

APPROVED

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
January 14, 2019**

Chairman Bill Kearney called the meeting to order at approximately 7:00 pm.

Secretary Diane Chubb called roll:

PRESENT: Bill Kearney, Diane Chubb, David Hennessey, Alternate Darlene Culbert, Alternate Deb Ryan, Alternate Heather Patterson, Planner/Zoning Administrator Jennifer Beauregard

ABSENT: Peter McNamara, Svetlana Paliy

PLEDGE OF ALLEGIANCE

REQUEST FOR REHEARING

Case #ZO2018-00031

Map 34 Lot 1-3-1

GULBICKI, John & Lesa Breault - 17 Greeley Road - Seeking a Variance concerning Article III, Sections 307-7, 307-12 (Table I), 307-13(B) & 307-14 to permit a 2-Lot subdivision of an existing approximately 2.5 acre lot improved existing single-family home and garage. The proposal includes providing 200.4ft. of frontage for the existing home on Lot 1-3-1 and creating a new lot 1-3-2 with 56.21ft. of frontage on Greeley Road. *Motion for rehearing by Alfred Gagnon regarding a decision of the Pelham Zoning Board of Adjustment.*

Mr. Kearney stated that the Board had received a request for rehearing within the required 30-day time period.

Ms. Culbert and Ms. Patterson were appointed to vote. Ms. Patterson stated she wasn't present for the November meeting, but had read through the meeting minutes. Both members felt confident being appointed.

Mr. Kearney discussed the process for a rehearing, which had been submitted by an abutter. Ms. Chubb read aloud the request for appeal dated December 10, 2018 submitted by Alfred Gagnon, 13 Greeley Road, Pelham, NH (*attached was a Warranty Deed, Easement and Right of Way, Map of 1-3-1*).

Ms. Chubb was unsure what frontage Mr. Gagnon was referring to. She said she looked at the map and saw where there was Town land but was not sure why there was an easement granted in the first place. Mr. Kearney offered a point of clarification. He said properties (boundaries) don't go to the road; the Town owns a slice of the property from the road to a (resident's) property. He believed that was the referenced easement; at some point in time Greeley Road changed configuration and the part that went in front of the (Gulbicki) property got wider.

Mr. Hennessey stated the pertinent lines in the meeting minutes (November 15, 2018) was page 8 lines #345-#357.

“Mr. Hennessey asked for the frontage measurement of the existing lot. Mr. Gendron replied 256.61ft. Mr. Hennessey understood from the abutter (Mr. Gagnon) that the frontage measurement was taken from along the stone wall and there was no frontage along the road. Mr. Gendron replied there was no parcel between the applicant’s property and the road. He said the road was in a right-of-way owned by the Town. He said if the applicant’s property were to need an easement to access Greeley Road, every property along the road would need the same easement to cross the land. He told the Board that Greeley Road’s right-of-way in the area of the applicant’s lot was wider than it was in other places. Being an old road, Mr. Gendron said Greeley Road was probably defined by bars and stone walls on either side of it. He didn’t believe there was a separate parcel of land between the applicant’s parcel and Greeley Road’s right-of-way. Mr. Gagnon stated in the past Greeley Road had run along the stone wall and was later moved over. Mr. Gendron noted the road was moved because of the AASHTO standards for road curvature. Mr. Hennessey confirmed that the right-of-way still consisted of the land up to the stone wall. Mr. Gendron stated that was correct; it was part of the Town’s right-of-way.”

Mr. Hennessey said testimony was given and felt the applicant’s representative Shayne Gendron of Herbert Associates did a very good job explaining such. He stated Pelham had many roads laid out in a similar manner; the roads were laid out one way, but the deeds were different when reviewed. He felt the testimony was persuasive and that’s why he voted the way he did.

Mr. Kearney asked Ms. Culbert if there was anything in the minutes or the appeal that she’d like to make a comment on. Ms. Culbert clarified the reason behind why she asked the question of the size of the parcel. She said it wasn’t because she didn’t know the requirements, she did so for the benefit of the public who may not understand. She said she wanted them to know the applicant was working with the full amount of land to do the proposed subdivision.

In Mr. Kearney’s view the point of contention was maybe not as crystal clear as it potentially could have been. He didn’t think that because it wasn’t ‘crystal clear’ that it would have changed his thinking on proceeding forward and his vote in favor of the proposal. He felt the Board had done their due diligence and asked the questions that were pertinent and made the right decision.

In looking at the letter requesting the appeal Ms. Chubb understood that Mr. Gagnon believed the Board did not consider all the information that was pertinent, and he wants the Board to open and have a new hearing, so the Board can consider the case again with the easement document (attached to his letter of December 10th). What she heard from the Board’s discussion was that they were considering if having the document now was enough to have a new hearing. Mr. Kearney didn’t think that everyone had an easement to get from the road to their property. He didn’t know why that particular document (provided by Mr. Gagnon) was drawn up. Ms. Beauregard also didn’t know what the reasoning was for the document or why moving the pavement would suddenly deem the lot as no longer conforming. Mr. Kearney said in his mind that (document) didn’t change the facts that were presented at the hearing.

Mr. Hennessey stated the Board had dealt with several lots during the last few years where the lot lines were ‘cloudy’. He believed it was prudent that the abutter came in with a request for variance on their property to create a museum to make sure the access was clear. On the other hand, Mr. Hennessey said with hindsight as well as the reconfiguring of Greeley Road, based on what he read to ‘modern’ standard, he didn’t feel it was necessary. He understood why they did it, but by itself he didn’t think it meant anything. He said the point made at the hearing was if the Board required a variance to get to Greeley Road itself, then every house on the street would have to have a variance. He said that made no sense. He said he always liked to bend over backwards to conduct a rehearing if the Board had new information; however, he didn’t see new information in the submitted request for rehearing that was pertinent to the case that was in front of them.

Ms. Culbert stated she hadn’t heard anything different.

Ms. Chubb said she only had the minutes to go by and it looked like there was quite the discussion about it. She assumed when the abutter said they had the piece of paper and indicated they would produce it, that it was on the Board's mind to consider if necessary.

Mr. Hennessey spoke to the comment (in Mr. Gagnon's letter) about the Board being 'under-manned'. In this case the vote was unanimous (4-0-0); so even if there was a full Board with five members voting the variance approval would have passed. He didn't see that point as being pertinent.

Mr. Kearney asked for a Show-of-Hand vote.

SHOW OF HAND VOTE: TO RECONSIDER THE CASE:
#ZO2018-00031: Mr. Kearney- Did not raise his hand
 Ms. Chubb- Did not raise her hand
 Mr. Hennessey- Did no raise his hand
 Ms. Culbert- Did not raise her hand
 Ms. Patterson- Did not raise her hand
 (0-5-0) The motion failed.

TO LET THE CASE STAND AS-IS:
 Mr. Kearney- Raised his hand
 Ms. Chubb- Abstained
 Mr. Hennessey- Raised his hand
 Ms. Culbert- Raised her hand
 Ms. Patterson- Raised her hand
 (4-0-1) The motion carried. Ms. Chubb abstained.

THE CASE WILL STAND and NOT BE REHEARD

HEARING

Case #ZO2019-0001

Map 24 Lot 12-204

LOOSIGIAN, Peter & Lisa - 8 Foreman Lane - Seeking a Variance from Article III Section 307-12 Table 1 to permit a 4-Lot subdivision with each lot containing less than the required 200ft. of road frontage (144ft, 62ft, 92ft and 166ft)

Ms. Ryan and Ms. Patterson were appointed to vote.

Ms. Chubb 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 was represented by their son Mr. Tom Loosigian and Mr. Karl Dubay of the Dubay Group. Mr. Dubay told the Board that the applicant had owned property (nearly six acres) off Foreman Lane (a public way) for several years. A complete survey had been done; the applicant's existing home is situated in the back acreage of the property. He explained when the applicant purchased the property, they had done so to create a subdivision with cul-de-sac as retirement planning. They held the property as an investment and were now acting. Mr. Dubay explained when they did the survey and development layout, it shows they could achieve a total of four lots (one existing lot and three new lots) by right and meet all Zoning criteria. A depiction of a development layout (by right) was displayed for the Board and public to view. In

this scenario they would have a right-of-way for a cul-de-sac that would extend into the property that would meet all of Pelham's standards. Mr. Dubay commented that as the applicant reviewed the plan and saw that the property would end up being cleared to the property lines. They looked at altering the plan to pull the cul-de-sac back and add voluntary restrictions and buffering around the edge of the property. He advised them they would need to go to the Zoning Board for a frontage variance, which would allow them to reduce the length of cul-de-sac and impervious surface. He referenced a 'preferred' plan which was given to the Board and displayed for the public.

Mr. Dubay spoke about the existing condition of Foreman Lane, which was a Town maintained road that ends in a messy 'knob' area that is difficult to maneuver for visitors, emergency response and school buses. He said they would like to upgrade Foreman Lane to have the ability for vehicles to turn around by installing a paved cul-de-sac. The remainder of the land would have a voluntary buffer around the edges and to do so they are requesting a variance to the frontages. The existing home would be retained, and three additional homes built. The driveway standards criteria would be met and there would be a full right-of-way dedication so school buses, post office, etc. would have access. As part of the application they submitted an aerial photo of the parcel with an overlay showing the context of the neighborhood with the proposed subdivision.

Mr. Dubay understood they would have to meet the variance criteria although they felt they with their proposal they were doing the right thing. He understood they had to prove that the parcel is unique. He had done research regarding the cul-de-sacs in Pelham and provided the Board with a chart and spread sheet listing out all cul-de-sacs within the Town. In Pelham there are approximately 177 cul-de-sacs. There are about 100 that have been built-out or have conservation land. There are an additional 60 (+/-) that are restricted based on either wetland, flood zone, conservation land, steep slopes, private etc. This leaves approximately 19 cul-de-sacs that have expandability and multiple access points available. From a statistical standpoint Mr. Dubay stated Foreman Lane was truly one of a kind. He provided the Board with the tax maps for each cul-de-sac listed on the spread sheet (submitted with the application). He stated the applicant's property was approximately six acres. The family had not subdivided because they held the land as an investment. The applicant has enough land to develop four lots by right.

Mr. Dubay reviewed the responses to the five variance criteria as submitted with the application package. He noted that the alternative to the proposal would be to develop the project as they could do 'by right' and not seek the variance. He further explained if the variance wasn't granted the cul-de-sac would be extended into the property to gain frontage for the house lots. He submitted a letter into the record from Lisa Sevajian, Bentley's Real Estate that spoke to 'no diminution of value' standard. Mr. Dubay told the Board that they felt they were doing the right thing by requesting the variance and didn't believe extending the cul-de-sac into the property would be reasonable to the environment.

Mr. Hennessey asked if the applicant had gone in front of the Planning Board for a conceptual review. Mr. Dubay answered no. Mr. Hennessey questioned why they weren't conducting a joint hearing with the Planning Board. Ms. Beauregard replied the applicant hadn't requested a joint hearing. Mr. Dubay said they didn't request to do so but would be happy to do so as they had time and weren't rushing. Mr. Hennessey understood that they needed Zoning Board approval before going in front of the Planning Board; however, his questions had more to do with what the Planning Board would be asking. He felt they needed to get back to having joint hearings and sharing common knowledge.

Mr. Hennessey asked for the road classification. Ms. Beauregard replied it was a public road - Class V. Mr. Hennessey heard mention of how difficult it was to come onto the road and wanted to know if there were problems with access. Ms. Beauregard hadn't heard of any but knew they would need to meet with the Highway Safety Committee ('HSC') at the Planning Board level. Mr. Hennessey questioned if a 100ft. cul-de-sac was adequate under the current Site Plan Requirements. Ms. Beauregard didn't have that information. Mr. Hennessey reiterated his belief that they should be conducting a joint presentation and

felt this was a missed opportunity. Mr. Dubay commented they would support working with Ms. Beauregard to draft a conceptual or preliminary design. Mr. Hennessey said the case was in front of the Board and they should only be looking at the five criteria. Mr. Dubay informed that there were a lot of 100ft. paved cul-de-sacs in existence within Pelham. He was open to exploring any of the process options. Mr. Kearney agreed with Mr. Hennessey; however, at this time he recommended moving forward. Mr. Hennessey believed it was a missed opportunity. Ms. Beauregard pointed out the applicant could request a continuance and submit the plan to the Planning Board for a joint hearing. Mr. Hennessey agreed with Mr. Kearney that they should proceed but wanted to go back to conducting joint hearings in the future.

Ms. Chubb asked Mr. Dubay what cul-de-sac he had reviewed in Town. Mr. Dubay replied it was last year as part of The Pines conservation project. He offered to get the diameter of the cul-de-sacs in Town. Ms. Chubb asked if he would get the diameter of the cul-de-sac in her neighborhood, so she could understand the proposal. Mr. Dubay replied the proposal accommodated a full-size fire truck, plow trucks buses etc. Mr. Hennessey understood that the cul-de-sac would be turned over to the Town. Mr. Dubay replied the Town currently maintained the road and turn-around area. Mr. Hennessey asked if the proposed cul-de-sac would be located on public land. Mr. Dubay replied it was a combination of public land plus on the applicant's private land. They proposed to extend the public right-of-way with a full cul-de-sac.

Ms. Chubb questioned where the snow storage area was currently located. There was a member of the public that raised their hand, but the discussion had not yet been opened to public input. Mr. Dubay described how the proposed cul-de-sac would be cleared. Mr. Loosigian noted snow was currently pushed (piled up) by the Town plow to an area on the left of his parent's existing driveway. Ms. Chubb understood that the plan would include specific information regarding tree removal and wanted to know if they would replant areas. Mr. Dubay said the plan would include a voluntary vegetated buffer; each deed would have language to infill holes of the buffer with supplementary plantings. He commented if they weren't able to move forward with the proposed plan, they would cut to the property line to construct the homes and perform on the theoretical layout that didn't require variances. He submitted an exhibit package that contained aerial photos of the parcel.

Mr. Dubay heard there were some concerns about drainage from the neighbors and had updated the plan for the exhibit to show a large drainage area (possibly a constructed wetland) that would take on the drainage. He said if they were suggested to go to the Planning Board, they felt the plan would be well liked. He believed the Planning Board would want them to act on the proposed plan and were happy to meet with them anytime.

Mr. Kearney asked if there were any wet areas on the property. Mr. Dubay replied there were no wetlands on the property. There were some wetlands off the property that had been identified and flagged. Mr. Hennessey inquired if they met all the setbacks from the wetlands. Mr. Dubay answered yes; there was an area off the property of poorly drained soil.

PUBLIC INPUT

Ms. Carol Anne Senator, 18 Mulberry Lane told the Board her property had a vernal pool which was a legal wetland. She also informed that Mulberry Woods Estates was built on a quarry with the applicant's property being adjacent to it. She discussed the drainage in the area and told the Board that the Planning Commission had allowed the drainage from Ballard Road to flow onto her property. She said it was illegal to redirect storm water onto private property; the builder and Planning Commission allowed it to happen without going to the Department of Environmental Services ('DES'). At the outlet there were two 3ft. drains that were on her neighbor's property before it hit her property. She noted that the outlet was within the 50ft. setback of the vernal pool. Ms. Senator stated she had worked hard to get the vernal pool back to life, so it could do its job. She said each year it had toxic runoff going into it from lawn and road treatments. The water now covers 75% of her lot. She said if she hadn't tried to contain the water it would have flowed onto the

applicant's lot. She spent a lot of money on the forest area, so water could be contained and not flood her lot. Ms. Senator stated she had zero trust in the Planning Commission and Conservation Commission to do what was required by law. She couldn't sit back and allow the applicant's proposal to happen without knowing up front exactly how the drainage would be and how the lots would be cleaned up. She noted that the applicants hadn't done anything to clean up or maintain the forest area. She had no trust in the applicant or the agency to do what's right.

Ms. Senator stated she was interviewing real estate land development attorneys to correct the illegal drainage. She said the neighbors complained when her development was being built but hadn't done anything to plant. She took the applicant's statement about building townhouses or duplexes as a threat. She said the Town had two-acre minimum lots and the size was reduced to one acre when the Mulberry Woods development was being done. She was concerned with the lots not percolating because they were built on rock and not getting the depth of dirt for leaching of the septic systems. Ms. Senator said the Town had not been proactive to take steps to improve the requirements for builders for the health, safety and welfare of the citizens. She discussed the State statistics regarding soil contamination and water issues. She wanted the Board to know there were adjacent properties that had problems because things weren't done right. She believed the houses should be on two-acre lots and speak to the other Town committees to change the requirements for lots to be two acres and require percolation tests and better standards for runoff and ground treatments. Ms. Senator stated she was against the proposal and being threatened. She wanted the Board to know she had a serious problem on her lot.

Ms. Beauregard pointed out that the Town's Zoning had always been a one-acre minimum lot sizing, unless there are wetlands on a property which would require a minimum of 35,000 contiguous square feet of dry land.

Mr. Michael Bebirian, 12 Ballard Road mentioned he was neither for or against the proposal. He was concerned that the plan wasn't brought to the Planning Board since there were drainage issues. He believed there was some misinformation and wanted to have clarification. He heard a veiled threat that all the trees would be cut, which would only exacerbate the drainage situation. He spoke about being concerned with Section 307-2 and the prevention of overcrowding. He saw that the Zoning Ordinance speaks to undue concentration of population and felt the proposal would concentrate a lot of people. He said Section 307-13 mentions that lot sizes must be contiguous with 35,000SF and cannot contain poorly drained soil. He was unsure if engineering or test pits had been done. He said the entire area had poorly drained soil and understood it could not be included in the 35,000SF calculation.

Mr. Bebirian addressed the drainage of the wetlands during the 2009-2010 timeframe prior to the development on Ballard Road/Wellesley Drive. He said there was a perforated catch basin installed in the Wetlands Conservation District ('WCD') upstream from Ballard Road; a Special Permit was pulled but was in violation of Section 307-41. He explained that water flowed from Wellesley and Ballard and dumped into the WCD next to his property. Mr. Bebirian believed due to lack of knowledge the abutter Ms. Senator and her husband (18 Mulberry Lane) started cutting down several trees in the WCD that were absorbing water. He spoke about how the area had changed since he moved in (2005). He shared photographs with the Board. Mr. Bebirian told the Board that Steve Keach of Keach Nordstrom (Town's engineering review firm) told the Town (in 2009-2010) that the outlet of the water of the WCD had an outlet to the Loosigian property. He said that's where the problem was and believed there had to be wetland soil on the applicant's property. He said with the idea of putting in structures and driveways there would be less trees. Although he believed it was a Planning Board issue, he was concerned with a drainage issue forming in the future.

Ms. Chubb said she appreciates all the views being brought forward, she said they were Planning Board issues. She said the decision in front of the Board was strictly whether to allow a variance for the 200ft. frontage requirement. She noted the applicant could push the cul-de-sac through or move the cul-de-sac to the end of Foreman Lane and receive a variance for the frontage. She stated 'frontage' was the only decision

they could make. She had empathy for the abutters, but questions regarding drainage had to go to the Planning Board. Ms. Chubb noted the applicant had shown a plan with the cul-de-sac in the middle of the lot that didn't require a variance; however, the applicant was asking for a frontage variance and submitted a plan (showing the cul-de-sac pulled out from the property).

Mr. Hennessey stated based on the preliminary plans he asked if any of the wetlands described by Ms. Senator form a lot line. Mr. Bebirian replied the wet areas abutted the property and believed most flowed onto Ms. Senator's property, but some must flow onto the applicant's property. Mr. Hennessey wished the other Town boards were hearing the information together but noted Keach Nordstrom would review the subdivision. He added that the only thing the Board could review were the pros/cons of the cul-de-sac in order to allow a variance for smaller frontages. Mr. Bebirian reiterated he was not for or against the project, he simply wanted the Board to be aware of the wetlands. Ms. Chubb asked if he had any comments regarding one proposal over another. Mr. Bebirian said he was concerned with the trees being cut because it would exacerbate the drainage problem, therefore the proposal to go for was the one being recommended by the applicant.

Mr. Peter Brody, 44 Ledge Road was hearing that whichever plan was chosen had nothing to do with the current meeting. Mr. Kearney said that was correct. Mr. Brody wanted to know when it would be discussed. Mr. Kearney replied it would be discussed by the Planning Board. Mr. Brody commented that he didn't see a 10,000 gallon cistern for fire protection, which he understood had nothing to do with the Zoning Board. He heard the engineer speak about having an environmental runoff 'collector' as opposed to a retention pond. He wanted to know if those two things were different. Ms. Chubb replied there was a detention pond shown on the drawing. Mr. Dubay explained they had a proposed detention pond area that could be an open basin that collects water, but they were proposing a constructed wetland that would act as a detention/retention area. He said the overall approach was to reduce the amount of impervious surface. He told the Board they would be happy to engage with Planning. Mr. Brody was concerned because the downstream people currently had water problems, and no one had cleared land yet. Mr. Kearney replied the applicant had a responsibility to control their runoff. He recommended the abutters document what they currently had.

Mr. John Westwood, 22 Ballard Road said the only thing that had been constructive for him was the comment about needing the Planning Board. He asked why they weren't going to them or discussing what they needed to talk about. Mr. Kearney explained that the applicant had the ability to put four house lots on their property with an extended drive without being in front of the Zoning Board and proceeding directly to the Planning Board. However, the applicant had elected not to do so and instead request a variance to the frontage requirements. He said the only request was for frontage. He wanted people to have an opportunity to speak.

Ms. Margery Moore, 5 Foreman Lane told the Board her home was in the area where the applicant wanted to construct a cul-de-sac. She asked that the variance not be granted. She purchased her home prior to the applicants buying their property and the Mulberry development being built. She explained once the road was paved all the traffic came down the street in front of her home and pulled into her driveway. She knew what would happen with a cul-de-sac directly in front of her home. Ms. Moore didn't think the neighbors were too upset about the mail not coming down the street given they had dealt with it for the last twenty-six plus years. Being a school bus driver, she noted the buses wouldn't drive down the street unless a kindergarten student was added. She said the current problem is that no one could turn around in their driveways. Ms. Moore saw that the proposed frontage wasn't close to the required 200ft. and was concerned with the plows piling snow and adding to her existing water problems. She questioned how delivery trucks, oil trucks, emergency response etc. would access the proposed homes given the narrow driveways. She also was concerned with large vehicles parking in the cul-de-sac making it difficult for other vehicles to maneuver around. Ms. Moore told the Board she would suffer the most with the proposal but felt she would have more privacy if the cul-de-sac was constructed in front of the homes. Mr. Hennessey asked for

clarification of her opinion regarding the cul-de-sac. Ms. Moore stated she did not want the cul-de-sac in front of her house.

Mr. Wayne Helliwell, 12 Shephard Road questioned why they weren't made aware of the fact that there were two plans and questioned how they could be well informed. Mr. Kearney replied that the plan with the extended drive and larger cul-de-sac met the Town's requirement (and didn't need a variance). Mr. Helliwell said how could he know which was better if it wasn't in front of him. He said his mind could have been changed if he had seen the other plan. Mr. Dubay commented that both plans were submitted. Ms. Beauregard added they were available to the public in the Planning Department. Mr. Helliwell said he can't make an accurate decision. In looking at the plans that were available to him he felt the proposed lots were non-conforming. Regarding drainage, Mr. Helliwell told the Board when he moved in twenty-six years ago, he had no water issues. Now that the big development (Mulberry Lane) had gone in he had water. He was concerned with additional development making the situation worse. He wanted to know who would guarantee his well wouldn't be affected by blasting and drilling. Mr. Kearney stated the only thing in front of the Board was the consideration of smaller frontage. Mr. Helliwell asked how the Board would make their decision. Mr. Kearney replied based on the testimony that was given the Board had the responsibility to decide whether the applicant met the criteria. Ms. Chubb confirmed that a certified letter had been signed for by Cheryl at 12 Shephard Road. She explained that the only letter sent out was that the Board of Adjustment was holding a hearing. She stated that the Planning Board had not received a plan, so there are no hearings scheduled. Mr. Helliwell asked if the Zoning Board was seeking his input. Ms. Chubb replied they were only seeking input on the frontage issue, which was the only issue in front of the Zoning Board. Ms. Culbert pointed out that the Board was only voting on one plan because the other plan didn't require Zoning approval.

Mr. Dubay reiterated that both plans were submitted to the Town as part of the variance request package.

Mr. Helliwell commented that the boards should get together and combine information, so they could move at a faster pace. Ms. Beauregard pointed out that the applicant had met with the Planning Director prior to the meeting.

Ms. Lisa Gagnon (Castiglione), 6 Foreman Lane and Ms. Amber Morse, 3 Foreman Lane came forward. Ms. Gagnon said between the two plans she found the one that didn't require approval would be devastating to Foreman Lane and her property. She said she moved into the neighborhood later than everyone and had done so knowing the difficulties of the neighborhood. She commented that the best part about Foreman Lane was the narrow road without a lot of traffic. She also liked the wildlife. She preferred the revised plan with the lesser frontages to preserve the aesthetics and atmosphere she'd grown to love.

Ms. Morse understood that the buses would never come down the road. She said most of her questions were for the Planning Board. She understood there were always pros/cons and said it was a tough call which plan to pick because of the existing water issues. Ms. Gagnon said there was a lot of discussion about how the cul-de-sac would improve the access for emergency vehicles, buses etc. when the first part of the road was already so narrow. Ms. Morse agreed that having a joint meeting would have been helpful, so they could understand the issues before making a choice. Mr. Kearney appreciated the comments and reiterated that the matter in front of the Board was for frontage. Ms. Morse stated she wanted as little impact as possible, especially with water.

Ms. Gagnon wasn't clear about how the proposal looked in relation to where her house sits on the land. She said a 15ft. buffer wouldn't feel like a buffer because there wasn't much of one there to begin with. She couldn't support or oppose because she couldn't tell what it really meant in relation to the house on her property. Mr. Hennessey urged those with water issues to look up the Nashua Regional Planning Commission ('NRPC') site and review the overlay GIS maps.

Mr. Kearney brought the discussion back to the Board. He reminded the Board the question in front of them was a variance request for frontage.

Mr. Dubay told the Board they were respectful of the process and was unsure of the logistics for scheduling a joint meeting. He said they would be happy to provide additional information and/or continue the hearing. They believed they were doing the right thing with their submission. He would like to address the questions/concerns that were brought up. Mr. Kearney asked for the plan to mitigate water. Mr. Dubay replied they were showing an oversized area for that. He noted that the driveways met the criteria; the longest driveway was the existing driveway. The proposed plan had a substantial reduction in impervious area that would could be built. He said they were in no rush and wanted to do the project right. He agreed to have a joint hearing if the Board wanted to do so. Mr. Dubay felt they were doing the right thing within the proposal and being respectful.

Ms. Beauregard stated the Board had the right to continue a case. She added they could date specify the case a couple months out to allow time to apply to the Planning Board. Abutters would be notified (for the Planning Board portion) if a joint hearing was conducted. Mr. Hennessey commented the idea was that the applicant should have been able to go in front of the three boards (Zoning, Planning & Conservation) at the same time. He believed the Zoning Board had enough information to be able to make a decision on the Zoning application. He said joint hearings were quicker and more transparent for both the applicant and abutters.

Mr. Dubay commented that some of the abutters that spoke have houses adjacent to the property and noted the reason for the proposed plan was so there would be buffering. He said they were trying to do the right thing and if the Board felt they had enough information to move forward they would respect that decision. He said they would move forward with one plan or the other and will work with Town staff to do the project right.

Mr. Kearney stated he was in the process of moving forward with the variance proposal, unless the applicant wanted to withdraw their application, which he did not recommend. He also did not recommend conducting a joint meeting at this time. Respectfully noted, Mr. Dubay replied they did not want to withdraw because they felt they had a superior plan that was better on many levels including drainage. He stated they had an 'open door' policy to speak with abutters and work with the Planning Department.

MOTION: (Chubb/Hennessey) If the variance is approved (for the plan with the smaller frontages), the Zoning Board makes a recommendation to the Planning Board to have no-cut buffers and barriers between the houses and maintain such between the other neighbors as well (as shown on the plan)

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

Mr. Hennessey heard what was being requested and agreed with the motion but noted the Highway Safety Committee would be reviewing the whole plan. He noted the sight lines came under the purview of the Planning Board and may end up needing to cut at the end of the driveways for safety reasons.

Understanding that the subdivision wasn't yet approved, Ms. Patterson inquired if the frontages could change once the plan went to the Planning Board. Ms. Beauregard replied the frontage could be larger but could not be any smaller. Ms. Chubb stated the cul-de-sac could be moved into the property further for safety reasons.

Ms. Chubb heard from the applicant and appreciated the fact that they didn't have to come before the Board and showed they were being very aware of factors beyond the use of their piece of land. She said they could do what they want with their land if it met or passed Zoning. She appreciated the fact that the

applicant spent the money to design something they believed would be more aesthetically pleasing for them and their neighbors.

Mr. Hennessey ran through the criteria from his point of view. He didn't believe the variance would be contrary to the public interest. He felt it would be a safer approach and would maintain the general neighborhood better by having smaller frontages. He also felt the spirit of the Ordinance was observed through safety and access being improved. He heard the abutter explaining why she opposed but felt they would be in better shape with a smaller subdivision/cul-de-sac. Mr. Hennessey spoke to substantial justice and felt it was being done because from the Board's standpoint the only change was for frontage. He said the buffering related to what the Ordinance was supposed to be about. He agreed with the realtor's letter that values would no be diminished. Usually the issue for the Board was hardship, which Mr. Hennessey felt the applicant had done a good job delineating how the site was different/unique from other parts of Town. Also, the abutters provided similar testimony. He was in favor of all five criteria.

Ms. Chubb stated given the shape of the land and what the applicant could do with the parcel without coming in front of the Board went toward the criteria. She said choosing an option that went with the spirit was sort of a hardship in and of itself. She agreed with Mr. Hennessey on the criteria.

Mr. Kearney said when he first read the application and saw there would be four non-conforming lots, he was against it although he tries not to pre-judge. In listening to the neighbors, he felt the submitted plan with smaller frontages addressed their number one concern with water. He believed if vegetation remained it would absorb more water and result in less runoff which would benefit the abutters. He commended the application for the presentation and felt the proposal was the best option for the parcel.

BALLOT VOTE

#ZO2019-00001:

Mr. Kearney – Yes to all criteria
 Ms. Chubb – Yes to all criteria
 Mr. Hennessey – Yes to all criteria
 Ms. Culbert– Yes to all criteria
 Ms. Patterson- Yes to all criteria

(5-0-0) The Variance was Granted

VARIANCE GRANTED

(There is a 30-day right of appeal)

MINUTES REVIEW

November 15, 2018

MOTION: (Hennessey/Ryan) To approve the November 15, 2018 meeting minutes as amended.

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

(Ms. Chubb submitted amendments to the Recording Secretary)

OLD BUSINESS

- 1) Term ending in 2019 for Svetlana Paliy, Peter McNamara and Darlene Culbert.
- 2) Mr. Kearney read aloud a prepared statement informing it had been brought to his attention that members and alternates of the Zoning Board had participated in social media conversations regarding active and past Zoning Board decisions. He stated that kind of behavior was

unprofessional, unfair and unacceptable. He also stated Town Counsel had informed that it is extremely unfair to fellow residents and unwise to have conversations regarding Zoning Board business outside of a public meeting session. Mr. Kearney expected each member and alternate would follow Town Counsel's advice.

- 3) Mr. Kearney informed that Lance Ouellette had tendered his resignation from the Board and it had been accepted in December 2018.

ADJOURNMENT

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

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

The meeting was adjourned at approximately 9:14pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary