

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
October 12, 2017

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

The Secretary Bill Kearney called roll:

PRESENT: David Hennessey, Svetlana Paliy (left prior to adjournment), Bill Kearney, Peter McNamara, Diane Chubb, Alternate Deb Ryan, Alternate Heather Patterson, Planner/Zoning Administrator Jennifer Hovey

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

PLEDGE OF ALLEGIANCE

CONTINUED

Case #ZO2017-00024

Map 39 Lot 1-89

RAMALHO, Donna & Steven - 38 McGrath Road -Seeking a Variance concerning Article III, Section 307-8 to permit the construction of a new house with “second floor expansion” within the same dimensions of the existing house.

Mr. Hennessey stated that the current meeting was a continuation of the previous meeting and site walk. The Board has received dissertations from the applicant’s attorney, as well as from the abutter’s attorney. He will ask the applicant to provide a brief summary of their request and to go through the five criteria for variance. Mr. Hennessey commented there has been some testimony about the issue of ‘title’ and the certified plot plan. Unless there was discussion regarding its validity, the Board would not get into those issues. He noted the Board was in receipt of a certified plot plan that had been signed by a certified surveyor/engineer. He won’t spend time regarding such, unless there was something specific, or someone found fault with it. It would need to be brought to civil court if there’s still an issue.

Representing the applicants was Attorney David Groff. Also present for the applicant was Alden Beauchemin of Keyland Enterprises, LLC., and General Contractor Joe Forrest of J&K Construction and Excavation, LLC. Attorney Groff stated that the applicant was requesting a variance to the non-conforming use provision of the Zoning Ordinance, which in his opinion was a minor expansion of a pre-existing use. The structure would remain in the same footprint and be raised approximately 8ft-9ft. to be more in conformance with the current Ordinance. The shed and concrete walkway will disappear so there would be less impervious area on the site. He understood a site walk was conducted, and believed everyone understood the applicant would like to construct a more modern house with a more modern septic system. Attorney Groff referenced an August 12th letter submitted by the Conservation Commission, which indicated they voted 4-0 in favor of the proposal with two recommendations: 1) metal septic tank be removed, and 2) that there be some plantings. Mr. Hennessey noted the letter was read into the record during the initial presentation.

Attorney Groff stated a pre-existing non-conforming use has certain constitutional protections. It's allowed to continue in existence even though there had been a change in the zoning, and the applicant is permitted a natural expansion of the pre-existing non-conforming use. Cited cases of such were included in the memo provided to the Board. He said the proposal was a natural extension of what's happened with other properties in the surrounding area, including the abutter's property. He referenced the tax card to point out the lot versus house area being used of the applicant's property compared to the abutter's property. The abutter's property was erected by variance granted by the Board, as was another property in the neighborhood; both were the same type of variance with undersized lots and pre-existing uses.

Attorney Groff reviewed a portion of the Town's code, Section C of non-conforming use. In reference to such, he said the applicant was trying to modernize their existing structure, bring it into conformance with current building codes, prevent pollution of the pond by modernizing the existing septic system, and prevent blighted areas. He then reviewed the variance criteria. Based on the Town's code the applicant's request to modernize the old structure was in the public's interest. He stated the request was in the spirit of the ordinance because the request was only to the 'expansion'. It was not a major expansion and the structure would remain a single family structure and be built on the same footprint. The lot will be brought more into conformance from what currently exists. As to substantial justice, Attorney Groff stated the use being sought was permitted in the residential district. He noted most lots were undersized and no one could do anything without a variance. He believed the Board saw the existing structure and has seen what is proposed. He understood the Board received a letter (through the abutter's representative) from realtor Sue Tisbert (of Re/Max dated September 16, 2017) who stated the proposal might devalue the property; however, he doubted anyone serious believed that was the case. He noted there was an older existing structure with an older septic system, and the proposal was to put a new structure (up to code), new septic system and there would be less impervious surface. Attorney Groff submitted a letter from realtor Tim Desmarais (of Re/Max rec'd October 4, 2017) which in summary states having a newer construction would increase to the value of the surrounding properties. He felt the Board was allowed to rely on its own site walk as part of the evidence of the case.

With regard to hardship, Attorney Groff told the Board that the applicant couldn't do anything to improve the property without a variance, given the fact that it was a pre-existing non-conforming use on an undersized lot. He noted the property was slightly smaller than some of the other lots in the area. There wasn't a lot of room to move on the lot in order to shift any of the existing structures and in order to maintain the non-conforming use status, the applicant is proposing to use exactly the same footprint. He stated to deny the applicant would be a hardship, given the fact that Board had granted the same type of variance to other properties in the area. He reiterated that the proposed use was reasonable since the applicant would modernize the home by bringing it up to code and keeping it on the same footprint.

Ms. Paliy questioned if the design had been changed since the Board conducted their site walk. Mr. Foster answered yes; they changed the architectural drawings for the new structure to be within the exact footprint of the existing structure. They will remove the shed and concrete pads to give back impervious land. Attorney Groff believed that the windows on the second floor have also been removed from the abutter's side. Mr. Foster said they made the change because the neighbor had been concerned about privacy with looking from one window to another. The applicant agreed to remove all second story windows on that side of the home. Ms. Paliy wanted to understand the basement expansion. Mr. Foster replied there would be nothing in the basement of the new structure other than a utility room.

Ms. Paliy spoke about past cases where houses were sitting on the same ledge. She wanted to know if there had been any modification to the proposal given the ledge situation. Mr. Hennessey noted there had been a lot of discussion about blasting at the previous meetings. Per code, Mr. Foster stated they had to get down 4ft. He told the Board that the applicant is willing to not blast, and instead use a hydraulic hammer. He explained there was several different types of ledge; if the construction effects the neighbor's house, they won't have a complete basement. Instead they will jackhammer enough to get a footing to pass the

codes. Ms. Paliy stated in the past they have never had this type of impact on the neighbors. In this case the site work is incredibly important since there are two houses on the same ledge. She said the proximity of the two structures was extremely close. She commented they weren't just discussing the betterment of a house. She wanted to know if the applicant had any legal precedence regarding jackhammering ledge for two houses so close together. She felt the situation was very different than saying an applicant had a right to rebuild. Attorney Groff referenced the tax card for 40 McGrath Road, which showed the basement as 592SF. He said they were on the same ledge and had to have done something to install their basement. He stated the precedence was located next door to the applicant. In the past, the Board granted a variance for them to install a basement under their home.

Mr. Hennessey recalled the applicant commenting regarding assurances and insurance that no damage would be done to the abutter and asked that it be put into the record. Mr. Foster replied he couldn't speak to the legal aspect of jackhammering or blasting, but had personally been involved with projects that have blasted and jackhammered closer than the applicant's and neighbor's homes. He referenced a project he'd done in Gilford with structures being 15ft. away from each other on Lake Winnepesaukee. That project had no negative consequences to any of the neighbors. He discussed the insurance his company held and noted that the applicant also had homeowner's insurance. Mr. Foster stated there is generally a site inspection done of all the abutters to document any cracks in foundations, plaster, china cabinets, etc. prior to any work being done. Attorney Groff said the Board questioned if there was any precedence and he reiterated the abutting property was the precedent.

Ms. Chubb reviewed Attorney Groff's submission to the Board which referenced substantial justice and permitted uses. She didn't think there was an argument about whether or not the applicant was allowed to build from their summer camp to something that's more year-round. Attorney Groff noted that the applicant's structure wasn't classified as a summer camp. Ms. Chubb understood that the properties in the area all started as summer camps at some point. She agreed that the applicant had a right to update and modernize their home. She was looking at how much of a non-conforming use was being expanded, given there would be an additional bedroom. She pointed out in the examples provided to the Board by Attorney Groff, the structures kept the same number of bedrooms. Attorney Groff explained that the number of bedrooms was a function of the septic capacity and had nothing to do with zoning. He said the question before the Board was if the expansion was major, or natural. He believed the request was a natural expansion. Ms. Chubb saw the addition of another bedroom as an expansion of a non-conforming use and noted that the septic system was also being expanded to accommodate the extra bedroom. Attorney Groff spoke to the examples he provided to the Board, which were substantial expansions on a very small lots, based on what was previously on the lot. The percentage of building to lot size were greater than the applicant's proposal.

Mr. Chubb spoke about hardship. She stated that there was an existing structure, and wanted to know the hardship to the land if the applicant renovated the existing structure to keep it one story. Attorney Groff replied they should be able to use the land in conformity with the way the neighborhood had evolved over the years. He pointed out that the neighborhood wasn't all little camps and there was no reason why the applicant shouldn't also be able to. They're proposing to bring it into more conformity with the current zoning. Ms. Chubb questioned if there was conformity on which way the roof pitch had to be. Mr. Hennessey answered no. He said one of the reasons for conducting the site walk was to discuss how the proposal would effect effect abutters and sight line toward the pond. Attorney Groff noted that the abutter raised concerns about privacy; therefore, the applicant had eliminated windows on that side of the home. Ms. Chubb wanted to hear the argument from the applicant why they couldn't renovate the existing home. Attorney Groff believed the applicant was entitled to a reasonable expansion of what was currently there under the non-conforming use schedule.

Mr. McNamara heard that Attorney Groff may be arguing that the proposal was the natural expansion of a non-conforming use, which meant that the Board wouldn't need to grant a variance. Attorney Groff replied the Board would have to make a determination that a variance wasn't needed because it was a natural expansion of a non-conforming use; even though zoning states that a non-conforming use cannot be expanded. Mr. Hennessey didn't think they had any choice than to submit a variance request. Mr. McNamara questioned if Attorney Groff was suggesting that because the Board had granted variances around the pond for homes to increase in height, that it would be fundamentally unfair to not grant a similar right to the applicant. He also asked if he felt the Board would be prohibited from denying a variance request because they had done similar requests in the past. Attorney Groff supposed if he lost he would argue that the Board had set precedence. He pointed out that the lots couldn't be expanded outward and the only way they could go was up. In regard to the Board, Mr. Hennessey stated the use of the term 'precedent' could be used as an example of things the Board has previously done, but it was not binding. He said every case was different.

Ms. Paliy stated in the past when the Board had similar buildings in front of them, the applicants moved the buildings away from the current footprint because the footprint hosted problems. In this particular scenario, with the height and close proximity to the neighbor's home, she questioned if the lot would become more conforming if the house was moved a little away from the footprint. She believed most of the issues were from the applicant trying to keep the footprint. She said the close proximity and increased height made the proposed structure tower over the neighbor's home. She reiterated her question of whether the lot could become more conforming by moving the structure toward the middle of the property that would suit it better and not have the current impact. Mr. Foster agreed, it would be better if the structure could be shifted more toward the center of the lot. He noted they would also have to satisfy the State's requirements. Mr. Hennessey stated the Board was not entitled to ask for a change in the application, but was interested to know why the proposal was cited the way it was. Ms. Paliy understood they were not allowed to change an application, but noted there was an increase of non-conformity, which had an impact on the neighbors. Mr. Beauchemin told the Board he put the plans together and noted it was a matter of keeping the application simple. He said he could move the house and satisfy the State's requirements. He would then have to address some setback issues. Mr. Hennessey repeated the Board was not in a position to 'make deals'.

Mr. Kearney agreed that there would be an improvement to the neighborhood. He felt removing the (2nd floor) windows and the new septic were positive things. He said he was stuck on the expansion of the basement and the hammering that would have to be done. He heard the comment that the hammering would stop when the neighbor was effected. Mr. Foster spoke to the basement expansion and hydraulically hammering out the ledge. He said the granite state of ledge could be more impactful. He said if the ledge was breaking up easy, they would keep on going, but if they found it was getting solid they would do the minimum to satisfy the building codes. Mr. Kearney understood that the test was when the ledge began to get hard, and they would stop at 4ft. Mr. Foster stated that was correct. He noted that the applicant would forego some of the utility room in the basement if they came upon the harder ledge.

Ms. Chubb questioned if the hammering would need to occur if the structure remained one-story. Mr. Foster answered yes. They would have to hammer to get a footing/foundation in. Ms. Chubb inquired if less ledge would need to be hammered if the structure was shifted. Mr. Beauchemin believed the ledge ran parallel, so even if the structure was shifted, they would still be impacted by ledge. He told the Board that the neighbor to the south was concerned about discharge from the foundation grading. He assured the neighbor that there was nothing being graded to flow onto their property. He stated they were prepared to address the concern.

PUBLIC INPUT

Mr. Bill Dumont, abutter to the applicant, told the Board he had been at McGrath Road for fifty-nine years (summer resident from March to November). He said he had two issues, ledge disruption and water diffusion, which were legitimate concerns. He was in favor of the proposal if it didn't hurt anyone else. He accepted the fact that the septic design was limited to what the Town and State allowed. His remaining issue was the increased height, and told the Board that he intended to come in front of them within three years with the same request. He didn't want to be in a position of the neighbor saying that their view is disrupted for something that didn't currently exist. He believed there was no remedy to protect the value of a property going forward because the Board had to look at the cases in front of them. In looking at the variances that were given and the precedence that were set, Mr. Dumont believed that was the reason the applicant was facing the issues with their property. He didn't want to be in the same situation in the future. Mr. Hennessey replied there was no 'magic wand' and the Board would use the framework of the five criteria to move forward.

Attorney James Lombardi, representing Brian and Erin Wilson of 40 McGrath Road, who are the direct abutters to the Ramalho's property came forward with his clients. He stated they were present for the last meeting, and presented a fair amount of material, which they hoped the Board had an opportunity to review. He displayed photographs and asked that they be entered into the record. The photos were each numbered and included a description on the back. Mr. Wilson spoke to what each photograph depicted.

A description of the photos is as follows:

- 1) Fence along the property line and proximity of two properties (applicant's home to the right);
- 2) Both properties showing the close proximity;
- 3) Significant exposed ledge in between both properties;
- 4) Outcropping of ledge in a different direction;
- 5) Front of Wilson home at location of beach facing abutter's property;
- 6) Close proximity of fence to abutter's foundation;
- 7) Narrow roadway width facing toward neighbor's property (Wilson's property on the left);
- 8) McGrath Road during winter facing toward Wilson and applicant property;
- 9) McGrath Road facing toward Sherburne Road taken in front of the fence at Wilson property;
- 10) Example of 'odd' narrow/long un-proportional house on Long Pond;
- 11) Same house shown in #10 – different angle;
- 12) Ledge outcropping located directly beneath Wilson basement (knee wall basement, block foundation);
- 13) Outcropping within basement;
- 14) View of lake from daughter's (2nd floor) bedroom toward neighbor's house;
- 15) View of lake from 2nd floor hallway toward neighbor's house;
- 16) Sunlight coming into Wilson's home (hallway);
- 17) Sunlight coming into Wilson's living room (noon).

The photographs were given to the Board for review and to be entered into the record.

Attorney Lombardi told the Board they had the opportunity to read through Attorney Groff's letter and exhibits. He noted one thing Attorney Groff relied upon was there are various constitutional rights that support the applicant's right to obtain a variance; no one was disputing that right. It's also been established that the Town has the right to set standards and requirements, within which those rights should be enjoyed. The requirements are set forth in the Zoning Ordinance; if they are not met, there is a procedure to be followed/satisfied for a project to be granted. A variance has five elements that must be satisfied for an applicant to obtain approval. He noted that he addressed the variance criteria in a letter previously submitted to the Board.

Attorney Lombardi understood a letter from realtor Tim Desmarais of Re/Max was submitted by the applicant regarding how the project may effect the value of surrounding properties. He said while it's

generally acknowledged that a new or well-maintained building is more attractive than a run down one, the letter doesn't address how a building so narrow and tall (as proposed) would impact surrounding properties. The Wilsons are concerned with the aesthetics of the building and how it might effecteffect their view.

With regard to hardship, Attorney Lombardi noted there were two ways the applicant could satisfy it, but first they would have to establish there were special conditions of the property that distinguish it from other properties in the area, and that denial of a variance would result in hardship. He stated that the applicant hasn't established what that special condition is. More importantly, they haven't said why the provisions to vary a non-conforming use shouldn't apply to them. He heard Attorney Groff say that the hardship was that other properties have been granted variances to improve properties on the lake. He didn't think there was any court decision (throughout the State) that would support that as a hardship in trying to attain a variance. As to 'precedent', he understood that the Board took each property and application on its own merit. He said Attorney Groff spoke about other properties, including the Wilson's property, saying that at one time they were granted variances to improve those lots. Attorney Lombardi noted the standards that needed to be met were different than what they are today, and would argue that they were more stringent than they are today. He stated an applicant needed to meet whatever standards were before them, and would argue that the applicant hasn't met them.

Based on the information provided, Attorney Lombardi said they didn't know what specific provisions the applicant was looking to be granted variances from. He pointed out that there were several properties throughout the area that were still relatively undeveloped, or that were not nearly developed as some of the lots referenced by the applicant's attorney. He said the fact that there are other developed/ undeveloped lots shouldn't effecteffect the merits of the applicant's case. They need to establish why they are entitled to a variance.

Attorney Lombardi spoke to the non-conforming use argument. He heard Attorney Groff mention that the proposal was a natural extension of a non-conforming use. He pointed out that the ordinance doesn't say anything about a 'natural' expansion, it just says that there can be no expansion. He said the applicant needed to establish why they would be entitled to a variance based on an extension. If the Board believes that natural expansions could be accommodated, and the proposal is one of those cases, Attorney Lombardi would argue against such given that the living area of the residence is being doubled, they are adding a second floor and at least one bedroom. He said there was a question about how that effected the property, and how it might effecteffect other properties, and the response from the applicant's representative was it would only effect the septic system. He stated with more bedrooms, there could naturally be more occupants, which would increase traffic and effect the neighborhood. He pointed out it was a seasonal property and the applicant was looking to make it a year-round property. Mr. Hennessey understood many towns in New Hampshire made a distinction between seasonal and year-round. Pelham did not do so. Attorney Lombardi replied his comments were related to the effect it would have on the property and the surrounding. He said there would be opportunity for greater use and traffic as well as impact on the neighborhood if it were to become year-round.

Aside from what he's already touched upon, Attorney Lombardi believed the major considerations were that the applicant's house was just a couple feet from the property line and approximately 15ft. from his client's property. Therefore the Wilsons had serious concerns about how the construction of a new 2-story home would effecteffect their home, both during construction and afterward. He heard discussion as to whether or not it was possible for the project to run into problems as ledge was being chipped away; the answer was that there could be. He said there was a question whether or not that could effecteffect the height of the property, but it wasn't addressed. If they aren't able to go down as far as they want, the question becomes how the plans would be effected. He commented that the contractor attempted to address the height issue by saying in his letter that the height increase will be less than 10ft, and depending on the exact type of framing/finish materials, he anticipated a height differential of 8ft.8in. Attorney Lombardi questioned how the height of the building might be effecteffected if the ledge cannot be hammered to

accommodate what the applicant was seeking. He noted there was also a drainage issue and appears that revised plans only call for gutters and down spouts, whereas the initial plan called for a perimeter drain. He said the drainage issue was significant and had been addressed by Richard Groll, Industrial Seismologist in his report dated September 12, 2017 that was previously submitted to the Board.

Attorney Lombardi told the Board they wanted to address the title issue in the case. He stated that the certified plot plan submitted by the applicant did not appear to be correct. They consulted with Ronald Simpson of Patriot Surveying who prepared the 2012 plan/survey, which had been submitted to the Board for the record. He stated Mr. Simpson had reviewed the deed and the certified plot plan submitted by the applicant, and compared it to the plan he had prepared in 2012 as well as the 1951 plan. Mr. Hennessey questioned what he wanted the Board to do. He noted the Board had accepted into record a certified plot plan signed by a licensed surveyor in the State of New Hampshire. He heard people speak to the possibility that it was incorrect; however the Board was not capable of handling the differentiation between two certified plot plans or survey. Attorney Lombardi accepted what Mr. Hennessey said and understood they couldn't resolve the title issue; however, he felt there could be some significant ramifications from it given that Mr. Simpson found discrepancies. He explained that the plot plan showed the neighbors having direct access to McGrath Road and a 'bell' on the bottom, which impinges upon his client's property. The situation could effect their frontage. He would like the applicant and their surveyor to clarify the issue because the deed and plan they reference clearly shows something different. He noted they weren't speaking about the lot, it was just the part that accesses McGrath Road. Mr. Hennessey felt it would behoove the applicant to double check their records, but he wasn't prepared to have the Board decide. He felt Attorney Lombardi was successful in saying that the applicant should be sure that their plot plan was correct. The Board could not adjudicate it. Attorney Lombardi understood.

In reviewing the submitted photographs, specifically the photo the two houses and fence running between the properties, Ms. Paliy questioned if the applicant was currently encroaching the Wilson property. Mr. Wilson said it looks to be about a 12in. to 16in. overhang, and if the applicant is two feet to the property line, the overhang is very close. Ms. Paliy said the overhang looks to be two feet, if not more. She was concerned that the applicant may be currently encroaching on the abutter's property. Mr. Hennessey stated it was a germane matter; however, it was also a matter of jurisdiction. He said the Board was given a certified plot plan. He stated that the applicant needed to be sure about their information.

Attorney Lombardi didn't know if the 1951 plan had been submitted for the record, therefore he submitted copies to the Board. Ms. Chubb questioned if it would effect the driveway, or the Board's decision. In terms of arguing about lot lines, Mr. Hennessey stated that the Board had to rely on the certified plot plan (from the applicant) in front of them.

Ms. Paliy felt her earlier point was significant regarding the applicant's house possibly not being entirely on their own property and encroaching the abutter. She was concerned if the applicant's property was currently encroaching and they wanted to build a larger house. She wanted to see some evidence because the picture was showing it. Mr. Hennessey replied he would not allow it; the Board was not the correct venue. Ms. Paliy replied it was the correct venue to say that the new house had to be built entirely on the applicant's property and not overlap onto the neighbor's property. She believed the Board should be sure that the applicant would build on their own property. Mr. Hennessey replied the Board received a certified plot plan and would not argue with it. Ms. Paliy said the Board had discussed the foundation, but if the top of the house is going to be bigger than the foundation it wouldn't be on the applicant's property. Mr. Hennessey confirmed that prior to a building permit being issued, the Planning Department would review the certified plot plan and ensure (according to the plot plan) that the proposed building would stay within the confines of the lot lines. Ms. Hovey stated that was correct; it would have to.

Attorney Lombardi spoke about the lots in the area that were granted previous variances and pointed out that there were additional lots involved. With regard to the Wilson's property, they own a lot across the

street that was used as a basis for approving their septic system. He said they would argue that there were different situations accompanying them (previous decisions). They weren't trying to deny anyone their constitutional rights, but felt anyone should be held to the standards under the ordinance/law. He felt the applicant hadn't met them.

Ms. Chubb referenced the letter from realtor Susan Tisbert (of Re/Max dated September 16, 2017) and noted she only addressed diminution of value, if there was an issue with ledge and the effects of jackhammering. She said the submitted photographs entered a new discussion point with the comment about a narrow house potentially effecting value. She questioned if they wanted to add anything else to that point. Mr. Wilson said it would be a burden on them if a potential buyer came to view their home and saw the abutting property 2ft. from the line that wasn't proportional. Ms. Chubb replied the property was near the pond and sort of the price they pay for living by the pond. She asked if they would still object if the proposal was for a one-story structure. Mr. Wilson replied they had no problem with the applicant improving their property, but also liked the neighborhood the way it was and would like the applicant to not expand the use of it. Ms. Chubb noted for the applicant to improve their property, they would have to do something. Mr. Wilson replied they had no problem with the applicant improving their property the way it was; a single-story. Ms. Chubb stated they would still have to do jackhammering and put in footings for a foundation. Mr. Wilson stated they were very apprehensive about the effect on their property with jackhammering and (potential) runoff, etc. He said it was a significant change; the pitch of the house would now go toward their home, versus toward the street and lake. Ms. Patterson commented that runoff would be addressed by Shore Land and the engineer would have to present information on the plan. Mr. Wilson stated because the houses were so close together the applicant's perimeter drain would be directly on the property line. Mr. Hennessey reiterated the point that the State would stipulate the drainage.

Mr. McNamara inquired if Mr. Groll (seismologist) inspected the site. Attorney Lombardi answered yes.

Mr. Rich Dionne, 20 McGrath Road told the Board that he didn't want to see changes in the neighborhood, as it was a small community, with most residents being there for many years. To his knowledge there were still at least five (seasonal) cottages in the neighborhood. He wanted to know what would stop others from coming forward if the Board granted the applicant's request. With additional year-round residences, he was concerned about water consumption, sewage, and the wells in the area. Mr. Dionne was also concerned about the effects from jackhammering and possible creation of fissures in the rock. He stated there may be other properties that would seek variances, which would increase traffic in the neighborhood. His house sits approximately 9ft. off the road, and at least three properties that could seek a variance would have to go past his house. Mr. Dionne questioned if the applicant would consider testing the wells in the area (at their expense) before and after to show that wells haven't been diminished and the water table hasn't dropped down. He spoke about a development on Sherburne Road that created problems for residents in the area with regard to their wells. He reiterated his concerns regarding the wells, water and traffic in the neighborhood.

Mr. Hennessey stated that the public portion of the meeting would remain open while the Board conducted their discussion, which would allow them to recall people and allow the public to pose additional questions.

Mr. McNamara heard Attorney Lombardi state that the applicant hadn't established any special conditions of the property to entitle them to that aspect of the variance. Attorney Groff referenced the aerial photograph attached to the information he submitted to the Board, which showed the configuration of the applicant's house compared to the neighbor's house. He said he didn't know anything about the lot lines, until he just heard it and commented it didn't impact the Board's discussion. He stated if there was an overhang of the applicant's house, it would have been in existence for over sixty years because the property (according to the tax card) was constructed in the 1940s. With regard to what was going to be built, he stated it would have to satisfy the current zoning. He said a certified plan would have to be submitted with the application for building permit, and noted once the foundation was in they would need a certified

foundation plan. Requirements of the building code had to be satisfied. He said an overhang wouldn't be removed with a variance approval; it was a situation that had existed for a long time.

With regard to the comment about light, Attorney Groff stated based on the way the houses were situated there wouldn't be any impact if the applicant's house went up 8ft. He said there would still be a sight line out to the lake and didn't know how (the neighbor) could argue otherwise. Attorney Groff heard the question if the house could be moved and didn't feel it was a solution. He said they were in front of the Board on a variance to simply go up approximately 8ft., which was a natural expansion. His argument was that the applicant had a pre-existing non-conforming use. He said court case establishes that they could have a natural expansion consistent with what was in the neighborhood. He stated there wasn't going to be any change in the well and with the property being on the pond, he didn't think the water table could be that deep. Attorney Groff said they knew there were problems on Sherburne Road with wells, but it had nothing to do with the proposed variance. With regard to hardship, he said the property was situated on the lot in such a manner that there was no other land available. He reiterated that the proposal was a natural expansion of what was there and would be an improvement to bring the existing house more into conformity with current zoning.

Mr. Hennessey wanted to know the current sewage disposal system. Mr. Foster replied there was a septic system. Mr. Hennessey questioned if it was being changed for capacity or for regulations. Mr. Beauchemin told the Board he was a licensed septic designer and was working with the engineer to put the preliminary septic design together. He explained there was an existing one-bedroom house and the State requirements require a septic design to be a minimum of two-bedrooms. He said even if the house remained as a one-bedroom, they would have to design and install a two-bedroom septic. Mr. Hennessey confirmed that the existing septic would have to change regardless. Mr. Beauchemin replied per State requirements, it would have to be upgraded to at least two-bedrooms.

Mr. McNamara inquired if a perimeter drain would still be installed. Mr. Beauchemin stated there would be a foundation drain. Based on the plan there appeared to be at least 4ft. from the nearest point to the property line. He said if they did something they would crowd it next to the house.

Ms. Paliy wanted to know how the side of the house (facing the neighbor) could be reached without going onto the neighbor's property, as the house was being built, or when repairs needed to be made. Mr. Foster stated it was a very tight worksite and explained the equipment (pump jacks) that would be used during construction. He said it was challenging, but it could be done and it would be done.

Ms. Chubb asked the Board to look at 307-8, where it speaks to conforming use and wanted to better understand expansion of conforming use. She also questioned how rebuilding after damage of 50% effect affected what the Board was deciding. Attorney Groff stated there hadn't been any damage to the structure; it was an existing home. Ms. Chubb understood it was uninhabitable, based on the applicant's (previous) testimony. The applicant was seated in the public stated it had a leaky roof and mold; it was their decision not to inhabit the house. Attorney Groff commented that it wasn't in good condition, but it hadn't been destroyed. Mr. Hennessey wasn't sure that the point was germane to what was in front of them. He stated if there was a non-conforming commercial property that had been in abeyance for two or more years, if they weren't being used, they would be lost. However, a structure/residential property reverts to the underlying usage. As long as he'd been on the Board they haven't gotten into abandoned property. He believed the question was good, although irrelevant.

Mr. Hennessey continued to leave the public input portion of the meeting open. He asked that voting slips be handed out to all Board members to be used as a framework when discussing the criteria.

1) Public Interest:

Mr. McNamara spoke about the common test for the criterion: 1) would granting the variance alter the essential character of the neighborhood/locality, and 2) would granting the variance threaten the public health, safety or welfare. In this case he didn't believe it would. Were they to grant the variance, he said it would still be a single-family home. It didn't seem to him that the essential character would be altered if the home was raised to have a second floor. He didn't see how a more-conforming house with new septic system and drainage would endanger public health, safety or welfare. He felt it would be improved.

Ms. Chubb agreed because a house that doesn't look as nice as the rest would become a target. It would be more dangerous to leave it as it currently existed.

Ms. Patterson agreed with Mr. McNamara and Ms. Chubb.

In looking at the photographs, Ms. Ryan said it was hard to determine whether the proposed home would look askew in the neighborhood. She noted that a lot of other homes in the neighborhood had made improvements. She felt it would be a detriment to the neighborhood if the house remained habitable, but in disrepair.

Mr. Kearney concurred. He said the improvement to the septic was huge. In his opinion the proposal wouldn't make the house stand out in the neighborhood or be objectionable.

Ms. Paliy believed the request was in the public's interest and improved the existing house and septic.

Mr. Hennessey also concurred with the Board. He felt the photograph of the odd shaped house (on the pond) was an interesting argument, but wasn't what he saw in the proposal. He believed the improvement to the septic and modernizing the property was in the public interest.

2) Spirit of the Ordinance:

Mr. Hennessey thought both parties brought forward an interesting discussion. He said the Town had an ordinance that said they had to restrict uses, dimensions, etc. Ms. Chubb felt they were observing the spirit of the ordinance because the applicant was looking to effect the footprint as little as possible and had made changes to conform to the existing footprint. Mr. McNamara agreed; the testimony was that the changes would make the house less non-conforming. He felt the proposal met all of the principles listed in Attorney Groff's information to the Board (under 307-88) based on the testimony they heard. Mr. Kearney felt the spirit had been met. He believed the applicant had the ability to improve their lot, and noted they had altered their proposal to make it conform to the exact footprint.

Mr. Hennessey felt #2 and #3 were intertwined and asked Ms. Paliy for her opinion of both. Ms. Paliy believed the proposal was overcrowding the neighbor's lot by the significant amount of change and added square footage. She was still thinking about the request.

From Mr. Hennessey's point of view, he felt the spirit was observed, but at the same time granted that the abutters had some significant issues, which gave him pause.

3) Substantial Justice:

Ms. Paliy stated that substantial justice was done to the applicant.

Mr. Kearney explained he looks at the whole picture, both the applicant and abutters, when reviewing substantial justice. He struggled with the current position of the structure, and what the applicant had to do to improve it. He also struggled with jackhammering ledge, the proximity of ledge to the neighbor, and the ledge in the basement. He didn't think substantial justice would be done if a variance was granted.

Mr. Hennessey said variances have gotten away from economic arguments; however when hearing about the need to jackhammer ledge, he thought about how much it would cost to do so. He didn't see how the work could be justified for a single-family home. He understood the courts have said to not get into economic arguments, but when looking at substantial justice, he didn't know how the property could be improved without putting a second floor in. Mr. McNamara replied it was a balancing act and a decision had to be made whether the benefit to the applicant outweighed damage to abutters, the Town, etc. It seemed to him when they conducted the site walk comments were made about seeing nice properties and the fact that the area had been improved to a significant extent. He felt it seemed more than unjust to allow other improvements to other properties (in this and other areas in Town) and deny the same ability to expand/improve the house. Mr. McNamara noted it was a significant economic investment and felt the second floor was needed in order to justify it. Mr. Hennessey couldn't imagine the property being improved unless they grant the variance for the second floor. Ms. Paliy pointed out that the applicant hadn't brought the subject up as an argument. She said it wasn't the Board's responsibility to justify their investment.

With regard to the ledge, Ms. Ryan understood that the seismologist suggested precautions, but didn't feel there would be an issue. She understood there would be meters and readings going on during the process to keep an eye on things. Although she would be concerned if she was an abutter, she felt more confident based on the professional opinion. Ms. Patterson agreed and summarized some of the seismologist's observations.

In thinking about Attorney Groff's comments about the Board letting others (receive a variance) and how it would be unfair to not let the abutter have one, Ms. Chubb said she was looking at what the applicant's property looked like versus what other properties looked like. She understood that point might also go to hardship. The work that needed to be done to improve the house, whether one or two stories, the applicant would need to do some jack hammering. Referencing the map and aerial photograph, Ms. Chubb didn't see two houses as close to each other where there would be such an impact to improve. Her thoughts were with the neighbors, who were being asked to do a lot of things to safeguard their house and foundation. If something happens and the excavator can't go any further, they will have to try and find a way to dig just enough to get the footings in. She wanted to know what would happen if they couldn't. The neighbors will have gone through a lot and possibly sustained damage for something that wasn't their property. She said it was the close proximity that gave her pause on the 'it's unfair if we don't get to do it' question.

Mr. McNamara wanted to know if there would be a case in front of the Board if the applicant had proposed to build a one-story structure on the footprint. Ms. Hovey answered no; not unless they were razing it and putting in a full basement. Mr. McNamara believed testimony had been they would still potentially have to get rid of some of the rock to put in a one-story house. He noted the contractor told the Board they had an insurance policy.

Mr. Hennessey felt the spirit of the ordinance was observed with the idea of keeping it residential and bringing the property up to modern standards and substantial justice is done by allowing what was in front of them. He said his focus on the value was to answer the question why the Board wasn't looking at a single story house.

4) Values of the Surrounding Properties:

Mr. Hennessey commented that the Board received testimony from real estate brokers on two sides. Ms. Ryan didn't believe that values would be diminished. She felt the realtor letter to the contrary (of the variance) was vague and left questions; it was somewhat non-committal when reading between the lines. Ms. Patterson stated the Board heard concerns about the lake view being blocked. She said they had cases where they've addressed lake views and variances had been passed.

Ms. Chubb stated the value would go up because the neighbor's value would go up. However, it might not go up as much as they want, and she questioned how the Board would consider it. Mr. Hennessey replied the question was only for the abutters/surrounding properties. Ms. Chubb wanted to know if the question was only regarding 'improved', or if it related to what it could be improved to. Mr. Hennessey stated the Board has to consider the case before them and determine if an approval would harm/diminish the values of the surrounding properties. Ms. Chubb said she wouldn't want to look out at a big wall and removing the windows would create a bigger wall. She questioned if the roof had to be pitched as it was proposed. She referred to photo #14 and #15 and noted the (proposed height) stick was visible. She said the trees wouldn't be visible anymore, the neighbor would see a wall.

Mr. McNamara commented that the Board received different letters from realtors. He noted that the letter from Mr. Desmarais indicated that he spent time on Long Pond fishing and boating, and commented that the subject property was unattractive compared to most homes on the water. He put more stock on his opinion because he seems to have personal knowledge of the area.

Mr. Hennessey said ordinarily when he heard cases with letters (from realtors) he had strong opinions whether they are right or wrong. He felt this was a case of weighing scales. He felt some of the abutters would be effected and in that sense the value would be diminished. He said it was a close call, but stated cautiously he didn't think it diminished the value.

Mr. Kearney stated he looked at the total neighborhood and felt the proposal did not diminish the values. He saw the new septic as being a big plus for the neighborhood. He felt taking away the old dilapidated structure and having a newer structure increased the value of the neighborhood. He believed one neighbor had a diminished view from a portion of their house; but as a whole it did not diminish the neighborhood.

Ms. Paliy didn't feel the overall neighborhood value would be diminished and the applicant's house value would increase. She had a problem with the proposed height and proximity to the abutter's property. She said the abutters didn't truly have a right to somebody else's view. But in terms of the structure being so close to the property line that it was creating a wall to the abutters, she couldn't see how it would not diminish their (the abutter's) value. She said the 'height' and appearance of a 'wall' made the situation unique to other situations the Board had seen. Ms. Paliy believed the value of the neighbor's (property) would be diminished.

5) Hardship:

Mr. Hennessey referenced Ms. Paliy's comments regarding the smallness of the lot, which colored the potential effect on value because of the wall, the effect of the ledge and everything there, which to him was almost the definition of hardship. He said the lot was so tight, as were many of the lots in the area, which to him was a special circumstance that created a hardship.

In this situation, Ms. Paliy said the hardship Mr. Hennessey described was causing a worse hardship to the neighbors. She said there were issues with drilling the basement, and pointed out special equipment would be needed because of how close the property line was. Because of these things, a hardship would be placed on the abutters. Mr. Hennessey read aloud the hardship criterion. He said it was a peculiar property in the neighborhood and causes many of the difficulties. He felt it was self-evident that the property had special circumstances that created a necessity for the applicant to come in for the variance. Ms. Paliy said the applicant was in front of the Board because they were asking for certain things that have an impact. She believed the hardship alleviation caused an impact to criterion #4.

Mr. Kearney felt the applicant hit the hardship by the configuration of the land and current non-conforming building and requirement to stay on the footprint in proximity to where they were. He believed they had

very limited options. When reviewing hardship, he looks at what else an applicant can do; this particular case, he didn't feel there was anything they could do.

Mr. McNamara agreed with Mr. Hennessey and Mr. Kearney. He also understood each case was judged on its own individual facts. As an overarching comment, Mr. McNamara said it would seem fundamentally unfair and a burden to the applicant if they weren't going to grant a variance, after the Board had time and time again given variance relief to people who wanted to improve properties in the postage sized lots. He said particularly with the variance relief given years ago in that neighborhood.

Ms. Chubb understood the hardship to the land. She commented that the land hadn't shrunk since the applicant bought it. She said they bought a piece of land with the house on it. She believed they were entitled to improve the house, and was in favor of doing so. She agreed that the new septic would be a great improvement. She wasn't yet convinced that the proposal was the only answer. She felt there was another potential possibility. Mr. Hennessey said it was a question of if there was a hardship with the land, lot location and site. He believed the variance request tied into the peculiar characteristics of the lot. Ms. Chubb agreed it was a peculiar lot, but was stuck on the fact that it hadn't changed from when the owner purchased it. Mr. Hennessey believe everyone understood all the lake front lots were legacy lots. Ms. Chubb said the request in front of them seemed different from other variance requests that had come to them.

Ms. Ryan felt the hardship existed regardless of if the house remained as a one-story. She noted that the septic would require blasting because it had to be for two bedrooms. Ms. Patterson asked if the abutters received a variance to build their home. Mr. Hennessey replied that was irrelevant.

Mr. Hennessey closed the public hearing.

Mr. McNamara said a point was brought up regarding the road coming in and out, and how it was narrow. He heard concern that a variance would result in a huge traffic increase and be an impediment to the neighborhood. He stated the proposal was for a single family home, not a structure that would require multiple traffic trips back and forth. He said it was an existing home and didn't see the argument that an impediment would be created. Mr. Hennessey commented that the road was pretty tight during the winter. Mr. McNamara replied that's the way it currently is and the applicants have every right to access the property.

BALLOT VOTE
#ZO2017-00024:

Mr. Hennessey – Yes to all criteria
 Ms. Paliy – 1) Yes, 2) No, 3) Yes, 4) No, 5) Yes
 Mr. Kearney - 1) Yes, 2) Yes, 3) No, 4) Yes, 5) Yes
 Mr. McNamara – Yes to all criteria
 Ms. Chubb – 1) Yes, 2) Yes, 3) Yes, 4) No, 5) Yes

(2-3-0) The Variance was Denied

VARIANCE DENIED

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

Ms. Paliy left the meeting.

HEARING(S)

Mr. Hennessey spoke about the next two cases. He stated first case was a variance, and the second was a special exception. He then explained how a special exception was reviewed. He commented if the variance

was approved, it was likely that the special exception would be granted. Mr. McNamara believed that the terms of the special exception could not be varied; however a variance could cover everything. In this case, he didn't think the Board needed to address the special exception at all. Mr. Hennessey believed Mr. McNamara was right. He said the Board could possibly grant the variance to include the right to build an accessory dwelling unit as described. There was no objection to doing so by the Board. If the variance is granted, the applicant will be permitted to have an accessory dwelling unit (as described in their application)

Ms. Ryan was appointed to vote.

Case #ZO2017-00026

Map 8 Lot 9-63-2

JAKUBEC, William - 35 Sycamore Street - Seeking a Variance concerning Article XII, Section 307-74(F) to permit an accessory dwelling unit to be placed on top of an existing two car attached garage where there is only 50% shared common wall

Case #ZO2017-00027 This was not heard. The Board included the permission for an accessory dwelling unit when reviewing the variance request (Case #ZO2017-00026)

Map 8 Lot 9-63-2 JAKUBEC, William - 35 Sycamore Street – Seeking a Special Exception concerning Article XII, Section 307-74 to permit an accessory dwelling unit

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

Mr. Jakubec told the Board his mother-in-law had recently moved in and he was seeking to build an in-law apartment above an attached garage. He explained the garage was attached to the house by a mudroom. Ms. Hovey noted the dwelling unit was required to have a 75% common wall. The applicant has a 50% common wall. Mr. Jakubec read aloud the variance criteria as submitted with his application.

Mr. Hennessey pointed out that under the new State law (last year) that the Board was approving a potential rental unit, not just an in-law apartment. He said accessory units are allowed to be rented as long as the owner is in one of the two units. He asked if the in-law was already created. Mr. Jakubec replied it was a space above the garage.

Ms. Ryan asked for clarification of the common wall percentage. Mr. Jakubec replied the Building Inspector looked at the space with him. He explained that the unit had to be attached to the main dwelling unit with a wall equaling 75% (of the attached area); he was requesting 50%. He noted the common wall between the proposed unit and his dwelling was 6ft; however, it contained a 3ft. door that couldn't be used in the calculation, therefore only 50% of the wall was considered as being attached.

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

**BALLOT VOTE
#ZO2017-00026:**

Mr. Hennessey – Yes to all criteria
Mr. Kearney - Yes to all criteria
Mr. McNamara – Yes to all criteria
Ms. Chubb – Yes to all criteria
Ms. Ryan – Yes to all criteria

(5-0-0) The Variance was Granted.

VARIANCE GRANTED

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

Case #ZO2017-00028**Map 42 Lot 10-211**

MENDES, David - 50 Jericho Road - Seeking a Variance concerning Article III, Sections 307-7, 307-12, Table 1, 307-13(B) & 307-14 to permit construction of a new home on a non-conforming, pre-existing lot of record that does not meet minimum lot size or have required road frontage. The lot contains 19,396SF or .44 acres and has 99ft. of frontage on Jericho Road.

Ms. Patterson was appointed to vote.

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

Mr. Shayne Gendron of Herbert Associates, representing the applicant, came forward to discuss the requested variance. He explained the proposed lot was a pre-existing non-conforming lot of record containing 19,396SF (.44 acres) with 99ft. of frontage on Jericho Road. The applicant purchased the lot in 2013 from the Town. He stated that the requested variance revolved around the frontage and lot size. Mr. Gendron told the Board that approximately one year ago they dug a test pit and had put a septic design together. He noted because it was a pre-existing lot the State allowed a two-bedroom septic design. The septic design was submitted to the Town and the State for review; a copy of the construction approval from the State was provided to the Board.

Mr. Gendron told the Board that there had been an old house on the lot years ago. That existing foundation is within the setback and will be removed. The proposed house will meet all building setbacks as well as building and health codes. He then read the variance criteria aloud as provided with the application. He summarized the lot dimensions and noted that the parcel was flat; contours were shown on the plan. There are no wetlands located on the property and it was not within surface water.

Mr. Hennessey wanted more information regarding the hardship of the lot. Mr. Gendron stated that the lot pre-dated current zoning. He explained that the lot was in existence prior to zoning being created, which made it not usable. He said he would argue if the lot was not usable, it would almost be a 'taking'. Mr. Hennessey understood that the applicant purchased the property 3-4 years ago knowing it was undersized and would need a variance. Mr. Gendron stated the applicant didn't create the lot; it was a pre-existing lot of record. He noted people purchase pre-existing lots of record and build on them. He said he had come in front of the Board for pre-existing lots of record and received variances. In this case, they weren't requesting setback variances, they were simply asking to use the property to be built on. Mr. Gendron pointed out it was in the residential zone, and the proposed use was residential.

Mr. Kearney struggled with property being purchased with the knowledge that it's undersized. He heard the applicant's argument that because it was a lot of record a variance should be granted so it could be built on. Mr. Gendron stated it was a lot of record and they felt it was a building lot. He questioned the use of the property, if it was not a building lot. He pointed out that people purchase undersized lots, especially around the pond, where there were obviously more problems. He reiterated that the lot was granted construction approval by the State and it was a pre-existing lot of record. Nothing said it wasn't a lot of record, just because it was an undersized lot.

Mr. Hennessey asked what lot sizes were in the area and if the proposed lot would be an anomaly. Mr. Gendron answered yes; most of the surrounding lots were bigger. Mr. Hennessey questioned if the proposal would effect the value of the other properties. Mr. Gendron replied they had plenty of building area to possibly construct a 2,500SF home, it would have two bedrooms. He felt it was a unique opportunity to offer something in the Town that wasn't all that available. He noted that the proposed home would meet

all the criteria, and would be sized approximately 60ftx40ft. He said a younger couple would have the opportunity to move into a new home in a great neighborhood. There wasn't a lot of similar inventory within the Town. He commented that the house would be attractively landscaped and someone would be proud to own it.

Ms. Chubb questioned how the lot was granted a construction approval. Mr. Hennessey replied the State approved the septic design. Mr. Gendron explained it was a State permit. He said as far as the State was concerned, if there is a lot that can meet the Department of Environmental Services regulations for septic design, it is considered a buildable lot. Mr. Hennessey clarified that the Town made the decision for if a lot was buildable.

Mr. McNamara saw that the protective well radius went across a couple of the adjoining property lines and wanted to know if those properties were developed. Mr. Gendron answered yes. He noted it was common to file a well release, which is a recorded document.

Ms. Chubb understood that the lot previously contained a house and wanted to know when it was removed. Mr. Gendron discussed the history of the lot. A gentleman lived in the house (previously on the lot) and family, that didn't live in the area, inherited the property. The owner's relatives didn't pay the property taxes, and the property went into disrepair, so the Town took it for tax purposes (in 1997). In 2013 the Town put the property on the ballot to put it back on the tax roll. He felt it was an important aspect to understand that the lot was put on the ballot to go back on the tax roll, and if the property wasn't developed, he didn't see how that would be achieved. Ms. Chubb questioned if the lot was part of a bigger parcel at the time the previous owner was in possession of it. Mr. Gendron answered no; it was a pre-existing non-conforming lot of record. The lot was plotted prior to 1967, before there were any subdivision regulations and had a descriptive deed and had always been the current size.

PUBLIC INPUT

Ms. Christina Miller, Birch Lane told the Board she was not a direct abutter to the property and understood she didn't have standing but was interested in what was going on. She drives by the property on a daily basis and recalled being at a meeting when the Selectmen discussed putting the property up for sale. She did some research and referenced the January 8, 2013 Selectmen meeting minutes. During that meeting there were three properties being considered for sale. She provided a synopsis of her findings. She said the Conservation Commission and Planning Board recommended that the lot be sold with a restriction that it not be built on; however, the Selectmen didn't restrict the lot when placing it on the 2013 warrant for Town Meeting. She provided the Board with a copy of the meeting minutes.

Mr. Hennessey read aloud the article that went on the 2013 warrant. He then read aloud the explanation of the article that was contained in the Voter's Guide. Ms. Hovey told the Board she had researched the matter, and clarified that the warrant itself didn't include the explanation contained in the Voter's Guide. Mr. Hennessey confirmed there were no restrictions on the deed when the Town sold the lot. Ms. Hovey said that was correct. Mr. Hennessey asked if there was anything in the purchase and sales agreement or the deed that would prohibit the lot from being built on. Ms. Hovey replied they were unable to locate a purchase and sales document. She stated there were no restrictions of any kind on the deed. Mr. Hennessey commented if there was a restriction the applicant wouldn't have come in front of the Board.

Ms. Miller found the note on the Voter's Guide concerning because she believed that information was used by voters when voting on the property. She said the article passed by a large margin. She felt the Board should consider that some people read the guide and thought it was too small of a lot to be built upon and would just become part of an abutter's existing property. Mr. Hennessey said the applicant was correct that the Board had granted variances on lots far smaller than the proposal. He noted that the Board had granted variances on half acres for various reasons.

Ms. Miller saw that an excavator had shown up on the property, and it looked like digging was going on. Mr. Gendron explained after the ballot was approved by voters the property was put out for bid with no restrictions. He said his client included a letter with their sealed bid that indicated they would clean the lot, remove debris and dispose of such. He noted since the test pit had been done his client was actively working on cleaning up the lot of junk cars, and an old camper, tires, old foundation etc. because it was agreed upon when the bid was submitted. Mr. Hennessey granted the point that some folks may have been misled by the Voter Guide, but the applicant was a well-known and respected builder in Town. He said when the Selectmen decided to sell the lot to Mr. Mendes he believed everyone knew it would be his intention to build on it. He said the question in front of the Board related to the lot. He wanted to better understand the hardship. Mr. Kearney concurred and didn't see the hardship.

Mr. McNamara commented that there had been a house on the property, which was a pre-existing lot of record. He agreed that the proposed two-bedroom home was in short supply in the Town. He felt the lot differentiated itself because other lots in the area were one acre. He confirmed there was no wetland on the property. Mr. Gendron stated there was no wetlands or water on the property. Mr. Hennessey wanted to know how the sight lines were. Mr. Gendron replied they were on the outside of a curve and had decent sight lines. There are two existing driveways on either side of the property and he wasn't aware of sight line issues.

Mr. Kearney stated when the Board has granted variances in the past for this type of situation, it's been because the property had been owned for some time. He didn't recall having a recent purchaser of a sub-sized lot being granted a variance to build. In addition, it wouldn't add to the neighborhood and would instead diminish from the neighborhood. He said creating something that was undersized would fly in the face of the spirit of the ordinance. Mr. Hennessey questioned what the owner could do with the lot if the variance wasn't granted. Mr. Kearney thought the applicant rolled the dice on building something. Mr. Hennessey noted it was a lot of record. Mr. Kearney said a person could buy whatever they wanted; however only the current standards could be applied. He didn't think the Board would do justice by allowing people to buy undersized lots and grant variances when it wasn't in the character of the neighborhood.

Mr. McNamara agreed that the buyer is deemed to be aware of the condition of a lot. In essence it's one measure, but it's not determinative; there could be other issues involved. In looking at the map, he said it was a small lot in relation to the rest of the neighborhood. It seemed to him that a brand new home would look good in that neighborhood.

Ms. Patterson inquired if a variance would have been needed if someone had inherited the lot from the gentleman who passed away, and they wanted to tear down the existing home and build a new one. Mr. McNamara said they could build on the existing footprint, but if they wanted to expand it would be considered an expansion of a non-conforming use. Ms. Patterson heard that the owner purchased the property knowing it was undersized and wanted to know if there would be a difference if someone inherited an undersized lot. Mr. Hennessey said not in terms of ownership. He pointed out that the owner had a valid deed and the Town sold the lot without restrictions. He said most of the undersized lots had already been picked up and were built on. He said he struggled with how to vote against the request, and didn't think he could. He felt it was in the best interest of the Town to have a new single-family home, built by a local builder, with two bedrooms.

Ms. Chubb noted there was something to be said about open space and noted that the owner had agreed to clear the space. Mr. Hennessey replied the owner indicated they would clear the lot of debris and didn't say anything about open space. Mr. Gendron re-read Mr. Mendes' letter that was included with his bid during the sealed bid process. He noted when the Town owned the property, there was a complaint

indicating there was a lot of debris, automobiles, tires, etc. Mr. Hennessey pointed out one of the purposes of the sale was to put the lot back on the tax roll.

Mr. Kearney agreed that there weren't a lot of affordable places and that the lot was a potential opportunity; however, he vehemently disagreed with granting a variance. He was having a hard time figuring out why he should vote in favor of the variance, because he felt there was no reason to do so. He said the lot wasn't owned for a long time and the codes didn't change during the time of that ownership. There wasn't a huge amount of water that made it a half acre. Mr. Kearney didn't think it was the right thing to do at this point in time.

Ms. Chubb understood it was a pre-existing non-conforming lot, and the applicant wasn't creating anything. Mr. Gendron stated that was correct; it was a lot of record. Ms. Chubb questioned if a non-conforming use was being put on the lot. Mr. McNamara answered no; it was a non-conforming lot, but the use would be a two bedroom home in a residential zone. The proposed use would put it back on the tax roll, which is why he felt it was put out to bid in the first place. Mr. Hennessey pointed out that the Selectmen specifically didn't put a restriction in the deed. The Selectmen's record indicates that it should be available for building if so chosen. It was noted that the restriction on the lot was in the Town's zoning, which is why the applicant was in front of the Board.

Ms. Miller felt people may not have submitted a bid based on what was shown on the Voter's Guide as to what was going to happen on the property. She said people may have thought the lot would become part of an abutter's property. There may have been other bidders if people thought they could build on the property. She felt the wording lead people to believe that the property would not be built on. Mr. Gendron stated it was a sealed bid and open to anyone to bid on the property. He added there were no restrictions on the lot.

Mr. Hennessey asked the Board to run through the criteria.

1) Public Interest:

Mr. Hennessey said if the voters voted for the sale of the property without knowing it could be built on, it could be considered against the public interest; however, that wasn't on the ballot. He questioned if it would be better for the Town to have a property built by a builder from Town than to have it lay fallow and add very little to the tax rolls. He noted according to the ballot item, the purpose of putting it on the ballot was to sell the property and add it to the tax rolls. Mr. Kearney said if that was the only criteria, yes would be the answer. Mr. McNamara didn't think the proposal in a marked way negatively effected public health, safety and welfare. He said it also doesn't alter the essential character of the location.

2) Spirit of the Ordinance:

Mr. McNamara believed the spirit was observed. Mr. Kearney didn't feel the spirit was observed. He said it was an undersized lot and purchased with that understanding. He believed the ordinance was clear about what sized lots Pelham wanted. Mr. Kearney felt by granting the variance the Board would go against the ordinances. He struggled with the lot size. Mr. McNamara replied the applicant was in front of the Board because they only had a half acre. Mr. Kearney believed the applicant created the situation for themselves by purchasing an undersized lot. Ms. Chubb added it wasn't just that the lot was undersized, it also had only half of the required frontage. Ms. Patterson asked if the shortage of frontage would be considered an exception. Mr. Hennessey said that was part of the request. He noted it was an existing lot and an exception in the neighborhood.

3) Substantial Justice:

Mr. McNamara believed that the lot seemed to be a perfectly developable lot and noted there was previously a home on it.

4) Values of the Surrounding Properties:

Mr. Hennessey believed if abutters were fearful of values going down that they would have attended the meeting. Ms. Chubb said it would be difficult to tell the lot size from the street.

5) Hardship:

Mr. Hennessey read the criteria aloud, both A and B. He said it was hard for him to say what the reasonable use of the lot would be if they didn't approve the variance. Mr. Kearney felt the situation was self-imposed.

Mr. Gendron said when they speak about frontage and area in zoning, it was typically to have proper spacing. In this case, they had a house would meet all the building setback criteria. He felt it would be difficult to say that the home had less of a value than the surrounding ones. The house met proper spacing between the properties. He reiterated that the lot was a pre-existing lot of record and they were making a reasonable request.

BALLOT VOTE
#ZO2017-00028:

Mr. Hennessey – Yes to all criteria
 Mr. Kearney – 1) Yes, 2) No, 3) Yes, 4) Yes, 5) Yes
 Mr. McNamara – Yes to all criteria
 Ms. Chubb – Yes to all criteria
 Ms. Patterson - Yes to all criteria

(4-1-0) The Variance was Granted.

VARIANCE GRANTED

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

MINUTES REVIEW

August 14, 2017

MOTION: (McNamara/Chubb) To approve the August 14, 2017 meeting minutes as amended.

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

August 19, 2017

MOTION: (McNamara/Chubb) To approved the August 19, 2017 site walk minutes as written.

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

September 18, 2017

MOTION: (Kearney/McNamara) To approved the September 18, 2017 meeting minutes as amended.

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

ADJOURNMENT

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

VOTE: The motion carried.

The meeting was adjourned at approximately 10:51pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary