

APPROVED

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
June 12, 2017**

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

The acting Secretary Svetlana Paliy called roll:

PRESENT: David Hennessey, Svetlana Paliy, Peter McNamara, Diane Chubb, Alternate Heather Patterson, Alternate Deb Ryan, Planner/Zoning Administrator Jennifer Hovey

ABSENT: Bill Kearney, Alternate Lance Ouellette, Alternate Darlene Culbert, Alternate Thomas Kenney

Mr. Hennessey welcomed the new Board members.

PLEDGE OF ALLEGIANCE

ELECTION OF OFFICERS

Mr. Hennessey stated based on the Board’s Bylaws he didn’t feel they could hold off having the election of officers; therefore, he asked for nominations.

MOTION: (McNamara/Paliy) To reappoint David Hennessey as Chairman.

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

MOTION: (McNamara/Chubb) To reappoint Svetlana Paliy as Vice Chair.

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

Mr. Hennessey stated he asked Mr. Kearney prior to the meeting if he would be willing to take a post as a Board officer if nominated. Mr. Kearney indicated that he would accept any post.

MOTION: (McNamara/Paliy) To reappoint Bill Kearney as Secretary.

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

REQUEST FOR REHEARING

Case #ZO2017-00003

Map 30 Lots 11-336 & 11-351

HAGGERTY, Charles & Marjorie - 4 Springdale Lane – Seeking a Variance concerning Articles III & VII, Sections 307-8 & 307-39 to permit to expand a pre-existing non-conforming use by raising it

9ft. and expanding the footprint and to allow soil disturbance to install a foundation. RSA 677:2 – Motion for Rehearing by Daniel & Deborah Constant – Regarding a Decision of the Pelham Zoning Board of Adjustment.

For purposes of these meeting minutes:

Applicant shall be Charles & Marjorie Haggerty

Abutter shall be Daniel & Deborah Constant

Mr. Hennessey spoke to the request for rehearing. He explained the Board had voted to approve a Variance and the Abutter (applicant for rehearing) didn't like the decision. The Board received a letter from the Abutter's representative, Attorney Robert Parodi indicating why they were requesting a rehearing. Mr. Hennessey asked if the Board members had read the letter; all answered in the affirmative.

Based on the reading of the letter he wanted to know if the Board found new information that would cause them to change their vote. He noted the original vote was 3-2-0 (April 10, 2017 meeting) to approve the Variance. He pointed out that there was a statutory limit and the Board would have to vote on the request to rehear.

Point of Order – Mr. McNamara questioned if the four regular members would vote. Mr. Hennessey answered yes. He explained the practice of the Board was generally to appoint an alternate; however, in this case he would not be doing so, as it would be unfair for the new alternate members. He added that they could weigh in with questions. Ms. Paliy asked if it would be 'safer' to appoint somebody. Mr. Hennessey didn't feel the new alternate members were familiar with the case. It was noted that Ms. Chubb was in attendance for the original hearing and included in the discussion regarding such.

Mr. McNamara read in counsel's letter (for the appellant, Abutter) in which a point was made that there were two variances. He believed one was rolled into the other for purposes of the argument and felt they were both covered; however, this was the only point that gave him pause in the attorney's argument. Mr. McNamara didn't feel there was anything new introduced, either factually or a point of law.

Ms. Paliy didn't see anything new.

Ms. Chubb stated she didn't recall well enough as it was her first meeting, if the Board separated the variances. She said it seemed to be addressed as one issue.

In Mr. Hennessey's opinion, the crux of the issue was the blocking of the view. He commented that the Abutter who filed the appeal made a point at the time in looking at the height and the bulk, which is why the discussion was wrapped in together. The Board was looking at the property values of the Abutter's view of the lake. Mr. Hennessey said the Board took this concern seriously when walking the site, and looked at every angle they could. He recalled immediately to the right of the Applicant's property (when facing the lake) was a tall/big structure. He said it would be hard to argue that the Applicant's proposal was worse than the existing. He noted the Board discusses heights in a serious manner and added that view and access to the lake plays a huge part in determining the value of property; therefore, he said it was part of the Board's job in going through the criteria for Variance to take into consideration the effect of the values of the abutting property.

Ms. Paliy discussed clear cutting lots to allow views, which went against Shore Land Protection Act. Mr. Hennessey added that Shore Land required base line vegetation to be maintained as much as possible. He said the Board could try to minimize the effects to a view, not because it's a Statutory right to see a pond, but rather because it may affect values. Mr. Hennessey stated there was no such thing as a view tax in New Hampshire; however, the view of a water body had an effect on determining the value of a property. The practice of the Board has been to impose some height restrictions, even in the absence of an Ordinance.

Mr. Hennessey stated that the Board walked the site and looked at the area from the Abutter's porch. He said the Abutter made an eloquent claim, but ultimately didn't show the case.

Mr. Hennessey asked the Board if the attorney's letter changed anyone's mind. He questioned if the Board felt there should be a rehearing on the points made.

Ms. Chubb understood that the Board was looking to see if there was a reason to rehear the case. According to the lawyer, she believed it was because the Board didn't take the matters separately. She pointed out that the Board talked about the matters separately; however when they voted the minutes indicate 'variance' granted. She questioned what would happen if the Board approved one and not the other. Mr. Hennessey said generally separating is done, but in this case he believed the variances to be inexorably bound. Ms. Chubb wanted to know if variances could be together. Mr. Hennessey stated the Board has taken variances separately when there were separate arguments made for each. In this case, he commented that the argument for the height and bulk were the same. Mr. McNamara pointed out that the attorney was present when the Board voted, and there were no objections voiced. He said the submission was one variance request and noted that neither the Chair nor the Board saw the need for separating them. He felt the variances were bound together, which is how the Board discussed them at the time of the hearing. Mr. Hennessey had never heard of a requirement to take linked variances as separately. In going through the five criteria, he didn't see that there could be any difference in how the Board treated the criteria because they had the same answers.

Mr. McNamara saw two letters were filed with the attorney's objection; one from Century 21 and another from Berkshire Hathaway. He said in one instance it could have presented at the time. He wanted to know if Mr. Hennessey found the letter persuasive, given he was in real estate. Mr. Hennessey thought the argument was if the value would be diminished. He felt that the Abutter had a legitimate argument, but after viewing it, he didn't see the effect.

Ms. Chubb understood the Board should first make a decision if the case should be reheard before they get into any merit behind a rehearing. Mr. Hennessey replied the Board was deciding if they should rehear the case. He said the members had to make a decision if the letter, the arguments and supporting material called for a rehearing.

Mr. Hennessey told the alternate members even though they weren't voting, they could join the conversation.

Ms. Paliy pointed out that many times abutting lots around the lake were owned by family members, or there were empty lots. She said it's always nice to own the lot in front so a person could give themselves a view, which would add to the value. However, when a lot is purchased behind another lot, there was an understanding that it couldn't have the same valuation or ownership as someone owned both lots. She commented that she usually asks an applicant if they made an attempt to purchase additional lots, which would give them a greater market value. She stated when a person doesn't own additional lots they couldn't get the fair market value as if they owned additional lots.

Mr. Hennessey polled the Board to see if they wanted to grant a rehearing

Ms. Chubb answered no. Ms. Paliy answered no. Mr. McNamara voted to deny the request for rehearing. Mr. Hennessey concurred with the other members.

The Board denied the request for rehearing.

CONTINUED

Case #ZO2017-00013**Map 24 Lot 12-203-10**

NEWTON, Eric & Natalie - 3 Harley Road – Seeking a Special Exception concerning Article XII, Section 307-74 to permit an accessory dwelling unit.

Ms. Ryan was appointed to vote.

Mr. Hennessey confirmed that the list of abutters was read the previous meeting. Mr. McNamara stated the abutter's list was read aloud at the previous meeting to allow the case to be rescheduled.

Ms. Natalie Newton came forward to discuss the request for Special Exception.

Mr. Hennessey asked Ms. Hovey if the application was complete. Ms. Hovey replied the only item missing was the State approved septic design. Ms. Newton stated she submitted the approved septic to the Planning Office. Mr. Hennessey confirmed a copy of the State approved septic was contained in the file. He noted there had been a change in State law and as of June 1st, legal accessory dwellings in New Hampshire could now be rented to non-family members.

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| BALLOT VOTE | Mr. Hennessey – Yes |
| #ZO2017-00013: | Ms. Paliy – Yes |
| | Mr. McNamara – Yes |
| | Ms. Chubb – Yes |
| | Ms. Ryan - Yes |

(5-0-0) The Special Exception was Granted.

SPECIAL EXCEPTION GRANTED

Mr. Hennessey noted there was a 30-day right of appeal.

HEARING(S)**Case #ZO2017-00015****Map 30 Lot 11-156**

PATTERSON, John - 1 Andover Street - Seeking a Variance concerning Article III, Section 307-12 (E) to permit a proposed 10ft.x24ft wood deck with 3ft stairs to grade level.

Ms. Patterson stepped down. Ms. Ryan was appointed to vote.

Ms. Paliy stated the person was a client. Mr. Hennessey asked Ms. Paliy if she felt it would affect her vote. Ms. Paliy answered no; the job was long done. Mr. Hennessey explained the rule of 'conflict' and stated per State Statute a member had to make the decision. Ms. Paliy stated she removed trees (during a commercial project) that were between two properties, which she believed might have been removed to do the project. Mr. Hennessey asked Ms. Paliy if she felt it would affect her judgement. Ms. Paliy answered no, the job was done. No one voiced an objection to Ms. Paliy remaining seated. (*see below for Ms. Paliy recusal*)

Ms. Paliy 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 Patterson came forward with his representative Timothy Peloquin of Promised Land Survey, LLC. Mr. Peloquin explained they had come in front of the Board for the first hearing in early

December (December 12, 2016- Case #ZO20160028) for a garage that met all setbacks except to Andover Street (8ft. requested where 15ft is required). Subsequently, an appeal of a Building Permit was submitted (April 10, 2017 – Case #ZO2017-00007) and came before the Board. He noted the Board voted that things were satisfactory (Board supported the Town's approval of the Building Permit). During that hearing the question of the boundary lines were discussed. Mr. Peloquin told the Board he had performed a boundary survey and would put the plan on record; a copy was available if necessary.

Mr. Peloquin explained to the Board that as part of the building permit application, the plans and applicant's intent was to have a second story on the garage. The plans had an accessory deck and main access stairway on the outside of the structure to access the second floor. However, when the Building Inspector reviewed everything and informed the applicant that technically a Variance was needed for the deck because it had not shown up anywhere until that point in the process. Mr. Peloquin stated there was a bonus room above the garage, and the stairway/deck would be used as the ingress/egress for that room.

Ms. Paliy told the Mr. Hennessey she needed to step down from the case. Mr. Hennessey told Mr. Peloquin and Mr. Patterson that there were four seated members. For the Variance to be approved they would need at least three Board members voting in the affirmative. He asked the applicant if they would like to continue with the hearing. Mr. Peloquin told the Board they would continue with the hearing.

Mr. Peloquin read aloud the responses to the Variance criteria as submitted with the application. He summarized the request and explained as part of the building permit there was a deck attached to the garage. He said the owner didn't know it was a structure that required a variance and apologized for the omission. The proposed stairs were the only access to the second floor (above the garage). Mr. Peloquin understood that the property was part of a Shoreline Protection application and subsequent approval. He said at one point the boundary was in question; therefore survey monuments were set. He was prepared to record a plan and would provide the Board with copies of such if needed.

Ms. Ryan understood originally there was a one-story garage with a bonus room and wanted to know if (at that time) the deck was on the plans. Mr. Patterson answered no. He stated they received the variance first and then hired an architect, who drew the deck on the plans. Ms. Ryan asked if the original Variance included (in writing) that there would be a deck involved. Mr. Patterson replied the original Variance just had the footprint of the garage. The building permit application included the deck. Mr. Hennessey stated the Board was unaware of the deck when they considered the original Variance.

Mr. McNamara stated he voted in favor of the original Variance and he voted against overturning the Administrative Decision. He recalled the applicant (during the December 12, 2016 hearing) representing that the second floor (above the garage) would be used for storage. He said there was no mention of a bonus room. He felt it was a little deceptive and perhaps would have made a difference in their vote. Mr. Peloquin told the Board he wasn't present at the December 12th hearing, but had helped the owner write the Variance application and put the plan together. He said there was no deception involved. Mr. Patterson stated when they went for the Variance they didn't know if it would be granted, so they hired an architect afterward. He believed during the December hearing the Board asked him what the main use of the garage would be and he replied storage. He still felt that the main use was storage. Mr. McNamara said in reviewing the meeting minutes, he specifically asked the purpose of the second floor and was told it would be for storage. He questioned if there would be a bathroom in the garage. Mr. Peloquin answered no; there would be no bathroom or kitchen.

The Board asked for clarification of how many floors the structure would have. Mr. Peloquin explained the garage would have two levels; the lower level would be the garage, the upper level would be a bonus room with an attached deck and access staircase. Mr. Hennessey recalled the applicant stating that the garage would remain within the original envelope. Mr. Peloquin replied it would still be precisely 8ft. from Andover Street right-of-way and met the side and front setbacks to Gaston Street. He stated it would

be no closer than the approved Variance. Mr. Hennessey confirmed it would be no closer (to Andover Street) and it wouldn't increase the height of the building. Mr. Peloquin said that was correct.

Ms. Chubb wanted to know how the applicant was originally planning on accessing the second story. Mr. Patterson stated when they received the Variance they hired an architect who drew the stairs outside. Ms. Chubb questioned how they anticipated accessing the second story for storage. Mr. Patterson replied he always intended to have a stairway and deck. He said it had been on the plan, but didn't know it was an issue until after the fact. Ms. Chubb inquired if a variance would have been needed to just have stairs without a deck. Mr. Hennessey felt it was a fair assumption that stairs would be needed; however, a deck is considered a structure under the Town's definitions. He added it was the judgement of the Town staff as to whether another variance was needed, or if it was a logical next step as part of the original Variance. He said the applicant could have appealed the Town's decision or come in front of the Board for another variance.

Ms. Ryan asked if the bonus room (or use of it) altered the type of required ingress/egress. Mr. Hennessey answered no. Mr. Peloquin reiterated that the primary use of the bonus room was for storage. He said the applicant wanted to sheetrock the room so his children could access the area. Mr. Patterson told the Board that he had a very small house and the main use of the space would be for storage. He said he had young children and wanted to create a playroom for them. He stated that the deck was always on the set of plans that he had and nothing had changed. Mr. Peloquin added that Mr. Patterson didn't know that the deck would require a variance.

Mr. Hennessey asked the applicant if they would object to a stipulation that prohibits adding a bathroom. Mr. Patterson replied there was no water on the site. Mr. Hennessey believed the fear was that the area would end up being an apartment. Ms. Hovey pointed out that the applicant had applied for and received a building permit for the bonus room. She included a stipulation on the permit that it was never to be used for a bedroom or dwelling. Mr. McNamara questioned if that stipulation would cover the installation of a bath. Ms. Hovey answered no. Mr. Peloquin told the Board that a stipulation would be acceptable to the applicant.

Mr. Hennessey opened the hearing to public input. No one came forward. He left the public input portion of the meeting open.

Mr. McNamara felt the Board learned a lesson to ask more questions, such as are there stairs and where they would be. Mr. Hennessey pointed out that the discussion revolved around the dimensions and whether the plan had been signed (by a certified engineer). He said they were focusing on the wrong thing.

Ms. Chubb wanted to know if the Board could restrict enclosing the deck or building a structure on the deck. Mr. Patterson stated he had no intent of covering the deck. Mr. Peloquin added that the Board could add a restriction. Mr. Hennessey said the germane part of the question was regarding height and blockage, which he felt the Board addressed during the site walk and original hearing. He said testimony was given that there would be no increase of the non-conforming use. The Board frequently addresses height near the pond and Shoreline areas. He stated if a request for a roof was submitted it would be up to Town staff to determine if a further variance was required, unless the Board made a stipulation with the present application.

Ms. Ryan understood that a building permit was issued for the deck. Ms. Hovey stated a building permit was issued for the plans the applicant submitted, which contained a deck. She said they missed it; they reviewed it for Zoning compliance and building code. Once the process began and they realized a deck was involved, both she and the Building Inspector decided the applicant needed to come back and request a variance to include the deck. Mr. Patterson discussed the change in grade between Andover Street and Gaston Street and pointed out that the deck wouldn't block anyone. Mr. Hennessey recalled the height

during the site walk. Mr. Peloquin reiterated that a stipulation for no screening on the deck would be acceptable.

Mr. Hennessey closed public input.

MOTION: (McNamara/Chubb) As a condition of any approval for variance, installation of a bathroom or any water source to the garage is prohibited.

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

BALLOT VOTE Mr. Hennessey – Yes to all criteria; with stipulation
#ZO2017-00015: Mr. McNamara – Yes to all criteria; with stipulation contained in motion.
 Ms. Chubb – Yes to all criteria
 Ms. Ryan – Yes to all criteria

(4-0-0) The Variance was Granted.

VARIANCE GRANTED

Mr. Hennessey noted there was a 30-day right of appeal.

Ms. Patterson and Ms. Paliy returned to the Board.

Case #ZO2017-00016

Map 4 Lot 9-69-48

KNIGHT, Adam & Sarah - 15 Moeckel Avenue - Seeking a Variance concerning Article VII, Section 307-39 – to permit a yard area located in the 50ft. buffer zone on the edge of poorly drained soils.

Ms. Patterson was appointed to vote. *(See below for Ms. Paliy's recusal and Ms. Ryan's appointment to vote)*

Ms. Paliy 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 applicants, Adam and Sarah Knight came forward to discuss their Variance request. Mr. Knight told the Board they would like to remove fallen trees and create a safe yard for his children. He stated they were abutted by very steep hills all around their house with no more than a 4ft.x4ft. area of flat land, including their driveway.

Mr. Hennessey understood they were dealing with a wetland setback. Mr. Knight replied they didn't want to build anything. They simply wanted to use the specified area. Mr. Hennessey asked for the age of the property. Mr. Knight replied it was built in 2006.

Mr. Knight read aloud the responses to the Variance criteria as submitted with the application. He added that they wouldn't be constructing sheds or structures in the area. They were looking to remove the trees that had fallen and bring in minimal fill to make a yard. He displayed an aerial photograph and pointed out that the surrounding properties didn't have trees. He told the Board they weren't removing any of their trees. Ms. Knight noted that there was only one neighbor that had any view of their home. She said they were located at the end of a dead end road. Mr. Knight added the home was located down in a valley. Mr. Hennessey stated the Board was concerned with protection of the wetlands. The buffer minimized the

effects on the wetland. He asked the date of when the house was built. Mr. Knight replied it was built in 2006 and they bought it two years ago (2015). Mr. Hennessey questioned if there were any markers on the trees, or any indication of wetlands, or a plot plan showing the wetlands. Mr. Knight stated he had a plot plan, but the wetlands weren't explained to them when they purchased the property. He told the Board the area they were proposing to have a yard area wasn't wet; the closest wet area was approximately 125ft away. The yard area doesn't get wet, or soggy, even with the recent rain storms.

Ms. Paliy informed Mr. Hennessey she needed to recuse herself. She did not state her reasons. Mr. McNamara stated if a Board member needs to recuse themselves, they shouldn't do it in the middle of a hearing; it should be done before it begins. Mr. Hennessey appointed Ms. Ryan to vote.

Mr. Hennessey asked if the Conservation Commission had been notified about the case. Ms. Hovey replied the case had not gone in front of the commission. Ms. Ryan questioned the process of how a case got to the commission. Mr. Hennessey said generally it would be referred by the Board if they saw an issue that may come under their purview. The Board also conducts joint site walks with the commission.

Mr. Knight displayed photographs of his house lot, location of well, slope of property and area he would like to remove fallen trees. The photographs were taken approximately one month ago and showed that the area was dry. He reiterated they would not be taking any trees down.

Ms. Chubb wanted to know how close the Knight's lot was to Moeckel Pond. Mr. Knight displayed a photograph taken from their front porch showing the house across the street. The pond is located behind the house across the street, approximately 1,500feet away. He then displayed a photograph showing his back yard and the slope of the property. He noted they own two acres and have a very small area to work in.

Ms. Patterson questioned if the Knights planned to create a retaining wall to prevent anything from washing into the wetlands. Mr. Knight explained there was already a natural rock retaining wall in place that ran approximately 220ft in length. They planned to lay railroad ties on either side to access their proposed yard area.

Ms. Ryan inquired how and why the trees had fallen. Mr. Hennessey replied it could have been natural (i.e. wind storms) or from beavers given the proximity to the pond. He noted that the buyers should have been notified by the realtor and the previous owner as to the limits of the 50ft. wetland buffer. He said the Board ends up speaking to owners who purchase property in good faith that have no space for children to play. Mr. McNamara added that by law a buyer is presumed to know any restrictions on a property. He heard Mr. Hennessey's concern about the environmental impact. He noted that the Board could refer the case to the Conservation Commission for a recommendation. Mr. McNamara felt the applicant made a fair case for the variance given the restrictions on the property; however, the Board has to weigh everything. Mr. Hennessey knew the applicant's lot and felt it was a true case for hardship, but was a bit concerned about fill being brought in.

Ms. Chubb inquired when the retaining wall was built. Mr. Knight said it had been there since they purchased. Ms. Chubb questioned if the wall was retaining anything at this point since there had never been anything pushing against it to see if it really worked. Mr. Knight showed photographs of the existing rock wall and the location they were looking to make into a yard. Ms. Chubb was concerned about filling the area and possibly changing the way the water flows. Ms. Ryan understood that the area was dry. Mr. Knight stated there was nothing wet about the area. Mr. Hennessey noted they were speaking about the setback area (within 50ft. of the wetland).

Mr. Hennessey opened the discussion to public input. No one came forward. He left the public input portion of the meeting open. The Board discussed how they would proceed. Ms. Chubb and Ms. Ryan

wanted to have the Conservation Commission review the plan. Ms. Patterson wanted to schedule a site walk. Mr. McNamara suggested conducting a site walk and inviting the Conservation Commission to provide an opinion at that time.

A site walk was scheduled for Saturday, June 17, 2017 beginning at 8:30am; the Conservation Commission will be invited to attend. Mr. Hennessey explained that a site walk was considered a public hearing and interested parties could attend. Mr. Knight told the Board his neighbors signed a letter indicating they didn't mind them adding a yard to their property.

The case was date specified to the July 10, 2017. The Knights will be the first case heard on the agenda.

Ms. Paliy returned to the Board.

Case #ZO2017-00017

Map 30 Lot 11-160

RONNING, Cindy - 8 Andover Street – Seeking a Variance concerning Article III, Section 307-12, Table I & 307-8 (C) to permit a previously granted Variance for a 25ftx28ft single family home to be changed to a 24ftx30ft single family home with a 2ftx5ft landing to the rear of the house to accommodate the stairs.

The applicant, Cindy Ronning came forward with Edward Riemitis of Riemitis Contracting (investor and general contractor for the project) to discuss the requested Variance.

Ms. Patterson stepped down. Ms. Paliy believed that most abutters were clients. She asked the parties in the case if they felt she should recuse herself. Mr. Hennessey asked the applicant, Cindy Ronning, if she felt Ms. Paliy should recuse herself. Ms. Ronning told the Board she didn't feel Ms. Paliy had to recuse herself. Mr. Hennessey asked if there was anyone in the public that felt Ms. Paliy should recuse herself. He explained that Ms. Paliy was asking for people's opinion, but statutorily, she would make the decision. Ms. Donna Bibeau of 6 Andover Street (a direct abutter to the applicant) told the Board she felt Ms. Paliy was too close of a friend to the applicant. Ms. Paliy told the Board that she felt she needed to recuse herself.

Mr. Hennessey stated there were four seated Board members. He explained that with a four person Board the applicant would need a majority vote of at least three members for the Variance to be approved. He asked Ms. Ronning if she would like to wait until the following month to hear her case. Mr. Riemitis told the Board they would like to hear the case at the present meeting.

Mr. McNamara 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. Riemitis read aloud the statement contained in the application for Variance that spoke to what had occurred since the original Variance was granted (November 9, 2015 – Case #ZO2015-00025). *“On Jan. 29, 2016 a variance was granted for a 25ftx28ft new home. It replaces a 25ftx25ft. cottage. The lot measures 40ft.x80ft and has aa certified plot plan. The new house was reconfigured to better meet Pelham setbacks and subdivision covenants. A framing permit was granted on 4-27-16. Code Enf signed off the foundation size, and location at the site. 10 months later a mathematical error was discovered by Code Enf. They required a 1400 sq ft structure the actual size is 1440sq ft. The foundation measures 24ftx30ft. The house is 85% complete. We are also asking that a 2ftx5ft landing be built on the rear of the house to accommodate the stairs. The plan we submitted only shows the stairs.* Mr. Riemitis then read aloud the responses to the Variance criteria as submitted with the application.

Mr. Hennessey wanted to know what would happen if the Board turned them down. Ms. Ronning said she had no idea and guessed they would go to court. Mr. Hennessey commented he was trying to address the

hardship. He said the building was 40SF larger than the variance granted. He said the current application was based on the original variance that came in. Focusing on the case before the Board, Mr. Hennessey felt it would be a hardship if the Board made the applicant tear (the structure) down. He wanted to know the alternative. Ms. Ronning replied it was an incredible hardship. She said they met the front and back setbacks and noted the parking was not in the road. She said they could never make the side setbacks. Mr. Riemitis told the Board the original cottage was only 2ft. off the lot line and the back was 7ft. off the lot line. Now the structure was 15ft. from the back lot line and 30ft. from the front. The side setbacks are 7ft. on both sides. Mr. Hennessey understood the testimony was that the new structure was more compliant/conforming than what the Board originally granted the Variance for. Both Ms. Ronning and Mr. Riemitis answered yes. Ms. Ronning noted that the certified plot didn't specifically state it, but showed the structure as being 24ft.x30ft. (1in = 20ft.).

Mr. Riemitis told the Board although the house is beyond 250ft (from the lake), they had spoken to the Department of Environmental Services ('DES') prior to building the house. They took the recommendations of DES to install a gravel impervious surface driveway and drain spouts that fed into dry wells. They loamed and seeded the lot immediately after the foundation was back filled to prevent future runoff. With respect to being good neighbors, all subcontractors weren't allowed to start work before 8am and no loud music was allowed on the site. They tried to hire all local contractors. Also, for the demolition and construction of the house they did so without a construction dumpster and had to remove debris by the truckload, which was very expensive. Ms. Ronning noted they allowed the neighbor to park in the driveway all winter.

Mr. Hennessey asked that they focus on the variance request in front of them and not the original variance granted. Mr. Riemitis thought the size of the foundation was supposed to be measured (by the Town) before a Framing Permit was issued. He noted they were issued a framing permit.

Mr. McNamara agreed that tearing the structure down would be draconian, but wanted to be precise that the condition for the need of the present variance was not the fault of Code Enforcement. He stated the applicant made the mistake. The original Variance was for a 25ftx28ft. new home and it wasn't built that way.

Mr. Hennessey explained one of the Board's job was to hear appeals to administrative decisions by Town officials; however, the request in front of the Board was a Variance request. The applicant didn't appeal the Administrative Decision. Mr. Riemitis told the Board if they had found out about the situation a year ago, they would have happily come in for the extra square footage.

Ms. Hovey pointed out that the Building Inspector doesn't measure the size of a foundation. She said they inspect the structural integrity and making sure things are built to Code. Mr. Riemitis replied he had built in many towns and it was common course (to measure foundations). He said they also relied on the surveyor for the location when the plot plan is certified. Mr. Hennessey said ordinarily there is a certified plot plan prior to construction. Mr. Riemitis replied they had one and the inspector brought it with him when the foundation was inspected. Ms. Ronning noted it was in the package given to the Board. She added that the square footage was shown on the certified plot plan; if a ruler was used the calculation would have worked. Mr. Hennessey understood there was a 40SF difference. Mr. Riemitis pointed out the difference was front to back, not side to side. Mr. Hennessey understood it was more conforming than what the Board had approved. Ms. Ronning answered yes. She said the house fit perfectly on the lot. They were careful on drainage; no water drains into the road. She noted they made sure the height was less than 30ft and pointed out that the garage approved in the last case was 32ft in height with a size of 24ftx36ft.

PUBLIC INPUT

Donna and Jay Bibeau of 6 Andover Street came forward. Ms. Bibeau told the Board she was frustrated with the whole situation. She told the Board that she didn't mind the front and rear setbacks; however the side setbacks didn't leave much room between the applicant's house and her house. She described the space as being similar to an alley with a wind tunnel. During the winter they experienced a bad back draft with their fireplace. Ms. Bibeau stated the Town had included in the paperwork (of the original Variance) if there was a problem (with the fireplace) they were to speak up. Mr. Bibeau stated when it was cold and windy they didn't burn their stove because he was afraid they'd burn to death. He said he had gone through a fire once and didn't want to go through another one. He commented when the wind blows it sounds like a freight train against his house. He's lived at the location for thirty years and said it was always a quiet little neighborhood and now every tree was down and 3-story buildings were being constructed.

Mr. Hennessey pointed out that the Board was focused on the request to increase the size by 40SF and to increase the width. He asked the Bibeau's how that change was effecting them. Mr. Bibeau replied originally the structure was supposed to move 5ft forward, but it was moved 15ft. He noted the downdraft wouldn't be that bad if the structure wasn't moved so far forward because the front of the applicant's home would be more toward the middle of his house. He said the new location created a wind tunnel. Mr. Hennessey understood that the change created an adverse effect for the Bibeau's. Mr. Bibeau said that was correct.

Ms. Chubb asked for clarification of where the original house was going to be cited. Ms. Ronning replied the original house was farther back in the lot, by approximately 7ft. She said she used the septic design for her original Variance, but unfortunately the plan was not accurate for where the house was actually sitting on the lot. Ms. Chubb asked where the Bibeau's house was located. Mr. Bibeau indicated where his house was located. Ms. Ronning noted the Bibeau's were concerned with their fireplace being located within 10ft. of the new structure and pointed out it was located over 14ft. from the chimney. Mr. Hennessey recalled there was a discussion regarding the fireplace during the site walk. Ms. Bibeau stated they held comments back to see how the winter would be. Mr. Bibeau told the Board there was a lot of water running through the road. Ms. Ronning replied it wasn't from her house. Mr. Riemitis added that they didn't have a paved driveway, but the Bibeau's did.

Mr. John Patterson, 7 Gaston Road spoke about the certified plot plan submitted by the applicant and told the Board it was certified wrong. The plan certifies that the structure is 25ft.x28ft, when it was actually 24ftx30ft. He stated the original Variance gave permission to move the structure forward 5ft, and on the plot plan it was moved 17ft. forward. He said the house was not in the location granted by the Board. He felt Ms. Ronning should hold herself to the same standard she asked him to be held to in the neighborhood. He reiterated that the house wasn't close to being in the same location.

Mr. Hennessey stated the Board would be dealing with weighing the error/mistake/change that was put into effect with the onerous effect of telling the applicant to tear it (the structure) down. He said the question was if the two things equated. He asked Mr. Patterson how the change that was done effected the neighborhood, values and the general locale. Mr. Patterson stated the structure was closer to the neighbor's house. He reiterated that the applicant's house wasn't in the same spot that the Board gave permission for. Mr. Hennessey said they didn't have any other means, other than to make the applicant tear it down or grant a variance. He asked Mr. Patterson what he suggested the Board do. Mr. Patterson didn't know, but commented he didn't know how someone could get a variance and then build something totally different. He noted the structure wasn't in the same location, it already had two decks on the front although there was only one listed. He said even if the Board granted the variance for the one thing, there were multiple things wrong with the property. He believed the applicant was within 250ft. of the lake. Mr. Patterson stated he had photographs of the previous house and the new house that showed it was closer to the neighbor's property. He reiterated that the previous Variance granted the structure to be moved 5ft forward and by the plot plan it was moved 15ft. forward. He questioned if everything would be corrected by granting the current variance request. He said there was a lot more than just the one issue the applicant was getting the

variance for. Mr. Hennessey wanted to know what the other issues were. Mr. Patterson replied the structure was not in the location granted, the structure was 222ft from the lake, there are multiple decks, and it was closer to the other property.

Mr. Riemitis responded to the abutter testimony. He said the fireplace being discussed by the neighbor was not in compliance. He said the abutter's house was 7ft. from the lot line and the fireplace stuck out 3ft. Mr. Hennessey noted everything down there was non-compliant. Mr. Riemitis stated that the new house was not closer to the neighbor's house than the previous house. He pointed out they moved the structure front and back, not sideways.

Ms. Ronning explained there were covenants on the lots. She said there was supposed to be 7.5ft. from the sidelines. The original cottage was 7.5ft. from the lot line, and it hasn't changed. She stated they made it (the non-conformity) better by moving the structure forward to meet the Town's setbacks. She spoke about the plot plan and told the Board it (the structure) had been measured out. She had the certified plot plan done once the foundation was built; after which it was issued to the Town. Ms. Ronning stated the structure was on the certified plot plan as being 24ft.x30ft. Mr. Riemitis wanted to know why they had found out from the Town a year later. Mr. Hennessey pointed out that they were not appealing the Administrative Decision, but were instead requesting a variance. Ms. Ronning replied they didn't give her the option. Mr. Hennessey said they had the option; however, at present the Board was focused on the request for variance. He stated they had been through the criteria and the Board was seeing if they should grant a second variance to correct the structure error. Ms. Ronning reiterated she wasn't given the option to appeal the Administrative Decision. Mr. Hennessey replied an Administrative Decision can always be appealed. He said she made the choice to come in front of the Board with a variance. Ms. Ronning stated on the original Variance they had two decks that were larger. The current application shows 3ft self-supporting decks. Mr. Riemitis added the decks didn't touch the ground.

Ms. Hovey responded to the testimony regarding the foundation being measured. She told the Board that the Building Inspector (Roland Soucy) did not measure the foundation, he inspected the foundation. She added that there wasn't really an administrative decision made to appeal. She stated the applicant was granted variance for one thing and the Planning Department didn't have the authority to allow an applicant to build something else. She explained a complaint came into the office and Code Enforcement responded. Mr. Hennessey asked Ms. Hovey what the Town would do if the variance was not granted. Ms. Hovey didn't have an answer and assumed a case would go to court. The only thing Mr. Hennessey could see was the structure being torn down; obviously after an appeal to the court. Ms. Hovey pointed out that the situation wasn't personal, the Planning Department simply wanted it corrected. Mr. McNamara recalled a case many years ago in Town involving John Oganowski where the NH Supreme Court made him tear a structure down.

With regard to the complaints stated by Mr. Bibeau and Mr. Patterson regarding deviations from the original Variance, Mr. McNamara wanted to know if Code Enforcement had the opportunity to penalize the applicant. Ms. Hovey discussed the process and explained that the Planning Department received a complaint. Code Enforcement reviewed the site and reviewed the files to understand what was granted. Mr. McNamara understood that the reason for the hearing was due to a 40SF difference. Ms. Hovey answered yes; the foundation and square footage were different than what was approved. Mr. McNamara stated a lot of the Board's discussion involved the original Variance, which was granted. He wanted to know if there was a remedy from a planning perspective if there were conditions to the original Variance that had not been met. Ms. Hovey didn't believe so. If there were conditions not met, she believed the Board was the only avenue to address them.

Ms. Chubb asked if there needed to be a separate request to speak about the location of the structure. Mr. Hennessey felt if it was more in conformance from what the Board granted there was no reason for the

applicant to come back to the Board, because it improved the deviation from Zoning. He appreciated the complaints and testimony and pointed out that the question in front of the Board was the 40SF deviation.

Mr. Ronning stated the certified plot plan was given to the Town before they had a framing permit (approved by the Town). The plot plan showed the structure was 31ft. from the front setback and 15ft+ from the back setback.

Mr. Patterson didn't see how adding more square footage to a house on such a small lot made it more conforming. Mr. Hennessey understood the structure was moved forward, which made it more conforming by being in the center of the lot. Ms. Ronning noted the original house was 25ft wide, but it was constructed to be 24ft wide. She said they made it two feet longer; however, it met both the front and the rear setback. Mr. Riemitis stated they gave the rear neighbor more of a setback by moving the structure forward. Mr. Hennessey stated the applicant had a hardship, which was what the variance was built on. He said the question was if denial would cause even more of a hardship than granting the variance. Mr. Patterson didn't understand how someone could get a variance to build something, then build something bigger and come back for another variance. He didn't see that building something bigger on such a small lot would be more conforming. He felt it gave a person permission to do whatever they wanted.

Ms. Ryan pointed out that based on the plot plan submitted to the Board, the applicant had decreased the width on either side of the structure making it further away from the property line. Mr. Patterson noted that the certified plot plan showed the foundation a different size (25ft.x28ft). Ms. Ryan wanted to know if the plot plan given to the Board was 24ft.x30ft. Ms. Ronning answered yes.

Mr. Hennessey closed the public input portion of the hearing.

Mr. Hennessey understood the Board was dealing with a variance and not necessarily punishment for an error that was made. He inquired if there were any other means at the disposal of the Town to do something else. Ms. Hovey stated that fines could be imposed by the Building Inspector or the Code Enforcement Officer; however, they chose to send the applicant back to the Board to remedy the situation. Mr. Hennessey said the Board had to focus on the five criteria in terms of granting a variance.

Ms. Chubb asked if stairs had been mentioned. Ms. Ronning replied there was a small door in the back (egress for the kitchen) that they were going to add a 2ftx5ft. platform. Mr. Riemitis said the original plan for the house showed a set of stairs coming out the back door. Ms. Ronning ended by telling the Board that the house added to the neighborhood.

The Board reviewed responses to the five variance criteria submitted with the application and through testimony:

- 1) Public Interest – Mr. Hennessey noted that the response applied to the first variance. He questioned if it was in the public interest to ask the applicant to tear it down, or to leave it as built. Mr. McNamara said the Board shouldn't be approving the variance because the result of it would be too great. He didn't think that was a concern. He noted it was an increase of approximately 3% in square footage and the dimensions were somewhat more conforming. They acknowledged there was testimony regarding the abutter's chimney; however, the Board heard the same testimony during the first hearing. Mr. McNamara stated if there was a hazard with the chimney the Building Inspector, Code Enforcement Officer or Fire Department could step in.
- 2) Spirit of the Ordinance – Ms. Chubb stated the structure was more conforming. Mr. Hennessey agreed that it was slightly more conforming, although the applicant had deviated from the variance that was granted. Mr. Ryan asked for clarification of the covenants. Ms. Ronning replied she didn't know if they were enforceable.
- 3) Substantial Justice – Mr. Hennessey said the problem was there were some upset people because the structure wasn't built as it was approved, and those people felt that was not justice. On the

other side, he questioned if there would be justice in having the applicant tear it down. He couldn't see having the applicant tear it down for 40SF. Ms. Chubb questioned if that was the assumed remedy. Mr. Hennessey replied they would probably go to court, but from the Board's point of view if they don't grant the variance the house could not be completed as built. He felt that would be a severe penalty.

- 4) Value – Mr. Hennessey didn't see that the difference from what they originally approved and the request before them would diminish values.
- 5) Hardship – Mr. Hennessey felt having the applicant take the structure down would be a hardship. He understood the abutter's comments and wished there were other penalties the Board could use. Mr. McNamara believed the answer given in writing didn't apply, but the testimony given verbally answered the criteria.

BALLOT VOTE Mr. Hennessey – Yes to all criteria
#ZO2017-00017: Mr. McNamara – Yes to all criteria
 Ms. Chubb – Yes to all criteria
 Ms. Ryan – Yes to all criteria

(4-0-0) The Variance was Granted.

VARIANCE GRANTED

Mr. Hennessey noted there was a 30-day right of appeal.

Ms. Patterson and Ms. Paliy returned to the Board.

Case #ZO2017-00018

Map 35 Lot 10-351-10

N & C REVOCABLE TRUST - 18 Loretta Avenue – Seeking a Special Exception concerning Article XII, Section 307-74 to permit an accessory dwelling unit.

Ms. Patterson was appointed to vote.

Ms. Paliy 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 noted they had returned attempted receipt notification from Patrick & Karen Morse and Craig & Noel Minichiello.

Representing the applicant was Joseph Maynard of Benchmark Engineering who came forward to discuss the requested Special Exception. He stated the primary purpose of being in front of the Board was to allow an accessory dwelling unit to be installed within the existing dwelling. He noted that the septic design had been completed and reviewed by the Town Health Officer; however it had not yet been approved by the State. Mr. Hennessey asked if he would agree to an approval stipulation subject to receipt of State approval. Mr. Maynard had no objection. He then summarized the information that was submitted and contained with the application, indicating that the accessory unit met the criteria set out in Section 307-74.

Ms. Hovey confirmed to the Board that the accessory unit met the requirements and it had been signed off by the Building Inspector. She said they were only waiting on the septic approval.

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

MOTION: (McNamara/Chubb) Any approval is subject to Planning Department receipt of State approved septic design.

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

BALLOT VOTE Mr. Hennessey – Yes
#ZO2017-00018: Ms. Paliy - Yes
Mr. McNamara – Yes
Ms. Chubb – Yes
Ms. Patterson – Yes

(5-0-0) The Special Exception was Granted.

SPECIAL EXCEPTION GRANTED

Mr. Hennessey noted there was a 30-day right of appeal.

SITE WALK – June 17, 2017 beginning at 8:00AM

Case #ZO2017-00016 - Map 4 Lot 9-69-48 - KNIGHT, Adam & Sarah - 15 Moeckel Avenue

DATE SPECIFIED HEARING(S) – July 10, 2017

Case #ZO2017-00016 - Map 4 Lot 9-69-48 - KNIGHT, Adam & Sarah - 15 Moeckel Avenue

MINUTES REVIEW - May 8, 2017

MOTION: (McNamara/Chubb) To approve the May 8, 2017 meeting minutes as amended.

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

ADJOURNMENT

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

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

The meeting was adjourned at approximately 9:41pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary