

**APPROVED**  
**TOWN OF PELHAM**  
**ZONING BOARD OF ADJUSTMENT MEETING**  
**January 9, 2017**

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 Thomas Kenney, Planner/Zoning Administrator Jennifer Hovey

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

**PLEDGE OF ALLEGIANCE**

**CONTINUED**

**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. LaFrance stepped down. Mr. Hennessey appointed Mr. Kenney to vote.

Mr. Hennessey stated that the case was initially submitted for the Board's last meeting in December. Site walk has been conducted. He read aloud a letter from members of the Conservation Commission, noting that the committee didn't have a posted meeting, therefore the comments contained therein did not constitute an official opinion of the commission. Those members felt there were alternatives that would minimize the Wetland Conservation District ('WCD') impact and leave room to access the backyard. For that reason, the six members in attendance of the site walk unofficially voted against the current plan and requested the applicant consider alternatives to minimize WCD impacts and move the proposed addition away from the existing tree line.

Mr. Kearney read aloud the minutes from the site walk.

**MOTION:** (McNamara/Kearney) To approve the site walk minutes.

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

Mr. Joseph Maynard of Benchmark Engineering, representing the applicant, came forward for the discussion. He stated they took all of the comments from the site walk very seriously. The plan set was amended to locate the house 14ft forward, which puts the rear of the structure even with the existing house and leaves the total structure 25ft off the edge of the wetland. Another positive note of the amendment

provides 12ft along the side to allow access around the structure. Mr. Maynard noted they looked at the construction from a drainage viewpoint and told the Board they were able to maintain a 100-year storm event by installing an underground drainage system (gutters with down-spouts routed to the underground retention system). All runoff from impervious surface is either being held back or infiltrated.

Mr. Hennessey questioned if a variance to setbacks was required because of moving the structure forward. Mr. Maynard answered yes; they have 18ft. & 16ft. (on the garage corners) where 35ft is required for frontage. Mr. McNamara made a motion to allow an amendment to the original application to include a setback variance. Mr. Kearney seconded for discussion.

Mr. Hennessey explained there was a discussion at the site walk questioning if a re-notice would be necessary; he didn't feel it was, but was open to comments and/or complaints. In his opinion the same people were noticed and the plan adjustment was a reasonable response to comments at the site walk. Mr. McNamara pointed out the plan amendment was a result of what the Zoning Board and Conservation requested, it wasn't a change driven by the applicant. He felt it was a better plan.

Mr. Hennessey opened the discussion to public input. No one came forward.

**MOTION:** (McNamara/Kearney) To allow an amendment to the original application to include a setback variance.

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

Mr. Maynard discussed the proposal. His client owned an existing single-story house constructed in 1971. Primarily there is a vegetative wetland associated with Golden Brook that comes up very close to the side of the property; portions of the existing house and deck are in the WCD, including a shed that's been in existence for 30+ years. He outlined the difficulties of lot and expanding in any direction other than as proposed. Mr. Maynard read aloud the answers to the variance criteria as submitted with the application. He noted his client had spoken to their neighbors and received three letters of support that were previously submitted to the file. They also submitted a copy of the original 1970 plan and subsequent mortgage survey done in 2009 when his client purchased the house.

Mr. Hennessey opened discussion to the public. No one came forward.

Mr. Kearney found the most recent proposal to be drastically better than the first and felt it was the only opportunity for the applicant to use their property. He was in favor of the plan and felt it was fair and equitable. Mr. McNamara agreed. He felt the amended plans addressed the concerns of Conservation. Given the size of the lot, the location of the wetlands and septic and given there was very little room in the rear, he felt the proposal was the only reasonable option. He believed the hardship criteria had been met.

**BALLOT VOTE**  
**#ZO2016-00032:**  
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. LaFrance rejoined the Board.

**HEARING(S)****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 11-91 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 was granted on 12/12/16.)**

Mr. Hennessey announced at the Board's December 12, 2016 meeting the Board voted on the basis of a letter brought up by abutters to rehear the case. He stated this would be a de novo case and heard as if they had never heard the case in the past.

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. Shayne Gendron of Herbert Associates, representing the applicant, came forward to discuss the variance request. He stated his client owned an existing 3.5 acre parcel located in the residential zone and would like to subdivide the property into two lots. There is an existing home located toward the front of the property approximately 50ft. from Dutton Road. The remainder of the lot was a good size and not encumbered by wetlands or Wetland Conservation District ('WCD') setbacks and was productive land. The applicant would like to propose a new lot that is short on frontage. The existing house lot will have 200ft of frontage and sized at approximately 1.5 acres; the proposed lot will have 15ft. of frontage and be sized at approximately 2.029 acres with a new proposed house located at the back ('dog leg' portion) of the property. When looking at the subdivision, Mr. Gendron stated the property was very flat and they would be able to maintain 1.5%-2% on the driveway. They are also able to maintain considerable setbacks and separation to all abutting properties with the proposed home. He discussed the purpose for proposing the new house and explained that the Majors' have a son that had been injured in an accident and requires a lot of care. The applicant would like to build an accessible home for their son to have independence and at the same time be close to family so they can provide care. Mr. Gendron read aloud the answers to the variance criteria as submitted with the application.

The applicant Larry Major read aloud a prepared letter in summary it stated that he and his wife (Sally Ann) had a handicap son from a traumatic motorcycle accident while he was in the Navy in 1985. Their son is impaired by an extremely poor balance and poor judgement of safety issues and is unable to reside independently and requires 24 hour supervision. In January, 2000 their son experienced a fall down a flight of stairs and as a result suffered another brain injury that exacerbated his balance problems. After experiencing less than adequate living conditions Mr. Major was able to secure a home for their son, January, 2004 in Hampton. Mr. Major has since patched holes in walls, repaired/replaced furniture and broken windows as a result from falls due to his son's poor balance; these issues making renting to his son a landlord's nightmare. His son suggested moving closer to his parents, even suggesting converting their tool shed into living quarters. One year ago, due to changes in Federal mandated rule, they lost a live-in personal care attendant and other arrangements were put in place on a temporary basis by the provider of services. From that time they've began looking for facilities and services in the local area, and unsuccessful finding housing being on a single level/no stairs, accessible bathroom/walk-in shower and wheel chair friendly. When speaking to people about their issues, it was suggested to build on their own land. Mr. Major reviewed zoning laws and hoped to build a handicap accessible dwelling with accommodations for

a full-time live-in attendant. He's concerned that the balance issues will get worse as their son ages and hoped the proposed residence would serve his son into his old age and not add burden onto his siblings after he and his wife pass. Mr. Major asked the Board to approve the subdivision.

#### PUBLIC INPUT

Attorney James Lombardi of Lombardi Law Offices, PLLC, representing Robert and Mary Orlep of 97 Dutton Road (Map 36 Lot 11-92) came forward with Ms. Orlep. Attorney Lombardi stated that the Orleps have no personal issues with the Majors or the Major's intention to help their son. However, the Orleps have problems to address with the plan.

Ms. Orlep read aloud a prepared statement to explain the reasons why she and her husband felt the proposed variance should not be granted. It was a difficult position for them to take as they felt the reason was admirable. They understood the Majors were seeking to subdivide their property into two lots to be able to build a permanent dwelling on a newly created lot. The Orleps felt the proposal would negatively impact the enjoyment of their property and decreases their property value; further it didn't meet the legal standard for a variance as laid out in the Town's Zoning.

Ms. Orlep stated they purchased their home two years ago when expecting their first child and looked for a rural and rustic environment to raise their child. The house was built in 1897 and situated near the property line shared with 101 Dutton Road. When purchasing their home, 95 Dutton Road (on the other side) was undeveloped and for sale. They initially hesitated purchasing their lot believing the property behind them was part of that (95 Dutton Road) lot and knew the development on the land would change the feel of their property. In researching, they learned the property behind them was 101 Dutton Road and beyond that is conservation land. Since 101 Dutton Road was already developed, and didn't have the frontage to support another dwelling, they reasonably expected that the Zoning Ordinance would prevent a new dwelling from being built behind their property. If the land becomes a driveway and a dwelling, the Orleps felt it would negatively impact the enjoyment of their property and diminish their property value because future owners wouldn't have the same rustic surrounding and a neighbor whose frontage is 15ft away. She understood Zoning Ordinance 307-88 laid out conditions that must be met before a variance can be granted, and believed the request didn't meet the conditions. In addition to avoiding overcrowding, frontage is necessary to dwellings for emergency vehicles and to preserve the rural charm of the Town. They believed a lot with 15ft. of frontage was contrary to the public interest; in essence the entire frontage would be devoted to the driveway access of the new lot given that the minimum width of a driveway is 14ft according to subdivision regulations. During the winter it would be virtually impossible to clear snow without encroaching upon abutting properties and any buildup would result in diminished access for emergency vehicles. She noted there would be increased traffic along the entire length of the property line through normal household traffic and delivery trucks. The property line is visible from a number of window in her home, including her son's nursery and their back deck. Additionally, she felt the proposal was contrary to the curb appeal valued by Pelham homeowners. Given driveway requirements, Ms. Orlep believed it would be impossible to provide a vegetative buffer between the driveway and the property line. She was confident that the current owners valued the rustic nature of Pelham, but had no guarantee future owners would have the same value. She didn't feel a 'no cut' buffer would be sufficient.

If the variance is approved, Ms. Orlep stated they would most likely need a fence along their property line for safety reasons and mitigate the disruption to their property from increased traffic. If Lot 11-91 is sold and subdivided, it's possible that a proposed lot would be a driveway with a fence on either side, which would also not keep with the character of the neighborhood. Ms. Orlep didn't feel enforcement of the ordinance would result in an unnecessary hardship to the owners of 101 Dutton Road. She said from the application, it appeared the applicant was seeking a use variance, and using Simplex analysis, the zoning restrictions don't interfere with the owner's reasonable use of their property; however, she felt it would injure their right to enjoy their property.

Ms. Orlep stated there was nothing unique about the configuration of 101 Dutton Road as a number of properties along Dutton Road and in Pelham had enough acreage to subdivision but limited frontage. 101 Dutton Road is no different from rectangular shaped properties. She found it unfortunate that the circumstances of the owners at 101 Dutton Road had changed so their current residence no longer met their needs. If they were seeking an addition to their current residence, such as an in-law apartment, she didn't believe they would object. Creating a new lot with a new dwelling is a permanent solution; once a subdivision occurs and a dwelling is built, it will be there forever. Ms. Orlep called attention to the fact that the personal circumstances of a landowner are not, in their opinion, sufficient reason to grant a variance. If they were then any number of landowners in Pelham could seek a similar variance, as many people care for relatives with medical needs, and have similarly situated properties. The proposal has the potential to increase the population in Town as a whole with repercussion for property values, small town character and public services. Ms. Orlep believed the proposed variance was not consistent with the goals and spirit of the ordinance. They also didn't believe it was necessary as a matter of substantial justice because the harms to the public as mentioned are greater than the harm to the applicant. They disagree with the applicant that the proposed home would be a positive addition to the neighborhood as it wasn't an occasion where the frontage requirement was short by a few feet, but rather was 185ft. short. For the reasons outlined in the Orlep's letter, they felt the variance would diminish their property value. She said the applicant claims the proposal is for lot configuration only and she didn't feel that was accurate. The applicants currently use one lot that is configured like any number of lots in Pelham's residential communities. The applicant is seeking to create two lots from their one lot, which is substantially different from a pre-existing land-locked lot. She stated having a new lot and dwelling where previously there was none, would diminish their property value, regardless of how attractively or well landscaped the property was. Given all the considerations, the Orleps felt the request for variance should not be granted. Her letter was submitted to the Board for inclusion in the record.

Attorney Lombardi displayed photographs taken (in October, 2016) from the Orlep's property toward the Major's property and along the front of the properties. Ms. Orlep described each photograph for the Board and public's understanding. The photographs were submitted to the Board for inclusion in the record.

Attorney Lombardi argued that the applicant had not met all five of the variance standards. He focused on the hardship and if there were any conditions of the property that distinguished it from other properties in the area. He believed that was not the case and there were several properties in the area (that abut Dutton Road) that had similar configurations, including lots 10-10-5, 10-370-3, 10-369 and 11-97-2. He said the bigger question was if they were speaking about the larger parcel (current property) altogether and if the standard applies to that piece, or whether it should apply to the subdivided piece. He argued there was no special condition that applied to the case because of the lot configuration or size wasn't something a court would look at or allow or grant as a special condition to grant a variance. He said if they were talking about the smaller parcel, the applicant created the conditions and the courts look unfavorably upon those situations. It wasn't like other situations where the ordinance was providing the hardship. He stated the applicant was taking a property that perfectly fit within the confines of the ordinance/requirements and were trying to split it into a separate lot, which would then have a problem with frontage. A hardship can't be created just to argue its existence.

With regard to substantial justice, Attorney Lombardi saw the applicant had stated that the harm to the applicant would be greater if the application is denied, than the harm to the public if the application was granted. He pointed out it doesn't say what harm there would be to the applicant if it was denied, the application only speaks to the new home proving a safe handicap accessible living situation for the owner's son and that the home would be a positive addition to the neighborhood. He commented that the Orleps didn't question the applicant's motives; however, good intentions don't provide sufficient legal basis to grant a variance. He noted there was no discussion of any alternatives in the application, or why any alternatives would be detrimental to the applicant. As to surrounding property values, he saw that the

applicant stated that the proposal was for a lot configuration only. He stated the application was more than just a lot configuration because it involve the construction of a home and a driveway. In his client's eyes, the value of their property would be diminished. They were concerned about what they would see and what they'd not like to see and preferred not to have a home in their back yard or a driveway stretching along the entire length of their property line. Attorney Lombardi reiterated the Orlep's concern about the safety risks of having a driveway that length be located so close to their home, as they currently had a young child. He stated the way the plan was proposed was not a benefit to the Orleps and it was up to the applicant to prove there would be no diminution of surrounding property values. For the record, he provided a letter, dated January 9, 2016, prepared by Susan Tisbert of ReMax Properties in Pelham. The letter stated Ms. Tisbert had reviewed the plans and in her opinion may negatively impact 97 Dutton Road and cause diminished value especially because of privacy; she suggested there could be other options agreed upon between the parties, such as a good buffer of trees, fencing, bushes, etc.

Attorney Lombardi asked to reserve their rights and arguments put into their motion for rehearing and asked that it be included in the record. Mr. Hennessey was unsure about including previous information as the present hearing was considered de novo. He was open to comments regarding such. Ms. Hovey stated all information/documentation from the original hearing, request for rehearing and the present hearing were contained in the same file at the Planning Department and part of the record. Mr. McNamara clarified that the file was the Town's records; however, in terms of the present hearing he felt the Board should limit themselves to whatever evidence had been proposed. Mr. Hennessey agreed that the record from the present hearing should remain self-contained. Attorney Lombardi asked that any legal arguments that apply would still apply. He offered to resubmit such to the Board but was unsure when the record would close for purposes of the present hearing. Mr. Hennessey replied the Board's practice was to leave the hearing open to the last moment in case the Board had to ask questions.

Ms. Paliy asked Ms. Orlep if she was aware, at the time she purchased her property, of how close her house sat to the other property and that she didn't own the property behind hers. She also wanted to know if at any time the Orleps tried to purchase the property behind them. Ms. Orlep replied the property behind them wasn't subdivided or for sale. She said they researched the configuration of properties and their ownership. She didn't have a survey of her property, but had a general idea of the lot lines. Ms. Paliy questioned Ms. Orlep if she was aware that the Majors had enough acreage to construct a duplex, although they were only proposing to construct a single home. Ms. Orlep stated that wasn't the issue. They researched what could be done behind their house and the likelihood of having something done next door. She said the issue was the land being subdivided.

Mr. Gendron told the Board they had surveyed the property and well aware of where the property lines were located. He stated they had no proposal to cut any vegetation off their property for the proposal; any vegetation cut would be on the Major's property for the driveway. He said it seemed that one of the abutter's major contention was the proposed driveway. He pointed out that they weren't asking for any relief to put a driveway, they could put one in now if they wanted, for access to a barn or accessory building. He told the Board they would work with the abutter in terms of buffers and keeping the driveway off the property line. With regard to the assessment submitted from the real estate agent, Mr. Gendron agreed the proposal may, or may not impact, there didn't seem to be a decision. The real estate agent agreed that having a vegetative buffer may help and he said they were more than happy to do so.

Mr. Kenney wanted to know what would happen when all the other properties on Dutton Road came to the Board to construct houses behind their homes. Mr. Hennessey wanted Mr. Kenney to be aware there was no 'precedent' in the Zoning Board's hearings; he explained that each case is handled individually. He further explained the fact of granting or not granting a variance in this case would not mean that other applicants would automatically be dismissed or accepted.

Mr. McNamara inquired how far the proposed house would be located from the Orlep's lot line. Mr. Gendron replied the closest point would be to their rear lot line, which was scaled at approximately 175ft from the rear line. Mr. McNamara commented that the photographs submitted by Ms. Orlep seemed to indicate there was a lot of vegetative growth in the area. Mr. Gendron had done test pits on the property and agreed there was a lot of existing, mature vegetation. In terms of the driveway, Mr. McNamara saw it was situated on the property line and asked if there was a possibility of moving it further into the Major's lot. Mr. Gendron answered yes; they would happy to keep the driveway at least 5ft. off the property line. Mr. McNamara believed doing so would allow for sufficient buffering to be planted or a fence installed on the Major's property.

Mr. Kearney believed the land had a hardship with its configuration of having a total of three acres, of which two being situated off the road and in the rear of the parcel. Looking at the proposal, he felt it was a reasonable request to keep approximately one acre and 200ft. for the existing front parcel, and utilize the remaining two acres with 15ft. of frontage. He felt the situation spoke directly to the hardship criteria.

Mr. LaFrance agreed that the land had a hardship. He saw an upside with the proposal and building without having the full frontage because it provided a country setting by just having a driveway leading to the back. He acknowledged there was nothing stopping the owner from building a driveway and clearing to the lot line right now. He also pointed out there was nothing stopping the applicant from clear-cutting the whole lot, since it was high and dry land. To the argument of there being other similar parcels, there was nothing to say that those other parcels were equal to the property being reviewed. Mr. LaFrance noted the applicant's parcel was 'dog-leg' shaped and high and dry buildable land. He understood the situation and saw the hardship.

Ms. Paliy reviewed the plan and felt it was a much better plan that what could be allowed. She reiterated that the driveway was not in front of the Board for review.

Mr. Gendron called attention to the fact that a letter of support was submitted to the Board. Mr. Hennessey read aloud the letter dated October 6, 2016 submitted by Paul Gagnon, who were neighbors to the Majors who supported the proposal and encouraged the Board to approve the variance request.

Mr. Hennessey stated if the variance was approved, the plan would go in front of the Planning Board for review. He asked that the Board put on record a variance approval stipulation to recommend to Planning that the driveway be 5ft. off the lot line. Mr. McNamara suggested that the Board send a strong recommendation to Planning that there be adequate buffering along the length of the driveway and along the rear of the Orlep's property to the proposed house.

**MOTION:** (McNamara/LaFrance) With a variance approval, a strong recommendation will be sent to the Planning Board to locate the propose driveway 5ft off the lot line (between the Major and Orlep properties) and that there be adequate buffering along the length of the proposed driveway and along the rear of the Orlep property to the proposed house.

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

Mr. LaFrance wanted to know if the proposed house would be a ranch-style home or handicap accessible two-story home. Mr. Major replied it would be a single-story home. Mr. LaFrance saw that a single-story home would be a benefit to buffer the rear property as it would sit lower than the Orlep property, given that there was an eight foot grade difference between the two properties.

Attorney Lombardi heard the proposal to move the driveway 5ft off the property line and was concerned with there being only 10ft. remaining for the driveway itself, which he believed was insufficient according

to the rules. He heard it stated that the Majors could put a driveway in that location, which the Zoning Ordinance didn't restrict, but believed it would depend on what the use was for. He noted there was always legal recourse to try to make sure it doesn't affect what his clients were doing on their property. His clients had safety concerns about vehicles accessing the back lot and were looking to protect their small child and property. Attorney Lombardi believed the Board would be hard pressed to find any court case satisfying a standard of having a large piece of property with two acres essentially not being used.

Mr. Gendron commented they would place an easement on the Major property to accommodate the driveway and create a buffer for such.

Mr. Hennessey closed the public input portion of the hearing. The Board discussed the variance criteria beginning with public interest. Mr. McNamara noted public interest was also related to the spirit of the ordinance. He said in order to be contrary to public interest, the granting of the variance must violate the basic zoning objectives. He explained the way that could be tested is if the granting of the variance altered the essential character of the neighborhood; he suggested it didn't as the applicant was requesting one home in a residential area containing more than enough land to support it. Second, was if the variance threatened public health, safety or welfare. He didn't see how it was possible in the circumstances discussed. Mr. Kearney agreed, given that the applicant had two acres of property for one residential house. Mr. McNamara commented that the Board focused substantially on the placement/location of the driveway, which was where the opposition for the variance came from. He said it was understandable, but another question was if it was reasonable. He believed a lot of people who move into Town and have land beside or behind them presumed that's how it would be forever. He stated anything could happen unless someone bought additional property or had a deed restriction. The proposal was not a typical subdivision, but at the same time, the applicant was not creating a hardship; Mr. McNamara said the applicant came forward because they wanted to subdivide 3.5 acres of land into two lots. He wanted it to be clear that everyone seemed to be sympathetic to the Major's reason; however, the fact that the reason was stated didn't mean that the Board's decision is based on that reason. He stated the Board's decision had to be based on the particularities of the property, not the situation of the owner.

Mr. Hennessey asked if anyone disagreed that the individual situation of the Major's should not be part of the Board's decision regarding the land. He said it had to be the configuration of the lot. Everyone concurred.

Ms. Paliy commented that while the requirements indicate a lot is to have 200ft. of frontage, the Board has approved lot with less than 200ft. She said the request wasn't new or different and the Board had similar cases that came in front of them. Mr. Hennessey asked if she concurred that criteria 1 (public interest), 2 (spirit of the ordinance) & 3 (substantial justice) had been answered in their discussion. Ms. Paliy answered yes. Mr. McNamara spoke about the road (in the position of the driveway) was leading down to a grocery store or strip mall or something with a constant stream of traffic, noise and smells it would be a different story.

Mr. Hennessey spoke to the value of surrounding properties. He stated the case was regarding property on Dutton Road which is one of the top two or three travelled roads in Town. He said the controlling function of the value of the abutter's and Major's lots was not the driveway, it was the amount of traffic that went in front of the house. Mr. Kenney noted a letter from a realtor was submitted saying that the value would go down. Mr. Hennessey, Mr. McNamara and Ms. Paliy voiced their disagreement. In Mr. Kenney's opinion, Pelham was getting filled and was concerned. Mr. Hennessey heard the concern and reiterated his belief that the controlling function of the value of the property was the age, condition and the amount of traffic traveling on Dutton Road. He believed the driveway was a minor consideration for establishing value on the property. He noted he lived further down on Dutton Road and saw the volume of traffic and recalled there was a traffic count conducted where approximately 13,000 cars travelled within a three hour period. Mr. Kenney felt it was because too many houses were being built. Ms. Paliy stated when the Board



evaluates requests the members follow established regulations, go through years of training and review what the courts have advised. She said they don't do things because they feel sorry for someone, the Board follows the law even if at times it feels wrong.

Mr. Hennessey addressed the hardship criteria. He stated the hardship being considered applied to the land, not the applicant's son or family situation. He wanted to know the Board's opinion about there being a hardship to the land. Mr. LaFrance stated every time he viewed the information he blocked out the applicant's situation. From a visual of right and wrong he truly felt there was a hardship in the way the lot was configured. He felt the area the applicant was looking to subdivide was the best portion, and usable space of the property by the way it was laid out. Given the situation of there being high and dry land and the configuration, he said they had the right to develop the land. Mr. McNamara agreed; the hardship was in the large size of the lot and the 'dog leg' configuration. He agreed that a single family home would be less visible in the rear lot given it was relatively flat with the gentle slope (lower than the abutter) and being approximately 170ft. away from the Orlep property to the location of the proposed home. He pointed out recommendations were also made to the Planning Board for buffering. Mr. Hennessey agreed with Mr. Kenney's concern for over-crowding and over-building. In this case he found two mitigating factors in terms of effecting abutters, one being the slope and the second was the house being a ranch style.

Mr. Kearney stated the hardship was obvious to him and felt 'all in' with what the applicant wants to do, they were being considerate with controlling that portion of land and making it so it fits nicely. Ms. Paliy agreed.

**BALLOT VOTE**  
**#ZO2016-00024:**

Mr. Hennessey – Yes to all criteria  
Mr. McNamara – Yes to all criteria, with stipulations in motion.  
Mr. Kearney – Yes to all criteria, with buffer in motion.  
Ms. Paliy - Yes to all criteria  
Mr. LaFrance- Yes to all criteria, with motion.

(5-0-0) The motion carried.

**VARIANCE GRANTED**

**Case #ZO2016-00033**

**Map 6 Lot 4-142**

**JANOCHA, Robert & Janet 65 Valley Hill Road - 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. A member of the public told the Board that there was an individual's name read aloud that was deceased.

There was no one present to speak to the case. Mr. Hennessey stated without the applicant or a representative present, there could be no hearing. *(See below for hearing; the applicant arrived later)*

**Case #ZO2016-00034**

**Map 23 Lot 11-314**

**GREEN, Brian 35 Wood Road - Seeking a Variance concerning Article VII, Sections 307-39 & 307-41-B to permit the construction of an approximately 8'x18' extension to an existing deck to accommodate a hot tub. The existing deck is entirely within the wetlands conservation district (WCD). The extension to the deck will be no closer to the shoreline than existing structure.**

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, Mr. Brian Green came forward to discuss his variance request. He was seeking to extend his existing deck approximately 8ft. and install a hot tub. He explained that the deck would extend parallel to the shoreline, not toward the shoreline. Mr. Hennessey understood the area was within the Shore Land Protection area. Mr. Green replied that nearly his entire home was in the shore line area. Mr. Hennessey questioned if the plan had been submitted for State approval. Mr. Green answered yes; a copy of the approval had been previously submitted to the Board. He then read aloud the responses to the variance criteria as submitted with his application.

Mr. Green felt the proposal was the smallest size he could construct to accommodate the hot tub. There were no other areas on the lot that would accommodate or be appropriate. He told the Board he spoke with his abutters and no one had objected. Mr. Hennessey explained that the Board ordinarily conducted site walks for properties near the pond and would let the Board decide in this case.

Mr. McNamara asked if the type and size of hot tub that had been selected. Mr. Green replied that the size was approximately 7ftx6ft with an 8ftx8ft platform. Mr. McNamara questioned the type of chemicals that would be used. Mr. Green stated it would use a Bromine system. Mr. McNamara wanted to know how often the water needed to be drained and refilled. Mr. Green was told it should be changed every 3-5 months. Mr. McNamara asked where the water would be drained. Mr. Green believed it would drain into the yard. Mr. McNamara was concerned about the drainage going into the pond. He wanted to know if Mr. Green could get a statement from the manufacturer regarding the chemical elements were and what it would do when discharging into a body of water. Mr. Green said he could try but was unsure how helpful they would be. He understood Bromine systems had very low concentrations. Mr. Hennessey suggested the Board make a stipulation for a Bromine system versus a chlorine system. Mr. Green was agreeable, as he had already ordered the hot tub. Mr. McNamara relied on Mr. Green's good will to discharge the water as far away from the pond as possible. Mr. Green agreed as he liked to keep the pond clean.

The Board didn't feel a site walk was necessary. The hearing was open to public input; no one came forward.

**MOTION:** (LaFrance/McNamara) Stipulation that the hot tub have a non-chlorine system; Bromine or its equivalent.

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

**BALLOT VOTE** Mr. Hennessey – Yes to all criteria, with stipulation.  
**#ZO2016-00034:** Mr. McNamara – Yes to all criteria, with stipulations in motion.  
Mr. Kearney – Yes to all criteria, with motion for Bromine system  
Ms. Paliy - Yes to all criteria  
Mr. LaFrance- Yes to all criteria, with motion.

(5-0-0) The motion carried.

**VARIANCE GRANTED**

**Case #ZO2016-00033**  
**Map 6 Lot 4-142**

**JANOCHA, Robert & Janet 65 Valley Hill Road - Seeking a Special Exception concerning Article XII, Section 307-74 to permit an accessory dwelling unit.**

The abutters list was read aloud earlier in the meeting by Mr. Kearney.

The applicants Mr. Robert Janocha and Ms. Janet Janocha came forward to discuss the request for Special Exception. Mr. Hennessey confirmed with Ms. Hovey that all criteria had been met for a Special Exception. Ms. Hovey answered yes. Mr. Janocha explained to the Board that his mother was residing with them. He recently found out that the apartment wasn't up to code and they were going through the review process to make it legal.

Mr. Hennessey opened the discussion to public input.

Mr. Ed Stanley, 73 Valley Hill Road came forward and wanted to know where the apartment would be located. Mr. Hennessey summarized the criteria. He wanted the public to be aware that there was likely to be an ordinance proposed for the coming election because the State had mandated changes for accessory apartments. He understood because of the change in the law, after June, any accessory unit could be available for rental.

Mr. Richard Tarpey, told the Board he had no problem with the in-law apartment, but asked that the applicant have their lot surveyed prior to putting it in. He explained when he purchased his property in 2002 his builder certified his lot and when he walked the property line the marker that abuts the Janocha and Delaney properties was found on the ground in his yard and supposed to be on the opposite side of a rock wall. He spoke with Mr. Janocha who believed his own property went to the rock wall. Mr. Tarpey believed the question of the property line should be straightened out and he'd rather not pay for it himself again.

Mr. Hennessey inquired the distance between the accessory apartment from the property line. Ms. Hovey believed the apartment already existed. Mr. Hennessey asked Mr. Tarpey if he believed any portion of the apartment was too close to his property line. Mr. Tarpey stated he couldn't answer the question because he didn't know where his line was since the property marker was removed. Mr. Hennessey saw a survey had been submitted with the application. Mr. McNamara questioned if the accessory apartment was in the basement. Mr. Janocha replied it was within the house. Mr. Hennessey asked for the age of the house. Mr. Janocha stated his house was built in 1974. Mr. Hennessey told Mr. Tarpey that the lot line didn't affect the request for the accessory apartment. Mr. Tarpey stated he had no idea where his property line ended or the Janocha property began. Mr. Hennessey suggested reviewing the plat at Town Hall and check the Nashua Regional Planning Commission GIS as they were doing satellite surveys of most of the properties in the county. Mr. LaFrance also suggested Mr. Tarpey pull his file with the Town that may contain an as-built plan, which would give him a very good indication where the lot line is. He said a copy of the deed would also indicate the lot line. Mr. Hennessey stated the Board couldn't help in the matter as it didn't affect the case in front of them.

**BALLOT VOTE  
#ZO2016-00033:**

Mr. Hennessey – Yes  
Mr. McNamara – Yes  
Mr. Kearney – Yes  
Ms. Paliy - Yes  
Mr. LaFrance- Yes

(5-0-0) The motion carried.

**SPECIAL EXCEPTION GRANTED**

**Case #ZO2016-00035****Map 16 Lot 12-105-18**

**FORRISTALL, Timothy 14 Ladyslipper Ave - 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.

Representing the applicant was Mr. Bob Lemelin, who came forward to answer the Board's questions.

Mr. Hennessey asked Ms. Hovey if the application met all criteria. Ms. Hovey told the Board the application met the criteria and the State approval had been received earlier in the day.

<b>BALLOT VOTE</b>	Mr. Hennessey – Yes
<b>#ZO2016-00035:</b>	Mr. McNamara – Yes
	Mr. Kearney – Yes
	Ms. Paliy - Yes
	Mr. LaFrance- Yes

(5-0-0) The motion carried.

**SPECIAL EXCEPTION GRANTED****MINUTES REVIEW****December 12, 2016:**

**MOTION:** (LaFrance/Kearney) To approve the December 12, 2016 meeting minutes as written.

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

**ADJOURNMENT**

**MOTION:** (LaFrance/McNamara) To adjourn the meeting.

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

The meeting was adjourned at approximately 9:10pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary