

APPROVED

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
April 11, 2016**

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

The Secretary Bill Kearney called roll:

PRESENT: David Hennessey, Svetlana Paliy, Bill Kearney, Peter McNamara, Chris LaFrance, Alternate Lance Ouellette, Planning / Zoning Administrator Jennifer Hovey

ABSENT: Alternate Darlene Culbert, Alternate Pauline Guay, Alternate Kevin O'Sullivan

Also Present: Planning Director Jeff Gowan

PLEDGE OF ALLEGIANCE

ELECTION OF OFFICERS

MOTION: (Kearney/LaFrance) To defer elections until the next Zoning Board meeting.

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

CONTINUED HEARINGS:

Case #ZO2016-00005

Map 41 Lot 10-279

BARLO SIGNS - 28 Bridge Street - Seeking a Variance concerning Article XI, Sections 307-69S, 307-69 S2 & 307-69O – Permit the installation of (1) one internally illuminated ground sign, 20ft tall, 70.2 SF, with a front setback of zero and a side setback of 12ft. Ground sign contains an electronic sign which will display full color messages and graphics.

Mr. Kearney read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Applicant Paul Martin of Barlo Signs and the owner of the property Christopher Matte (Ace Cigarettes) came forward to discuss the Variance request. Mr. Martin explained the owner would like to install a full color message center, where red and amber were permitted. The proposed sign will allow the owner to compete with surrounding businesses. The required setback is 15ft; the request is for a 12ft. setback due to the lot restrictions and to locate the sign in an existing traffic island. The overall size of the sign (including the decorative pole covers) will be 70.2SF; however the sign itself will be 47SF, which complies with the 50SF code. Mr. Martin reviewed the first two of five Variance criteria. He told the

Board upon approval, the owner had agreed to sign an affidavit of use to specify language such as:

- 1) the full color messages will fade in and out uniformly,
- 2) all messages and graphics will be maintained on the sign board for no less than 3 seconds,
- 3) the illumination/brightness across the sign will not vary in strength,
- 4) willing to work with Town regarding sign brightness,
- 5) messages and graphics shall move and appear uniformly, no animation or scroll, explode, flicker or stagger or give appearance of movement.

Mr. Martin told the Board that they had met with the Planning Board and received approval to alter the site plan to fit the sign. He then read aloud the remaining Variance criteria.

Mr. Hennessey understood that the applicant was not appealing the Administrative Decision regarding the pole covers. He asked for comment as to why the applicant would have a hardship if the variance was turned down. Mr. Martin replied there was a competing business (within approx. 200yards) that used a full-color message center. Turning down the variance would deny the applicant's business the same privileges as the nearby business.

Mr. McNamara questioned what messages would scroll on the sign. Mr. Martin replied there would be advertising messages that would remain for no less than three second intervals. This will occur throughout the day and night; brightness is programmed to auto dim. Mr. Kearney asked if the brightness could be reprogrammed. Mr. Martin answered yes. Mr. Kearney confirmed that the owner would abide by illumination restrictions placed by the Town. Mr. Martin said they would.

Mr. Hennessey spoke about the education the Board received about full-color message center signs when the business in the area requested their variance. He wanted to know if the applicant was requesting a similar sign. Mr. Matte believed it was the same sign he was requesting. Mr. Hennessey recalled learning that the full-color sign would be less distracting than other illuminations. Mr. Martin spoke about red and amber signs, which were somewhat difficult/strenuous to read and could become pixelated. New technology had the ability to incorporate a picture and price, making it easy to read. Mr. Hennessey questioned if three seconds would be sufficient. Mr. Martin answered yes, noting three seconds would be the minimum.

Ms. Paliy asked for clarification of the setback, specifically if the sign would be within the State right-of-way. Mr. Martin explained the sign would have a zero setback from the front property line, not the State setback. They are also requesting a 12ft. side setback.

Mr. McNamara understood the proposed sign would be 20ft. in height. Mr. Matte pointed out there was a large sign on the abutting lot (Grand 38 – Chinese Restaurant). Mr. Martin added they were looking for additional height so the sign would be visible further down the road.

PUBLIC INPUT – No one came forward. Public hearing left open.

Mr. McNamara stated he didn't have a problem with the side setback or the electronic messaging with similar restrictions as the competing business (Mobil Station south of the property). He was concerned with the sign height and size. He said the purpose of the ordinance was to allow for reasonable advertising that didn't distract drivers.

Mr. Hennessey wanted it understood that a precedence could be considered; however, each case was treated on an individual basis, and not based on cases that were previously in front of the Board.

Mr. Ouellette suggested conducting a site walk and asking the applicant to provide a visual of the proposed sign. He made a motion to conduct a site walk to see what the applicant was proposing. (*Point of Order – Chairman stated Alternates on the Zoning Board were allowed to make a motion*). There was no second to the motion. (*Clarification during May 9th meeting minutes review – Alternate members are not allowed to make a motion*)

As a point of reference, Mr. Kearney questioned the size of the sign on the abutting lot (Grand 38 – Chinese Restaurant). Mr. Martin believed their sign board was at least 5ft.x8ft. with an overall height of approximately 15ft. He reiterated that the applicant's proposed sign was 47SF, it was the decorative pole covers that increased the dimensions.

Ms. Paliy spoke about the competitor's (Mobil Station) sign, noting their lot had a lot of space. She said the applicant's location was a different situation that had a lot of signage in a small area. Mr. Hennessey commented that businesses were entitled to have signs. He also commented that the Town's Sign Ordinance needed updating. He said the Board learned more information about electronic signs during the last hearing (for the Mobil Station). He felt everyone had a clear indication of the applicant's location. Ms. Paliy stated she didn't have a problem with the sign itself, her difficulty was with the setback.

Mr. Mike Hammar, 71 Bridge Street questioned what other full-color illuminated message centers were located within the Town on Route 38. The Board was aware of the Mobil Station. Mr. Hammar told the Board a few years ago the State went down the length of Route 38 and redefined their setback, which forced businesses to make alterations, including moving signs. He spoke about the request in relation to the Town's requirements. Mr. Hammar, who had approximately 50 years of experience in the sign business, felt the proposed sign, setbacks and height were appropriate.

Mr. Hennessey asked the Board if they would like to hear the three variance requests separately, or as one. The Board decided against splitting up the requests, subject to the applicant meeting with the Town regarding the illumination. Ms. Hovey stated there would be signage conditions similar to those included with the approval for the First Chance Mobil Station sign.

MOTION: (Kearney/) Applicant to work with Town regarding sign illumination prior to the sign being set up.

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

BALLOT VOTE Mr. Hennessey – Yes to all criteria-subject to stipulation.
#ZO2016-00005: Mr. Kearney – Yes to all criteria-with stipulation.
 Ms. Paliy – Yes to all criteria
 Mr. McNamara – Yes to all criteria – with stipulation in motion.
 Mr. LaFrance - Yes to all criteria- with stated motion.

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

VARIANCES GRANTED

Case #ZO2016-00006

Map 35 Lot 10-352-3

MUSTO, Dominic - 17 Cara Lane - Seeking a Special Exception concerning Article XII, Section 307-74 to permit an accessory dwelling unit.

Mr. Kearney read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Mr. Hennessey provided a brief explanation regarding how a request for Special Exception was different from a request for Variance.

Dominic and Tracy Musto came forward to speak about their request for Special Exception. Mr. Musto explained he was seeking an Occupancy Permit for the in-law apartment within their home. He stated the home was constructed in 2004 and assessed in 2007. Recently the Code Officer informed him of an investigation and advised that going in front of the Zoning Board was the proper channel to handle the situation. Mr. Musto told the Board that he house was built with the purpose of having an in-law apartment. He said the apartment conformed to the Town’s criteria for such.

Ms. Hovey told the Board that the in-law apartment met the Town’s criteria. She added that the Building Inspector reviewed the floor plan and confirmed that it met the 750SF requirement. Mr. Hennessey provided a brief overview of the requirements. Ms. Hovey confirmed the applicant was in compliance.

PUBLIC INPUT – No one came forward.

BALLOT VOTE Mr. Hennessey – Yes
#ZO2016-00006: Mr. Kearney – Yes
 Ms. Paliy - Yes
 Mr. McNamara – Yes
 Mr. LaFrance - Yes

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

SPECIAL EXCEPTION GRANTED

HEARINGS:

Case #ZO2016-00007

Map 30 Lot 11-253

WITHROW, Leanne - 18 Smith Road - Seeking a Variance concerning Article III, Section 307-12, Table 1 to permit the construction of a single family dwelling on a lot having only 108ft of frontage and a lot area of approximately 13,000SF on a private road with 43,560SF of area and 200ft of frontage required.

Mr. Kearney read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Mr. Joseph Maynard of Benchmark Engineering, representing the applicant, came forward to discuss the variance request. He explained they would like to construct a new single family dwelling on a lot containing 13,000SF, where 43,560SF is required and having 108ft of frontage where 200ft is required. The Town's setback and Article K Regulations will be met. The septic system is designed for a three-bedroom home, although the home will only have two bedrooms. Mr. Maynard read aloud the responses to the Variance criteria as submitted with the application.

Mr. McNamara understood the proposed house will have two bedrooms. He asked if the lot was presently undeveloped. Mr. Maynard answered yes. Mr. McNamara wanted to know the size of the proposed house and if it would have two stories. Mr. Maynard replied the plan contained a 30ft.x44ft box, there was no design yet. He said they would build within the box on the plan. Mr. McNamara asked for the distance from the pond and neighbors. Mr. Maynard said the pond was well over 250ft away. He described the surrounding lots and houses in the area.

Mr. Hennessey confirmed that the septic system would be designed for a two bedroom home. Mr. Maynard stated they were proposing a two-bedroom house, which would be the limiting factor. The grade slopes to the left, so the house will likely be a garage under type of structure. Mr. Hennessey understood that the lot was beyond the Shore Land Protection area. Mr. Maynard stated that was correct. Mr. Hennessey asked if there was a view of the pond from the lot, or if anyone's view would be blocked. Mr. Maynard answered no.

Mr. McNamara questioned if there were any pictures of the property. Mr. Maynard answered no. He described the lot as being wooded. There are no wetlands; the plan contained a stamp certifying this fact.

PUBLIC INPUT

Ms. Julia Steed Mawson, 17 South Shore Drive came forward. She began by applauding the applicant for bringing forward a smaller sized house. She asked the Board to speak about implications of building on a smaller lot. She spoke about a situation involving one of her lots and an abutter requesting she take down some of her trees because they were concerned for their house. With regard to the applicant's request, she was concerned with tree loss and the long-term protection of the water shed. Mr. Hennessey explained that the Zoning Code was not as 'iron bound' as it had been in the past. Through court cases, it was clear the Board had to consider not only what was written in Zoning, but also what was 'on the ground'. In this case, the applicant spoke about the varying house sizes in the area. An important piece of the application was the fact that they would not be requesting a waiver to keep the water supply separate from the septic. He also noted that the septic had to be designed to match the number of bedrooms. Another important note was the applicant's lot being more than 250ft from the pond.

Ms. Steed Mawson wanted to avoid a similar situation of unintended consequences with a home being built on a smaller lot that later became concerned about trees from her lot causing damage. She noted there had been some larger homes recently built that didn't fit with the character of the neighborhood. She wanted to voice concerns ahead of development. Mr. Hennessey noted other than the lot size and frontage, there was no other deviance from the rule being requested. He added there was nothing in the Zoning law restricting height.

Mr. Kevin Gervais, 21 South Shore Drive voiced concern regarding his lot, specifically his leach field in the event it needed to be replaced. Given the size of his lot and proximity of the pond, he told the Board there was nowhere else on his lot to locate a leach field except for its current location. Mr. Maynard told the Board there was nothing being proposed that would cause an issue for Mr. Gervais because of where the applicant's lot was located. Mr. Gervais replied he hadn't seen a plan for where the proposed septic would be located. Mr. Hennessey saw the location of the proposed well and commented that a septic must be 75ft. away from a well. Mr. Gervais asked for confirmation that he wouldn't have a problem in

the future if he needed to put a leach field in. Mr. Maynard didn't believe there would be a problem caused by the submitted proposal. He noted the lot had the ability to hold a standard 3-bedroom septic system without needing waivers.

Mr. McNamara said his only concern was approving a variance without knowing what the house would look like in relation to the neighborhood. Mr. Hennessey spoke about height. He noted there was no restriction in the Zoning Ordinance; however, there were two instances where height becomes a matter of public discourse, the first was properties along the waterfront, the second was the area with the Mixed Use Zoning District ('MUZD').

Mr. LaFrance didn't see how the proposed square footage area could exceed anything further than what was in the neighborhood based on the size of the lot. He said the information may be vague, but he didn't feel that a two-bedroom home could exceed the levels of where Mr. McNamara felt the building could go. Mr. LaFrance didn't see how the proposed home could exceed 2,000SF. He felt the lot held its own restriction.

Mr. Ouellette told the Board he was familiar with the area and spoke about certain homes that were over 3,000SF. He believed Mr. LaFrance was correct, that the proposed house was constricted due to having two bedrooms and the planned garage underneath.

Mr. Maynard understood the Board's discussion and spoke to the restrictions of the lot.

Mr. Kearney felt the Board should be fair and equitable to the applicant, but at the same time didn't feel the information presented wasn't sufficient enough for him to make a decision. Mr. Hennessey asked if he would like to conduct a site walk and/or do a stipulation on the size of the house. Mr. Kearney replied the proposed home should fit within the character of the lot and the neighborhood. He suggested stipulating that the house not exceed 1800SF of "living space".

MOTION: (Kearney/McNamara) The proposed house cannot exceed 1800SF of living space.

VOTE: (4-1-0) The motion carried. Mr. LaFrance voted no.

BALLOT VOTE Mr. Hennessey – Yes to all criteria – with stipulated 1800SF.
#ZO2016-00007: Mr. Kearney – Yes to all criteria – with 1800SF stipulation.
 Ms. Paliy – Yes to all criteria.
 Mr. McNamara – Yes to all criteria – with stipulation/limitation in the motion.
 Mr. LaFrance - Yes to all criteria.

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

VARIANCE GRANTED

Case #ZO2016-00008

Map 23, Lot 11-342

POIRIER, Randall - 14 Springdale Lane - Seeking a Variance concerning Article III, Sections 307-12, Table I & 307-8 (C) to permit the replacement of an existing garage/shed which was 12ft.x20ft. to new dimensions of 14ft.x22ft. (After-the-Fact)

Mr. Kearney read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Mr. Robert Balquist of Meisner Brem Corp., representing the applicant, came forward to discuss the requested 'after-the-fact' variance for the reconstruction of an existing garage. The previous garage was 12ft.x20ft.; the new garage was built to the dimension of 14ftx22ft. The applicant's lot is on Little Island Pond and sized at 4900SF with 49ft. of frontage onto Springdale Lane. The lot is a pre-existing, non-conforming lot that predated the adoption of the ordinance. Mr. Balquist explained that the applicant had reconstructed the garage in nearly the same location and dimensions as an older garage that was in disrepair and unsafe condition. He believed a complaint was filed with the Town; the applicant immediately sought a variance and Shore Land Impact Permit from the State. The Shore Land Impact Permit has been granted to treat the runoff from the new garage by means of a dripline trench. The existing home will not be expanded and there will be no removal of trees. The side setback of the new garage is 2.4ft where the minimum required is 15ft. The front setback is 10.7ft where 30ft. is required.

Mr. Balquist read aloud the variance criteria as submitted with the application. He displayed a photograph of the previous garage to show the comparison to the newly constructed garage.

Mr. McNamara questioned if the previous garage had any system in place to catch storm water runoff. Mr. Balquist answered no; the previous garage had no system, the new garage included a dripline trench to treat runoff into the ground versus flowing directly into the pond.

PUBLIC INPUT – No one came forward.

Mr. Hennessey commented that the present case was an illustration of how seriously the State considered the pond. Mr. LaFrance appreciated the photographs and noted the applicant had done a nice job improving the structures.

BALLOT VOTE Mr. Hennessey – Yes to all criteria.
#ZO2016-00008: Mr. Kearney – Yes to all criteria.
 Ms. Paliy – Yes to all criteria.
 Mr. McNamara – Yes to all criteria.
 Mr. LaFrance - Yes to all criteria.

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

VARIANCE GRANTED

Case #ZO2016-00009

Map 36 Lot 10-191

APPLEYARD REAL ESTATE INVESTMENTS, LLC - (*Garland Woods Subdivision*) Off Currier Road - Seeking a Variance concerning Article VII, Section 307-39 to permit the proposed development of twelve (12) single family house lots, each with Wetland Conservation District impacts. The twelve (12) lots are shown on approved subdivision plan of land recorded in Hillsborough County Registry of Deeds as Plan No. 38565 and are numbered as Lots 191-32, 191-37, 191-27, 191-26, 191-25, 191-24, 191-23, 191-22, 191-19, 191-15, 191-42 and 191-41 on said plan.

Mr. Kearney read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Mr. Hennessey informed that his company, Coldwell Banker, had dealings with Green & Company several years ago. He was not aware that they had any interest in the case and saw no cause to recuse himself from the Board. No objection was voiced regarding Mr. Hennessey remaining seated.

Attorney Stephen Ells of Holmes & Ells, PLLC, representing the applicant, Appleyard Real Estate Investments, LLC, came forward to discuss the requested variance for the Garland Woods Subdivision. Also present was Richard Green, Project Principal and Jim Gove, Wetland Scientist of Gove Environmental. Attorney Ells asked that Mr. Gove be allowed to begin the presentation by discussing his findings and describe the proposal.

Mr. Gove greeted the Board and directed their attention to a plan sheet depicting the wetlands on the site. He described the parcel giving a summary of the existing condition, highlighting the fact that a great deal of the land had been put into conservation. He explained the situation. In essence, when particular lots were laid out there was a bit of confusion about the wetland buffer and no-cut/no-disturb area. In some cases there were homes very close to the wetland buffer. The applicant requested relief from the buffer for twelve lots; there was no request for a direct wetland impact. Mr. Gove pointed out the buffer areas they requested going into and the areas that would essentially preserve and enhance the function of the buffer. He provided photographic examples of the buffer areas, which showed very little understory, which was an essential element to help buffer wetlands and provide habitat. He explained the theory was to enhance the buffers by putting in dense understory plantings. They would stagger shrub plantings outside of the encroached areas. The shrub species would be hearty, dense, hold the soil and provide protection from runoff. They would also have wildlife habitat value and be very attractive to songbirds.

Mr. Gove reiterated, although they were requesting an encroachment into the buffer, they would provide additional plantings that would maintain and enhance the buffer, and at the same time mitigate the areas by through protective plantings. There will be no direct wetland impacts.

Mr. Hennessey read aloud a letter submitted by the Conservation Commission to the Zoning Board dated March 30, 2016. The letter indicated that the case had gone in front of the Conservation Commission relative to the proposed Wetland Conservation District ('WCD') impacts and mitigation on twelve new house lots within the Garland Woods conservation subdivision. The Commission understood the proposal was to install buffer plantings at either one or two locations, depending on the extent of the WCD impact. Buffer plantings will be placed between the maintained yard area and the wetland on each lot. As the lots are now, there is very little natural buffer to any of the wetland areas. Current vegetation is mainly mature trees and saplings with very little understory growth. Buffer plantings will be clusters of native shrubs such as winterberry and dogwood; since there has been success with these types of buffer plantings. The Commission was informed by Planning Director Jeff Gowan that the buffer plantings will be marked with "No Cut, No Disturbance" WCD signs so future property owners will be aware that the buffers are not to be cut down or disturbed. The Commission voted five in favor (zero opposing and zero abstaining) of the proposed mitigation to the WCD impacts, with the added stipulation that the guarantee of survival regarding the planting be extended from one year to two years.

Attorney Ells read aloud the five Variance criteria as submitted with the application. He told the Board there was a fair amount of give and take discussion during the Planning Board review/approval process with many of the goals and objections being met for the conservation subdivision. He suggested that the requested relief was reasonable and justified in these circumstances. He concluded by saying the hardship criteria had to be an 'unnecessary hardship'; if it was going to deprive the landowner of the right to use their property, there must be some corresponding benefit to the public. In this case, not allowing the lots to be developed would provide no public benefit to the Town. Without the proposed mitigation, the wetland buffer area will not be enhanced or be protected.

Mr. McNamara questioned if the proposed changes would negatively affect either storm water or ground water drainage runoff. Mr. Gove replied every element of the proposal would do a better job of controlling erosion, runoff and help to provide more water quality treatment from runoff of the lawns. He pointed out the issue was very little understory and herbaceous layer able to take up any runoff. In essence, since the areas were downslope from lawn areas, the plantings would add stability and take up nutrients through their dense root base. Mr. McNamara confirmed with Mr. Gove that he had no objection to the stipulation of guaranteed survival of the plants being extended from one year to two years. Mr. Gove had no objection to the stipulation.

Mr. Kearney wanted to know if the 'nutrients' taken up in the root base was caused by fertilizing lawns. Mr. Gove answered yes; that was one potential. Mr. Kearney asked Mr. Gove if there were any fertilizers that the plantings wouldn't take up. Mr. Gove stated they were very adaptive to acid soils. He couldn't think of any fertilizers they wouldn't take up.

Mr. Hennessey questioned if there would be anything in the marking paperwork, lot disclosures, homeowner's documents, etc. that would inform buyers of the no-cut/no-disturbance areas. Mr. Green came forward. He told the Board the homeowner's documents would discuss the wetland buffer. He noted there wouldn't be structures in those areas as they will be marked with the appropriate markers. He had no objection including the stipulation in the purchase and sales documents. Mr. Hennessey indicated he would like to see the stipulation included in the purchase and sales documents.

PUBLIC INPUT

Jim Leonard, 83 Garland Drive told the Board he had water issues and had to dig his well three times to find water. He spoke about the Garland Drive extension development, which he believed caused further water problems in the neighborhood. In August he reduces his water usage and at times notices a Sulphur smell. Mr. Leonard didn't realize the number of houses that would be within the new development (Garland Woods). He also didn't understand why Lots 41 and 42 had to be built with additional plantings, which he felt would absorb more water. He questioned what recourse there was if he ran out of water. Mr. Hennessey suggested speaking to the Planning Department. He noted there were other areas within Town having difficulty with water. He explained the Zoning Board was addressing the variance case in front of them, not whether a development should, or should not be built.

Mr. George Garland, Garland Lane asked what brought the situation with the twelve lots about. Mr. Hennessey understood that an encroachment was discovered into the setback of the WCD and in some areas into the WCD itself. He said rather than redo the entire subdivision, the applicant was seeking Zoning relief. The Zoning Board is in charge of granting variances to the Zoning Regulations. Mr. Garland believed the situation was brought about because of a problem or mistake with surveying. He said they were trying to 'squeeze' so many lots onto a small piece of land that they made a mistake. Mr. Green stated the variance had nothing to do with a surveying mistake. Mr. Garland didn't think the Board had the authority to sit in judgement on a builder. He didn't think a surveying mistake by builder qualified for a variance. He believed the Board would open itself up to lawsuits down the line if they granted the variance because other people would come forward.

Mr. Hennessey explained the criteria review / variance process. The Board had to make a decision regarding those variance criteria and if an applicant met that criteria to change the Zoning laws. With respect he said questions about the number of houses or the development should be directed to the Planning Department and the Planning Board. Mr. Hennessey stated the case in front of the Board was if the Zoning laws should be altered to allow for the proposed adjustments. Mr. Garland replied he understood what was going on, as he had sat on the Board in the past. He didn't think the situation was right.

Mr. Michael Shaw, 14 Fineview Drive came forward for clarification that the twelve lots being discussed were contemplated in the approved plan and not additional house lots. Mr. Hennessey replied they were not additional lots. Mr. Shaw wanted to know if the foundations were being moved from the original plan. Mr. Hennessey answered no. He explained that the way the development was laid out, there was some encroachment on the 50ft. setback to the wetlands; in some small cases they slightly hit the WCD itself. He said rather than digging up the foundations, and disturb the land further, the applicant requested a variance to allow the encroachment and at the same time add mitigation so the land would be less affected than built originally. Mr. Shaw confirmed that the foundations weren't encroaching in the wetlands. Mr. Hennessey answered yes. Mr. Shaw asked if any of the septic

systems (for the twelve lots) were located in the wetlands. Mr. Hennessey answered no; the State had approved all of the septic systems.

Mr. Mike Hammar, 65 Garland Drive wanted to know if abutters would have the same consideration if they ran into a similar situation as the applicant. Mr. Hennessey stated in the eighteen years he'd been on the Board they had heard many encroachment cases in which owners inadvertently found they couldn't use their yards. During those cases the Board conducts a site walk to see the impact. He said in most cases the Board granted the variance because the harm to the owner and the use of their land outweighed the effect on the wetlands. Also, in most cases the Board had gone to the Conservation Commission to find out the effect of granting a variance. Mr. Hennessey pointed out in the case being heard, the Conservation Commission voted five to zero that the proposed mitigation did a better job than not touching the land. He said if anyone had a similar situation, they should speak to the Planning Department; the Board and the Planning Department tries to find solutions that work for everybody, including wetland protection. He reiterated that the Board heard testimony from Mr. Gove, a wetland scientist and the Conservation Commission saying that the proposed solution was better than the original subdivision. Mr. Hammar was familiar with hearings and instances of people wanting to build closer to wetlands and others having difficulty with water.

Mr. Gowan came forward to clarify his position in the process and tell the Board if the variance is granted he would personally each of the twelve lots and make a determination where the WCD signs will be placed. Normally WCD signs are placed every 50ft; however, he was unsure if that would be sufficient. He suggested and encouraged information regarding the plant species and plantings be provided to the homeowners so they could understand the value of the plantings. Mr. Gowan stated there had been no mistake in surveying. He told the Board the situation came about through an interpretation of the Town's WCD Ordinance. He explained when the applicant went in front of the Planning Board they received a Special Permit for encroachments into the WCD for the road and utilities without realizing that the Special Permit didn't extend to the small back yard pockets. He reiterated there were no errors and no mistakes, it was simply a misinterpretation issue that could only be fixed by the Zoning Board.

Mr. LaFrance understood the request and respected the proposal. He questioned if the lots had been clear cut into the WCD buffer or if there was a wetland not caught on the original design. Mr. Gowan replied the wetland were all identified. He explained the applicant was seeking prior permission, this was not an 'after-the-fact' mitigation situation.

Mr. Leonard told the Board he could see one of the ponds from his backyard. He asked if there would now be signs every 50ft. going across the rear of his property that he would have to look at. Mr. Gowan described the size of the signs. He stated the development was required to have specific signs posted; it was non-negotiable. Mr. Leonard understood what the signs looked like and was concerned about seeing the backs of those signs from his lot. Mr. LaFrance replied the signs were usually posted on a tree. Mr. Gowan told the Board he would go to the twelve lots and ensure that the signs are attached in a reasonable fashion so they would remain in place to demonstrate the WCD boundary. Mr. Hennessey discussed the importance of the signs so owners knew where they could not cut. Mr. Gowan noted the signs would be on the house side of the buffering plants. He reiterated signs would be posted in a manner to preserve the visual aspects.

Mr. Ouellette questioned if the situation was brought up to the Planning Board if they would have taken similar action as proposed by the Conservation Commission. Mr. McNamara replied the encroachment had not happened. He said the applicant saw the conflict when the plans came in with the detailed drawings; they misapprehended what the WCD entailed. Mr. McNamara pointed out that the plan (as drawn) was reviewed and approved by the Planning Board as well as the Planning Board's engineer. Mr. Ouellette wanted to know if the Planning Department would have proposed buffering similar to that being shown. Mr. Gowan said if the situation came up in the beginning, the applicant would have needed to come in front of the Zoning Board before going to the Planning Board. He pointed out the physical lots weren't changing, it was just a minor encroachment into the WCD, which he viewed as a modest solution from what other developers would have requested. Mr. Ouellette asked if the proposal would have been acceptable to the Planning Board. Mr. McNamara replied the Planning Board approved the plan and felt the proposal would also have been acceptable. Mr. Gowan added that the mitigation was a better situation from what presently existed. He said it was a best management practices approach. If the Zoning Board became aware of the situation, Mr. Hennessey stated they would have conducted a joint meeting with the Planning Board. Mr. McNamara believed the result would be the same given the fact that the plan contained a lot of benefits that far

outweighed breaking up the land into a conventional subdivision. He said it was well designed and engineered to take up the historical nature of the property.

Mr. LaFrance appreciated the clarification, because he initially thought it was an ‘after-the-fact’ situation. Knowing the basis behind the request, he said it made sense.

BALLOT VOTE Mr. Hennessey – Yes to all criteria- with stipulation that the ‘no
#ZO2016-00009: clear cut’ zone will be referred to in the Purchase & Sales (*as agreed by Richard Green during the discussion*)
 Mr. Kearney – Yes to all criteria
 Ms. Paliy – Yes to all criteria
 Mr. McNamara – Yes to all criteria
 Mr. LaFrance - Yes to all criteria

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

VARIANCE GRANTED

Case #ZO2016-00010

Map 41 Lot 6-148

SWINIARSKI, John Jr. - Cardinal Drive - Seeking a Variance concerning Article III, Section 307-12, Table I to permit a commercial building on a lot with less than the required frontage.

Mr. Kearney read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

The applicant John Swiniarski, Jr. along with his representative, Attorney Peter Bronstein, came forward to discuss the variance request. He stated that the property involved was a vacant lot of approximately 3.2 acres with approximately 143ft of frontage, where 200ft. was required. He displayed the plot plan and explained the lot, which was located in the Industrial Zone, had been in existence over seventy years. He described the lot as a stereotypical pre-existing, non-conforming lot.

Attorney Bronstein read aloud the variance criteria as submitted with the application.

Mr. McNamara questioned if the proposed building would be constructed in the rear portion of the property. Attorney Bronstein replied that was correct. Mr. McNamara asked for a description of the building. Mr. Swiniarski explained by the way the lot was configured, they would consider building something long and slender possibly along the left lot line, which would allow vehicles to turn around. He said they were considering tradesmen space. If the variance is approved, he will have additional details when going in front of the Planning Board for Site Plan Review.

Mr. Hennessey wanted to know if the lot had access to both Pelham and Dracut. Mr. Swiniarski replied they were on the Dracut line; however, Keating was located on the back of the property.

PUBLIC INPUT – No one came forward.

BALLOT VOTE Mr. Hennessey – Yes to all criteria
#ZO2016-00010: Mr. Kearney – Yes to all criteria
 Ms. Paliy – Yes to all criteria
 Mr. McNamara – Yes to all criteria
 Mr. LaFrance - Yes to all criteria

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

VARIANCE GRANTED

MINUTES REVIEW

March 14, 2016:

MOTION: (McNamara/LaFrance) To approve the March 14, 2016 meeting minutes as written.

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

ADJOURNMENT

MOTION: (LaFrance/Paliy) To adjourn the meeting.

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

The meeting was adjourned at approximately 9:45pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary