated that he doesn't foresee this to be an issue as this isn't a business where people are looking to drive by or conduct business on-site.

6. *All outdoor storage, display, and any other external indication of the business activity shall be screened from neighboring view.*

Mr. Groff stated that this is going to be behind the house where there is a fence on one side, trees on the other and that the business vehicles will be stored inside of the garage.

7. *Any use that may be objectionable, noxious or injurious by reason of the production of emission of odor, dust, smoke, refuse matter, fumes, noise, vibration, heat or excessive illumination is prohibited. In addition, the use, storage, or disposal of hazardous materials, chemicals, by-products, medical waste or similar items considered dangerous to health and safety shall not be permitted without full local and state regulatory approval.*

Mr. Groff stated that this is just to store the business vehicles inside the garage.

8. *A maximum of two registered vehicles related to the business may be kept in view. All other business-related equipment must be garaged and screened from neighboring view.*

Mr. Groff explained that this criteria is what he's been referring to and been discussing.

9. *Delivery of goods and materials is limited to vehicles customarily associated with residential deliveries.*

Mr. Groff stated that they don't anticipate any deliveries on site and that they don't currently have any people coming there with trucks. He explained that they have another location in Lowell which is where their warehouse is located.

10. *Customer parking shall be provided off-street and may not be located within the required front, side or rear setbacks of the property.*

Mr. Groff stated that there wouldn't be customers coming or going. He explained that they go to the customers house to do their quotes and bids and if they get accepted, they go and do the work there.

11. *No retail sales other than those that are incidental to and customarily associated with business use for which the permit was issued.*

Mr. Groff stated that it's not that type of business activity occurring.

12. *An accessory structure built or converted for home occupation purposes shall be a size, style and type that is compatible with the surrounding neighborhood and capable of reversion to uses that are customarily accessory to residential.*

Mr. Groff stated that it's a garage.

Mr. Hamilton asked what type of facilities would be available within the garage, would there be any plumbing or heating? Mr. Groff replied there would be no plumbing and that they are unsure if they are heating the garage. Mr. Stanvick asked if the only thing going to the garage would be electrical. Mr. Groff stated that they would need lighting so electrical would be needed. Mr. Stanvick asked if there would be any materials stored on site. Mr. Groff replied that he stores materials at his warehouse in Lowell and that the sole purpose of the garage is to screen the business vehicles. Mr. Stanvick asked if it was only vehicles going into the garage. Mr. Groff replied yes only business vehicles. Mr. Stanvick asked if there would be any dumpsters that would contain materials that they've pulled off roofs or anything like that. Mr. Groff replied that there wouldn't be and that the dumpsters are on site and aren't brought to the property. He explained that roofing businesses have the dumpster there where the shovel the roofing material into and then it gets hauled off. He explained that the garage is going to house the business vehicles and whatever is on those business vehicles so that they're out of sight of the neighbors and the street and that's the purpose of getting the site plan approved. Mr. Hamilton asked if they did all aspects of roofing including rubber and asphalt roofs. Mr. Zaruma replied that he does both asphalt and rubber roofs. Mr. Hamilton explained that the adhesives for rubber roofs are extremely flammable and toxic and asked if he is going to be storing those vehicles in the garage would there be fire suppression systems in place. He stated that it's a large piece of property and a large garage in a residential area that has a very high potential for flammability. Mr. Zaruma replied that they only need the garage to store the vehicles.

MOTION: (Hennessey/Wing) To stipulate that prior to the issuance of an occupancy permit on that garage, that the Fire Department do an inspection to make sure it meets all applicable codes.

VOTE: (5-0-0) Motion passes.

Ms. Masse-Quinn asked if this would go in front of the Planning Board. Ms. Beauregard stated it would and that it would be a Site Plan review.

Mr. Hennessey asked what the height of the garage would be. He explained that the home occupation has to be secondary to its use as a residence and it's a good-sized garage. Mr. Groff stated that he didn't have the finalized plan for the garage and asked if the Board would want to make a restriction on the height. Mr. Hennessey stated that there is no height restriction in Town, but this Board generally goes with 30' as the norm. Mr. Wing asked if they knew the height of the existing dwelling and if the garage would be one or two story. Mr. Groff responded that the garage would be one story. Ms. Beauregard stated that the square footage has to be no more than 49% of the house and any other outbuildings on the property. Mr. Hennessey stated that on the plan the garage looks bigger than the house. Ms. Beauregard stated that the house is two stories, and the garage would be one story.

MOTION: (Hennessey/Stanvick) To stipulate that the garage not exceed 30' in height.

VOTE: (5-0-0) Motion passes.

MOTION: (Hennessey/Stanvick) To stipulate that the commercial portion not constitute more than 49% of the total gross residential living space including any accessory structures on the property.

VOTE: (5-0-0) Motion passes.

Mr. Stanvick questioned that there was a possible driveway encroachment and what that meant. Mr. Groff responded that that's what is shown on the plan and that the neighbor's driveway might be on Mr. Zaruma's lot, but that doesn't have anything to do with the special exception.

Mr. Westwood stated that many neighbors could be object-able to this only because there would be vehicles around all the time that would make it hard on the appearance of the neighborhood. He explained that he would like to hear from the neighboring abutter about that. He stated that there doesn't seem to be any breaking of the law except for the number of vehicles that are at the house. Mr. Groff explained that this is a family business that does roofing and siding. He stated that they have another location in Lowell, but that they park their business vehicles here at night so that they can drive them to wherever they do their work.

Ms. Beauregard asked what their hours of operation are and what times are the vehicles coming and going. Mr. Zaruma stated that they leave at 6 o'clock in the morning and are back at 6 o'clock in the evening. Mr. Hennessey stated that the Planning Board might have a discussion about that. Mr. Hamilton asked what the garage is going to be constructed out of. Mr. Groff stated that he didn't know and that would be something that the Planning Board looks at. He explained that they don't have the final plans for it and all they have is a conceptual plan of how big it's going to be. He stated the Board can put restrictions on it, but it does have to meet the criteria. Mr. Welch asked if the lot had been surveyed to see if there were any wetlands on it. Mr. Groff replied that the Board has the survey and that there are no wetlands on the property and what is shown is the existing tree line. Mr. Welch asked if the survey was what uncovered the driveway encroachment. Mr. Groff responded that it looks like when it was originally built, they maybe had a shared driveway, but he has not investigated the original subdivision. He stated that he believes Houston White and his wife developed this area.

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

Daniel Demers and his fiancé Cathy Sallese of 1199 Bridge Street approached the Board in opposition of this proposal. Mr. Demers stated that it is a shared driveway with a shared entrance. He explained that he bought the land in 1996 and had his house built before that house was built. He stated that when his house was built, they curved the driveway which was inspected at the time, but he doesn't know where the property line is. He explained that he doesn't believe they surveyed it to find out exactly where the line is. Ms. Sallese stated that there are no markings on the driveway that would show it's been recently surveyed. She stated that they've seen four or five trucks there at any time with ladders on top so they know that the garage will have to have a higher height. She explained that they've seen dumpsters left there on the side close to the fence as well as in the front of the property. She explained that even when there was a dumpster on the property the back of the property was full of garage. She stated that when their 25-year-old fence came down they had trash that would come across into their yard all winter long and that they've kept some of it just

for proof. She explained that they've taken pictures and have printed some out. She stated that they've burned materials in their yard that had black smoke coming up which must've been pretty toxic stuff, but they did not call the Fire Department because it was quick. She stated that when they first moved in, they took every tree down in their backyard and that they could now see right into their backyard where they couldn't before. She explained that there had been 20' trees along the side of the fence so they couldn't see anything in their yard. She stated that they have before and after pictures of this. She explained that even though they put the fence up, they put it up exactly where their fence had come down and if they surveyed it there is no marking and it was put right where there's was. She stated that she wasn't with Mr. Demers when the fence was put up 25 years ago, so she's unsure if there was space left for maintenance, but if there was, they didn't do the same and just put their fence where theirs was. She explained that they were only given a notice to come here and not what the Board had received so they weren't aware of how big the garage would be. She explained that the house is probably 28' x 40' with a garage underneath which leads her to believe that the proposed garage would be greater than 49% of their living space. She mentioned how the plan showed five or six parking spaces in front of the garage which she thinks is probably parking for employees, so not only would they be housing their vehicles but employee vehicles as well. Mr. Demers showed the Board pictures of the view from his deck before and after the trees were taken down. Ms. Sallese explained that it is a shared driveway and that they don't always pull in or back out and they park at the top of the driveway blocking their half to get it. Mr. Demers stated that there is a number of different vehicles that go up there and none of them are numbered.

Mr. Hamilton asked Mr. Zaruma if he was doing some remodeling when they first moved into the house. Mr. Zaruma replied that they were. Mr. Hamilton stated that that would explain some of the dumpsters and some of the debris as it was from the remodeling and fixing up of the house.

Mr. Stanvick asked if it would be appropriate to conduct a site walk of the property. Mr. Hennessey stated that he doesn't recall doing a site walk on a home occupation as it is a yes or no. He stated that if they meet the criteria then they are obligated to vote yes, however for the abutters this Board can make stipulations which are recommendations to the Planning Board as they create their site plan. He explained that it may be more appropriate to do a joint site walk with the Planning Board. Ms. Beauregard states that they couldn't do that as the Planning Board doesn't have jurisdiction over it yet.

Ms. Sallese asked what the law is on having a commercial business in your back yard. Mr. Wing explained that the Zoning Ordinance allows for a home occupation given that the 15 criteria are met. Ms. Sallese stated that that is their right to do that, and asked what her right is as a neighbor to not see business being conducted there and the cars going back and forth as they do share a driveway and it affects them. Mr. Wing read criteria six of a home occupation, that all outdoor storage, display, and any other external indication of the business activity shall be screened from neighboring view. Ms. Sallese responded that the vehicles won't magically appear in the garage and that they'll be going back, and forth which is additional traffic for them. Mr. Demers stated that he's called the Police as they've blocked the entrance so both driveways. Mr. Wing stated that the shared driveway would be a civil matter and that it would not be taken up by the Town. Mr. Demers stated that the Police Department didn't know the law around it. Mr. Wing stated that it is

not for the Zoning Board to decide who is right or wrong and that it is a civil matter that can be taken to court.

Ms. Sallese stated that the fence is nice but because the garage is going to be in the middle of their property it's not going to block anything and asked if they could put 20' trees in there. Mr. Demers stated that he's in a residential zone and is going to be looking at a commercial building with six parking spots. Ms. Beauregard stated that on the plan they are showing 19" but by the time they get to the Planning Board and if they get to the Planning Board, they can require that they do more. Mr. Wing added that if it does get approved and goes to the Planning Board, they can also voice their opinions there. Mr. Demers stated that 1205 Desjardin has a garage not too far from his and he can't see it because of the trees. He stated that he told Mr. Zaruma if he had left the buffer of trees, he probably would've never seen it. He explained that his concern is with the driveway he's had the Police there once and he's told Mr. Zaruma multiple times to not block the driveway. He stated that when Ms. Sallese tries to turn into the driveway she is often forced to back out and pull over on the side of Route 38 until they move. Mr. Hennessey stated that he's been in real estate for 48 years and he's seen his fair share or shared driveways. He explained that these two parties need to go split the cost of a survey and look into possibly widening the driveway but doing that is between the two of them to work and figure out. Mr. Demers stated that he isn't building and isn't worried about where the property line is.

MOTION: (Stanvick/Westwood) To conduct a site walk of the property.

VOTE: (5-0-0) Motion passes.

Ms. Beauregard stated that site walks are open to the public and the public can attend.

Mr. Wing closed the floor to the public.

SITE WALK – Friday June 23, 2023, 3pm

Case #ZO2023-00012 – Map 10 Lot 13-167-6 PICHASACA ZARUMA, Manuel E. – 1197 Bridge Street

DATE SPECIFIED CASE(S) – July 10, 2023

Case #ZO2023-00012 – Map 10 Lot 13-167-6 PICHASACA ZARUMA, Manuel E. – 1197 Bridge Street

ADJOURNMENT

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

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

The meeting was adjourned at approximately 8:26pm.

Respectfully submitted,
Cassidy Pollard
Recording Secretary