APPROVED

TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
December 12, 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, Alternate Lance Ouellette, Alternate Thomas Kenney, Zoning Administrator Jennifer Hovey

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

PLEDGE OF ALLEGIANCE

HEARING(S)

Case #ZO2016-00032
Map 15 Lot 8-241
PRUDHOMME, Matthew 221 Hobbs Road - Seeking a Variance concerning Article VII, Sections 307-39 & 307-41-B to permit an addition to be constructed to an existing home to be within 20 feet of the edge of wetlands where 50 feet if the required wetlands conservation district setback for a structure from the edge of wet.

Mr. Hennessey appointed Mr. Ouellette to vote.

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 for the discussion.

Mr. Hennessey stated when they received the application he was surprised there wasn't anything from the Conservation Commission. His initial thought was the Board should conduct a site walk. He said in speaking with Mr. McNamara (who was also the Planning Board Chairman), he agreed. Mr. Hennessey asked the Board's opinion.

Mr. Maynard welcomed a joint site walk with the Zoning Board and the Conservation Commission. He felt it would be important for the boards to see the site. The Board members agreed that a site walk would be beneficial.

The Board discussed a date for site walk. Mr. Hennessey stated the Conservation Commission would be invited. He also noted that the public was invited as a site walk is considered a public meeting. Mr. Ouellette asked if the Conservation Commission would have adequate time to provide input. Mr. Hennessey replied they could provide input verbally during the site walk.

MOTION: (McNamara/Ouellette) To continue the case to the January 9, 2017 meeting and conduct a site walk inviting the Conservation Commission to attend on Saturday, January 7, 2017 beginning at 9am

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

The case was date specified to the January 9, 2017 meeting.

REQUEST FOR REHEARING

Case #ZO2016-00024
Map 36 Lot 11-91
MAJOR REALTY TRUST 101 Dutton Road - Seeking a Variance concerning Article III, Sections 307-12, Table 1 & 307-14 to permit a lot to be subdivided into two lots which do not meet the frontage requirements of 200 feet. The owner's intent is to provide a safe handicap accessible living situation for their son, who due to pre-existing health concern requires him to be close to family. The proposal includes providing 200' of frontage for the existing home on lot 1191 and creating a new lot on 11-91-1 with 15' of frontage on Dutton Road. RSA 677:2 Motion for Rehearing by Robert C. Orlep and Mary B. Orlep Regarding a Decision of the Pelham Zoning Board of Adjustment.

Mr. Hennessey stated the Board received an extensive letter (dated November 23, 2016) from Attorney James Lombardi of Lombardi Law Offices, PLLC, representing Robert and Mary Orlep of 97 Dutton Road (Map 36 Lot 11-92). The Board was provided with a copy of the October 24, 2016 meeting minutes, during which Case #ZO2016-00024 was discussed and voted upon by the Board. He asked the Board to keep in mind, as they went through the letter from the attorney, if they felt a response, expanse or discussion was required they should vote for a rehearing. He said if the Board members felt questions and comments were answered within the last hearing, they would vote to uphold the Board's decision and deny the request for rehearing.

Mr. Hennessey stated the first page (Point #1-5) of Attorney Lombardi's letter was essentially a recap of what was presented during the October 24th hearing. He asked Mr. Kenney to vote since he was present during the original hearing.

Page 2 outlined the request for hearing and the stated grounds for the request. Point #8 spoke to meeting the five variance criteria. Mr. Hennessey said the assertion was that the applicant did not prove that denying the variance would result in unnecessary hardship because the property was currently used for the purpose for which it is zoned (a residential lot).

Page 3, Point #10 reads in part that a property's dimensions by itself, especially with respect to land that is larger than other properties in the area is not a special condition that supports a finding of hardship. Point #11, Mr. Hennessey noted that the Board discussed the size of the lot and referred the meeting minutes. Point #12, cites Supreme Court cases. Mr. Hennessey told the Board they weren't to argue the cases, but if they felt the points were valid, they should vote for a reconsideration. Mr. McNamara felt the cases cited (Margate Motel v. Gilford, Saviano v. Town of Atkinson) should be distinguished factually from the case previously in front of the Board. He believed the applicant cobbled together various dicta from those decisions and tie them at once. Referencing the Margate case, Mr. McNamara said the BlueBird Hotel (next to the Margate) wanted to put up a 2-story, 30-bed motel to replace an existing 4-unit building and 20 cottages. The lot was such that it was long and narrow. The Town of Gilford had a 25ft. setback for buildings from lot lines and 15ft from a parking lot. The request was for a building to be 8ft. from the lot line. That board granted the variance allowing for a 12ft. setback and waived the parking requirement. The court overturned the variance quoting (among other things) the case of Richardson v. Salisbury which stated

size and dimensions aren't enough when the land could be used for purposes permitted by zoning. Mr. McNamara explained that the Richardson case involved someone who wanted to use a lot (purchased in a residential / agriculture zone) to store and repair old cars; creating a use contrary to the zoning ordinance. The court quoted there were other allowed uses of the property that were not precluded. He noted in the Board's case (Major Realty Trust) the parcel was approximately 3.5+ acres in a residential zone and the applicant wants to use it for residential purposes. They are requesting to subdivide the lot (in essence) and have more than enough room to do so. He stated the hardship was if the only way to get to that land (available to subdivide) is by a driveway located in or near the place where they are intending to put it, which happens to be on, or close to the property line. He noted the applicant would install a driveway, not construct a building.

Mr. McNamara then spoke to the cited case of Saviano v. Town of Atkinson. He explained that the plaintiff wanted to demolish two existing cottages on a 3-acre lot and construct a 2-bedroom dwelling. In that case the applicant applied for bot a special exception and a variance, but apparently the town recognized there should have only been one existing structure on the lot, when there were in fact two. The special exception was denied and the applicant then went to their variance request. The court said the plaintiff's argument for a hardship was his lot was larger than the neighboring lots and indicated that, that fact alone didn't establish hardship. The court didn't address anything else. In reading Point #11, Mr. Hennessey noted the quote of Mr. LaFrance didn't only address the size of the lot, but also the configuration being a 'dog leg'. The minutes contain additional comments.

Mr. Ouellette recalled the Pace case off Hobbs Road that had a landlocked piece of land and the only way to access it was through the property's edge via a road; a similar condition as the Major's case. Mr. Hennessey replied it wasn't just the size it was the way the lot was configured. Mr. McNamara said it was the lot, the size and the configuration to the other properties in the area.

Point #13, addresses the applicant's burden of proving that the values of surrounding properties would not be diminished. Mr. Hennessey stated at times he took the effects on property values more lightly than perhaps others would because he had been doing real estate for forty-three years. He tended to look at it through the prism of his own experience. He commented if anyone felt the point was compelling, they should take note and during their vote to reconsider it may be germane.

Point #14 was in regard to the Orlep's concern arising from the construction of a driveway for the new lot running the entire length of the boundary line separating their lot from the Majors'. In summary, they were concerned about a safety risk for their young child and belief that the driveway location would diminish the desirability of future property buyers. Mr. Hennessey stated this was an important point for the Board during the hearing. He felt their concern was legitimate and the Board addressed it through their discussion. He saw in Point #16 & #17 that Attorney Lombardi was adding the driveway location was another piece of the variance request. Mr. Hennessey pointed out that the Board was not giving a variance for the driveway; as discussed in the minutes, there was no permission needed in Zoning for the driveway to be built, it could be done without a variance. While respecting the concern of the abutter, Mr. Hennessey felt that point should be separated. Mr. McNamara believed there were ways to ameliorate the concern of the driveway, which could be accomplished during review by the Planning Board. He recalled the applicant saying there might be an effort to move the driveway further away from the lot line and include buffering (which was contained in the minutes). Mr. McNamara commented what the Board stated during their present discussion had no bearing on the record. Mr. Hennessey replied a copy of the meeting minutes were provided to the Board for review. While he felt the Board's decision was correct, Mr. McNamara said they had a lot of additional justification for their decision. He said the Board probably did not put enough particular justification specifically on the five criteria. Although he did not think the Board made an incorrect decision, he leaned toward a rehearing to give the Board the opportunity to enhance their position from appeal. Mr. Hennessey respected Attorney Lombardi's letter and felt it behooved the Board to go through it. Mr.

McNamara agreed, with the proviso that there was no new factual information it was argument (law). Mr. Ouellette agreed that the letter seemed argumentative and didn't see that new facts were brought in.

Point #19 header read that the Board improperly relied on the applicant's personal circumstances in granting the variance. With due respect, Mr. Hennessey thought the Board clearly laid out that despite their feelings for the applicant's circumstance, it was absolutely not the reasons for the decision; the Board laid it out several times and in several ways. Mr. McNamara believed that there was an insinuation in Attorney Lombardi's letter that by the public annunciation that there was personal hardship (during the hearing) that the Board took it as an additional reason. He stated he brought up that fact (during the meeting) specifically to say that it was not a reason and that a variance had to be grounded in the circumstances of the property. Mr. Hennessey said the applicant's letter with the variance application spoke about their personal circumstance, which is why the Board addressed the subject during their hearing.

Prior to her time on the Board, Ms. Paliy believed there was a similar case (approximately 14 years ago on Mammoth Road) that was asking permission for a back lot. She believed the board at the time denied the request and it went to court, who in turn allowed the back lot to be built. Mr. McNamara noted each case was judged on its own merits. Ms. Paliy understood. She said one of the things that case brought was the right to develop land. Mr. McNamara replied that was a long established right.

Point #21 further spoke to the Major's personal hardship. This point troubled Mr. Hennessey as it left out several statements contained in the record that the Board specifically did not look to the personal hardship of the Major family in deciding for, or against the zoning. The letter reiterates in Point #22 that variances decisions must be made based on the condition of the land in question, not on the circumstances pertaining to the owner. Mr. Hennessey agrees one hundred percent and believed the record showed that's how the Board decided. Mr. Ouellette quoted the October 24, 2016 meeting minutes which read "Mr. Hennessey felt there was a hardship that ran with the configuration of the land. He stated the Board had to put aside the handicap issue."

Point #24 addressed the Board's obligation to set forth in the minutes how an applicant meets each of the five variance conditions. Mr. Hennessey stated the Board had chosen, as a Board in their procedures, to take the criteria as a whole after full discussion on each. He explained they didn't vote on them one-by-one given the way they used the forms and written decisions. He said other boards in the State did it the way Attorney Lombardi described and there were also boards that did it the same way Pelham's Zoning Board did. He said the question was if the Board adequately addressed each one of the five criteria and each member had to consider this when making a decision regarding a rehearing.

The Board members took a moment to review the October 24, 2016 meeting minutes. Mr. Kenney made a motion for a rehearing. Mr. Hennessey asked that the Board continue their discussion.

Mr. Kearney believed the Board did an adequate job in addressing the variance and listening to the abutter. He felt they addressed the abutter's issues. He believed they understood the issue with the land and why the variance request was brought forward. His only reservation was if he hadn't been present for the meeting, and read the minutes exclusively, he said it might be the Board's error in not making sure that each of the points got in definitively. Although it didn't change the way he thought that night, or at the present meeting. Mr. Hennessey stated the minutes were a reflection of the case and asked the Board if they adequately reflect sufficient discussion of each point. Mr. Kearney felt the minutes were more meaningful to him because he was present for the meeting. Mr. Ouellette disagreed. He wasn't present for the meeting, but in reading the minutes noted that the Board had (at least the past five years he's been on the Board) voted the same. He said they take the five criteria as a whole and not singled one out unless it was a hardship. He felt when there was a hardship they 'grilled' the point, which he felt had been done in the minutes of October 24th. Mr. Hennessey noted the Board had to address each of the five criteria. Mr. Ouellette felt the Board did address all criteria in every application. He believed through the discussion

during the meeting the criteria were contained in the minutes. Mr. McNamara felt the Board made the right decision and done an adequate job in the record. He said the case was most likely going to be appealed, given that there was an attorney involved who wrote a fairly lengthy brief. He said they were possibly going to need to bring in counsel and expending public funds to defend the Town in a court room. Given that likelihood, Mr. McNamara stated the Board was better off being overly cautious and having a better record for counsel to defend.

Ms. Paliy stated she was also not present for the meeting but had also read the records and felt the Board addressed the criteria. She said the examples given by the attorney were 'commercial' and were different from the case in front of them. She believed if the voted no and the case went to court, it would be overturned based on the criteria, the background and the point that they could put more than one house and the point that the Board didn't issue driveway permits. She noted there were other permits and 'hoops' that the applicant had to go through before building. Ms. Paliy understood an attorney was involved and the case would probably go to court. Based on that fact, she was fine with the Board rehearing the case so when it got to court they had everything on record. Mr. Kenney questioned why the Board wanted the applicant to go through hoops. To better understand the process, Ms. Paliy suggested that Mr. Kenney read the meeting minutes and review court cases.

Mr. Hennessey stated the question came down to if the Board found the attorney's letter compelling, and the Board did an inadequate job, as opposed to an adequate job, in laying out the criteria, they had to vote for a rehearing. He questioned the fact of a lawyer being involved and what a court might, or might not do, which he stated was not fair to the applicant (Majors). He reiterated if the Board believed, based on the record, they did not do an adequate job, they had to vote for a rehearing. He didn't want to rehear the case out of fear of what a lawyer or judge may, or may not do. He said if the Board felt they did an adequate job laying out the reasons the members would have to vote against a rehearing. Mr. Ouellette pointed out that the lawyer (Attorney Lombardi) didn't present any new findings in the letter (dated November 23, 2016). Mr. Hennessey believed the Board was faced with a difficult question, just as the case itself was difficult, which he felt the record reflected.

By show of hands, Mr. Hennessey asked who was in favor of granting a new hearing. Mr. McNamara, Mr. Kearney and Mr. Kenney raised their hands in favor of granting a new hearing. Mr. Hennessey and Ms. Paliy voted against conducting a rehearing. The vote was (3-2-0) in favor of a rehearing.

It was noted that the case would be reheard January 9, 2017. Ms. Hovey stated the applicant requesting a rehearing (Robert and Mary Orlep) was responsible for sending abutter notification.

The original applicant, Mr. Major of Major Realty Trust asked the Board if he could have a copy of Attorney Lombardi's letter to provide to his own counsel. Mr. Hennessey answered yes. He said the Planning Department would have a copy available.

CONTINUED

Case #ZO2016-00028
Map 30 Lot 11-156
PATTERSON, John - 1 Andover Street - Seeking a Variance concerning Article III, Section 307-12-E to permit a detached garage within the required front setback on a corner lot.

Mr. Ouellette stepped down. Mr. Kenney was appointed to vote.

Ms. Hovey indicated that the abutter list was read at the initial meeting.

Mr. John Patterson came forward to discuss the variance request. He began by reading aloud his responses to the variance criteria as submitted with the application. He told the Board that his representative was not present and he would present his own case. Given that the area was dense, Mr. Patterson stated he currently allowed the Town and other neighbors use the lot for snow storage in the winter and the proposed garage wouldn't hurt that area. He displayed a tax map showing the location of the lot and noted it was one of the largest lots in the area.

Mr. Hennessey saw that the plot plan was marked as certified, but saw it wasn't stamped or signed. He questioned if the plot plan was accurate. Mr. Patterson stated to his knowledge the plan was accurate and indicated he had copies of the previous plot plans (5 copies) dating back to 1941, which all looked the same to him.

Mr. McNamara confirmed there was currently a shed on the property and questioned if vehicles were also being stored. Mr. Patterson replied the lot had a shed and he used the lot for parking his personal vehicles. Mr. McNamara asked how many vehicles were on the lot. Mr. Patterson stated he had three vehicles and other recreational-type vehicles (i.e. boat, 3-wheeler, children's bikes). He noted they had a small house and would like to use the garage mostly for storage. Mr. McNamara questioned if vehicles would be sold from the lot. Mr. Patterson answered no, the lot would only have personal vehicles. Mr. McNamara wanted to know if the garage would have a second floor and if there were any depictions of such. Mr. Patterson answered yes, it would be used for storage. He planned to construct one big room. The exterior would be vinyl siding and stone.

Mr. Kearney wanted to know the size of the structure. Mr. Patterson stated the garage would be24ft.x36ft with a height of approximately 32ft. Mr. Hennessey said in the area of the lake the Board had tried to keep heights below 32ft.

Ms. Paliy stated virtually every house in the area was a client and believed the applicant was also a past client. Mr. Hennessey asked Ms. Paliy if she saw a conflict. Ms. Paliy answered no; she wanted it stated on the record. Mr. Hennessey stated Ms. Paliy could poll the members; however the State indicates no one can declare a conflict except the individual member. Ms. Paliy did not see that she had a conflict. The other Board members didn't see a conflict. Mr. McNamara said in the future if a Board member feels there is a potential for a conflict they had an obligation to address it at the beginning of a hearing.

PUBLIC INPUT – No one came forward.

Mr. Patterson provided the Board with a letter from Kevin & Constance Crooker, the abutter located across the street from Mr. Patterson, who were in favor of the variance. He noted they were the only abutter behind his lot (facing the pond).

Mr. McNamara stated the only issue he had was the proposed height. Mr. Patterson explained that Andover Street located behind his lot) was 10.5 feet above Gaston Street. Ms. Paliy recalled the Board conducting a site walk (for another application) in the area. She noted there were other tall garages in the neighborhood. She asked if the garage would be dug into the hill to the rear of the property. Mr. Patterson answered yes; at the further point (closest to Andover Street) the structure would be 10.5 feet below grade. Mr. Hennessey clarified the height because the Board was concerned with blocking the view to the pond. Mr. Patterson stated he personally spoke to everyone abutting and no one had an issue with the location or the height.

Mr. Hennessey asked the Board if they wanted to make a motion restricting the height. Mr. McNamara was concerned with the height; however, in the context of the surrounding neighborhood, the proposal sounded like it would be okay, given the description by the applicant. Ms. Paliy believed if the Board had a topography map the decision would be considerably easier. From what she understood the building would

be basically underground, so the person behind the lot wouldn't view a 32ft. structure, they would only view approximately 22ft. (because the land is higher in the location). Mr. Patterson stated that was correct.

Mr. Hennessey asked that the survey (marked certified) be stamped prior to construction.

MOTION: (McNamara/Kearney) A requirement for approval is that the survey submitted with the application be stamped prior to construction.

VOTE: (4-0-1) The motion carried. Ms. Paliy abstained.

BALLOT VOTE #ZO2016-00028:
Mr. Hennessey – Yes to all criteria
Mr. McNamara – Yes to all criteria
Mr. Kearney – Yes to all criteria
Ms. Paliy - Yes to all criteria; with an abstention to the certification motion.
Mr. Kenney- Yes to all criteria

(5-0-0) The motion carried.

VARIANCE GRANTED

Mr. Ouellette returned to the Board.

HEARINGS

Case #ZO2016-00030
Map 30 Lot 11-183
SIFFERIEN, Gary & RIVERA, Javier - 21 Gaston Street - Seeking a Variance concerning Article III, Section 307-8- C permit an increasing height of existing dwelling approximately four (4) feet, in order to accommodate ceiling height to be in compliance with current building codes.

Mr. Ouellette stepped down. Mr. Kenney will vote (as appointed during the previous hearing).

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.

Attorney Joe Clermont, representing the applicants, came forward to speak to the request for variance. He told the Board the applicants had owned the property for approximately twelve years; however, the property had been in Mr. Sifferien's family longer than that time. The lot contains approximately .28acres (12,200SF). Attorney Clermont told the Board there was a pre-existing, non-conforming camp on the property. The applicants were seeking to re-build the structure due to the low ceilings and increase the building height approximately 4ft. above the current height to comply with the code requirements. He stated the property had already received their septic approval and Shore Land permits. The variance is to extend the pre-existing, non-conforming use to allow for the height increase. Attorney Clermont read aloud the responses to the variance criteria as submitted with the application.

Mr. McNamara wanted to know the current height. Attorney Clermont replied it was approximately 24ft.; the applicant was looking to add approximately 4ft. and be no more than 30ft in height.

PUBLIC INPUT

Mr. John Patterson, 7 Gaston Street told the Board he was familiar with the location of the building and didn't feel the additional feet (in height) would have a negative impact on anyone.

Mr. Lance Ouellette, 13 Gaston Street told the Board that the applicants had done a tremendous amount of work to the property over the last eight months; the property had gone through a total transformation. He understood they obtained all required permits and when it came to remodeling the house it didn't meet code requirement, and would need to raise the ceiling height. He commented it was shallow house and felt the request was reasonable. He stated he was in favor of the requested variance.

BALLOT VOTE #ZO2016-00030:
Mr. Hennessey – Yes to all criteria
Mr. McNamara – Yes to all criteria
Mr. Kearney – Yes to all criteria
Ms. Paliy - Yes to all criteria
Mr. Kenney- Yes to all criteria

(5-0-0) The motion carried.

VARIANCE GRANTED

Mr. Ouellette returned to the Board.

Case #ZO2016-00031
Map 24 Lot 12-215-3
CARTER, Fred, Jr. Piper Lane - Seeking an Appeal from the Decision of the Zoning Administrator rendered on October 17, 2016 for the issuance of a building permit #2016-00410 at Lot 3 Piper Lane for a duplex.

Ms. Hovey stepped away from the Board and took a seat in the audience.

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. Ms. Amanda Muldoon of 33 Drummer Road told the Board she had an interest in the case being a resident in the neighborhood. Mr. Hennessey welcomed Ms. Muldoon, and explained the Board was interested in knowing if a member of the public had statutory interest in the case.

Mr. Fred Carter came forward and outlined his appeal. He told the Board he and his wife signed a purchase and sales ('P&S') agreement with DHB Homes on February 8, 2016 to acquire lot 12-215-1. Mr. Hennessey inquired if Coldwell Banker was involved in any way with their transaction. Mr. Carter didn't believe so. Mr. Hennessey asked if Coldwell Banker was his broker or agent. Mr. Carter answered no. Mr. Hennessey stated he was a manager at Coldwell Banker and wanted to clarify before the discussion continued.

Mr. Carter stated in conducting extensive research understood their lot was one of seven homes destined to be phase 3 of the Bayberry Woods subdivision. Phases 1 and 2 were complete, along with Stonepost Road. All homes built in accordance with the final plan approved by the Planning Board in March, 2007. The first note on the cover sheet (of the approved plan) indicates the conditions under which the Harris family sold lots 215 & 221 that was to combine the lots and re-subdivide into 28 single family residential lots. The other factors, which gave them confidence in the development, were two signs along Poplar Hill Road advertised Bayberry Woods as premiere new construction, single family homes with acre plus lots. In driving through the development the homes adhered to the final plan and he felt any reasonable person would believe after ten years the final street in the development would follow suit, especially after being told so by the builder and some of the final seven homes were under construction and especially when the final plans were included as an addendum of the P&S.

Mr. Carter had a fundamental problem with the timeline of events leading up to the permit being issued, and what he characterized as an intentional lack of transparency regarding the project from the builder; however, he understood the present meeting was not the forum for those grievances. Instead, he focused on what he felt were reasonable objections for the construction of a duplex in Bayberry Woods from a planning board perspective. He told the Board he had a number of informal discussions that made him question the decision to spend money to come in front of the Board. He said building permits were described as largely administrative 'black and white' decisions. With that, he told the Board he stumbled across the NH Office of Energy and Planning handbook on-line. He said if the decision to award a duplex was merely a math equation, of a lot having two acres and 200ft. of frontage, a computer would do it. He noted RSA 674-17 illustrates why that is not the case. It reads that those decisions shall be made with reasonable consideration to, among other things, the character of the area involved and its peculiar suitability for particular uses, as well as with the view to conserve the value of the buildings and encouraging the most appropriate use of the land throughout the municipality. Mr. Carter felt a lot of subjective words were embedded in that statement that allowed for judgement, nuance and common sense. He noted according to Zillow.com as of Friday there were 94 homes for sale in Pelham, with sale prices ranging from $100k to $1.2million. Based on the appraised value, he stated if he listed his home it would be the seventh most expensive listing in Town. The other houses on Piper Lane and Drummer Road are similar; the neighborhood is filled with families that paid in the 90-95th percentile for their homes and have five-figure annual tax liabilities. Mr. Carter told the Board it was indisputable that single-family residences were the most desirable housing type in Pelham. According to NH.gov 87% of the homes in Town were single-family residences. He stated there was nothing inherently wrong with a duplex, or people that choose to make their home in one. He noted the proposed duplex was 3800SF, which would be 25% larger than the average surrounding home, on a road featuring seven homes ending in a cul-de-sac. He asked for another example in Town of a solitary duplex mixed into a neighborhood of homes with a similar price point. Mr. Carter stated there had been an immediate and visceral negative reaction by everyone he'd spoken to (in the neighborhood and beyond) was rooted in fact and felt to be completely abnormal and out of character for the subdivision.

Mr. Carter began to speak about conserving the value of surrounding buildings. He stated it was difficult to find statistics that fit his situation. He believed there were two undisputable truths surrounding homes within the 90-95th percentile; one is there are fewer market participants, and two, the homes take longer to sell. He went on to say that the introduction of a duplex where they typically don't exist took a small, slow moving market and removes participants that are put off by something so abnormal. Plenty of people harbor feelings for what a duplex would mean in their neighborhood.

Mr. Hennessey interrupted the discussion. He stated he respected Mr. Carter's anger and understood he felt mislead and mistakes had been made. He inquired if there were any covenants in Mr. Carter's deed or other properties in the area. Mr. Carter didn't believe so. Mr. Hennessey questioned if there were any deed restrictions on the properties regarding the type of structures that were allowed to be built. Mr. Carter was unsure. Mr. Hennessey was interested in the cited RSA, and went on to explain that the fundamental question for the Board, with regard to an Appeal of Administrative Decision, was what error was made by the Town in granting the permit. He appreciated the arguments about value; however it had nothing to do with the case in front of the Board. He asked Mr. Carter what mistake he believed the Town made.

Mr. Carter believed there were serious considerations surrounding the value of the home and the duplex would completely change the complexion of the street. He stated there were seven homes on Piper Lane; the duplex would equate to 15% of the homes. As an abutting property he thought he would have been notified of such. Mr. Carter provided a timeline. The duplex application was submitted on September 2, 2016. The Carters closed their home on October 21, 2016. In the interim, and especially during their final walk through October 4, 2016 the Carters asked a lot of questions about the property across the street (i.e. layout, driveway placement) and in hindsight felt they received vague answers. Mr. Carter contended that

he deserved to know. There were an additional five properties on the street that were not yet finalized. He stated there was approximately $3million in real estate value in process while the permit was put through the Town. Mr. Carter told the Board he would have seriously considered walking away from the neighborhood, given there were other premium neighborhoods in Southern New Hampshire. He stated the only time they found out about the duplex was when the foundation went into the ground. He felt it was a reasonable expectation to receive notification and believed they all should have had the ability to (at a minimum) renegotiate their sales price based on the uncertainty of placing an abnormal structure in a premium neighborhood. In terms of process, Mr. Carter believed there was a fundamental problem with a duplex being approved when there were two signs on Poplar Hill Road clearly advertising Bayberry Woods as premiere new construction with single family lots.

Mr. Hennessey said if one of his agents had been involved in the sales and Mr. Carter contacted him, as the manager he would advise him to consult with an attorney familiar with real estate issues. He understood Mr. Carter was speaking about being injured because of a real estate transaction. He told Mr. Carter he could make a complaint to the New Hampshire Real Estate Commission if he felt it was blatantly unfair. He explained that the Board was dealing with the Town's Zoning Ordinance; in Pelham a duplex could be built anywhere a single family could be built as long as there was enough land and a septic system. He noted there could also be a mobile home anywhere a single-family home was allowed. Mr. Hennessey advised beginning in June, 2017 under NH law when a request for an accessory apartment comes in front of the Board that meets the requirements, they will be allowed to be rental units.

Mr. Hennessey asked to hear from the Zoning Administrator and Building Inspector whether they followed procedure. Ms. Hovey came forward. Mr. Hennessey confirmed that Ms. Hovey issued the building permit. Ms. Hovey answered yes. Mr. Hennessey inquired under what basis the building permit was issued. Ms. Hovey replied she received the building permit for a duplex in September that included a six-bedroom septic design. The lot was over two acres in size, with 200ft. of road frontage and contained over 55,000SF of contiguous dry land. She stated the plan referred to single-family homes, therefore she contacted the NH Municipal Association for opinion, from the discussion understood as long as there wasn't a (specific) condition of approval by the Planning Board and the lot met Zoning, the permit must be issued. Mr. Hennessey confirmed that the Planning Board's approval was reviewed from the time the subdivision was approved. Ms. Hovey replied the plan was approved by the Planning Board March 3, 2008. Mr. Hennessey questioned if the Planning Board approval included a stipulation requiring single family (homes). Ms. Hovey stated there was not (a stipulation). Mr. Hennessey understood there was no variance for the lot. He questioned why people weren't notified about the permit. Ms. Hovey replied they don't notify abutters when issuing building permits; however, they list them weekly in the area newspaper, which she understood is where the Carters noticed the issuance of the building permit for the duplex. She said the Carters came in to speak with Planning Department staff, who suggested they speak with an attorney who knew about real estate. Mr. Hennessey questioned if there would be any basis or ability for the Town to have prevented or denied issuance of the building permit. Ms. Hovey answered no, the permit could not be denied as long as Zoning was met, there was no condition of the Planning Board and a septic design was submitted. The Building Inspector Roland Soucy was present in the audience, but had nothing further to add.

Mr. Hennessey brought discussion back to the Board. He saw nothing for the applicant to 'fight' with the Town about. There was nothing to second guess. He reiterated Mr. Carter should speak with an attorney and/or the real estate commission.

MOTION: (McNamara/Kearney) To uphold the Town.

VOTE: (4-0-0) The motion carried. (There was no alternate member appointed to vote)

SITE WALK – January 7, 2017 beginning at 9am

Case #ZO2016-00032 - Map 15 Lot 8-241 - PRUDHOMME, Matthew 221 Hobbs Road

DATE SPECIFIED PLAN(S) – January 9, 2017
Case #ZO2016-00032 - Map 15 Lot 8-241 - PRUDHOMME, Matthew 221 Hobbs Road

MINUTES REVIEW

November 14, 2016:

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

VOTE: (4-0-0) The motion carried.

ADJOURNMENT

MOTION: (Kearney/McNamara) To adjourn the meeting.

VOTE: (4-0-0) The motion carried.

The meeting was adjourned at approximately 8:35pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary