

**APPROVED**

**TOWN OF PELHAM  
ZONING BOARD OF ADJUSTMENT MEETING  
February 11, 2019**

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

Secretary Diane Chubb called roll:

PRESENT: Bill Kearney, Diane Chubb, Peter McNamara, David Hennessey, Svetlana Paliy, Alternate Darlene Culbert, Alternate Deb Ryan, Planner/Zoning Administrator Jennifer Beauregard

ABSENT: Alternate Heather Patterson

**PLEDGE OF ALLEGIANCE**

**REQUEST FOR REHEARING**

Mr. Kearney asked the Board members if they had an opportunity to review the requests for rehearing. Mr. McNamara stated he had read the meeting minutes but was not at the last meeting and felt more comfortable not participating during the motions for rehearing since there was a sufficient number of members who were present. Mr. Kearney noted that both Mr. McNamara and Ms. Paliy were absent for the last meeting. Mr. McNamara replied if the Board needed a vote, he would do whatever the Board wanted. Mr. Kearney said since one of the previous voting members was not currently present, he asked for either Mr. McNamara or Ms. Paliy to vote. Mr. McNamara stated he would participate.

The following members considered both requests for rehearing: Mr. Kearney, Ms. Chubb, Mr. Hennessey, Mr. McNamara and Ms. Ryan.

**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). *Motion for rehearing requested by Carol-Ann Senator, 18 Mulberry Lane, Map 24 Lot 12-203-17***

Mr. Kearney stated to rehear the case the Board would have to determine if there was new evidence (something not brought up during the January 14, 2019 meeting) or a clear and obvious error that the Board felt they made.

Mr. Hennessey felt the two people who requested a rehearing were making essentially the same argument. He believed their argument was worth discussing. He said if an applicant could meet the Zoning requirement without a variance you tend to want to look at the request with a little bit of skepticism. The minutes read that he was upset they didn't have some kind of joint meeting because he felt it was a case where the Planning Board would have helped in going over the two options (for development). In listening to the applicant and the abutters during the meeting, Mr. Hennessey said he was satisfied that the benefit to the public was greater in granting the variance than not granting the variance. It was weighing a benefit. He noted that the arguments made by the abutters (during the hearing) didn't pertain to the question at hand,

about the shortening of the road, moving the frontage shorter. He said the abutters were addressing other concerns which the Board correctly advised them to take up with the Planning Board if the variance was approved. After going over the meeting minutes and going over the two letters, Mr. Hennessey acknowledged their points of the Board's 'rule of thumb'; however, it did not make it 'iron clad'. He felt they had to weigh the benefit to the public versus the idea that if it could be met a variance shouldn't be granted. He stood by his vote and felt the Board should have granted a variance and felt they correctly did so.

Mr. Kearney agreed.

Ms. Chubb stated she read through the appeals, the meeting minutes, the application and information that was submitted. She began by saying one of the items contained in Ms. Senator's argument goes to the Planning Board. She said while the Chair indulged members of the audience and abutters by allowing them to speak about their concerns they were reminded (during the meeting) several times that the Zoning Board was discussing granting a variance as it related to frontage; and only as it related to frontage. She understood some of the abutters were upset and wanted to know when they would be able to speak about other things. They were assured that the Planning Board would hear them. Ms. Chubb felt there was some misunderstanding and confusion (by the public) about the purpose of the Zoning Board as opposed to the purpose of the Planning Board. She believed this led to confusion and anger directed at the Board that had no place being directed toward them. The Board's purpose is clear; to enforce the zoning laws as put into place by the Town, voters, Board of Selectmen and Planning Board. She said they grant variances as they come up. She has enjoyed her two years on the Board and working with people to figure out how a variance could be granted so that they can best help people to use their land that impacts the neighbors and environment the least. She said they consult with the Conservation Commission even though its not a board they are required to meet with. They have made recommendations when things move on to the Planning Board. Ms. Chubb saw a lot of frustration and anger toward them and felt there was confusion as to why they weren't conducting a joint meeting with the Planning Board, which she pointed out wasn't required. A joint hearing is a convenience for the abutters, architects, engineers to show up during one meeting.

Ms. Chubb spoke about the roles of the Zoning Board and Planning Board being different. She said they weren't bound by each other and they had separate purposes that needed to be respected. The Zoning Board makes decisions because they are a quasi-judicial body and they make decisions as to when they can grant a variance to the Zoning laws. Ms. Chubb read in Ms. Senator's statements that the Board must have been remiss in their responsibilities because they were trying to stick to the issue of the variance. Ms. Chubb pointed out doing anything else would have been irresponsible. She noted all the material she referenced about the Board's purposes, ByLaws, etc. was public information. She said there was an issue raised that the public couldn't review the plans; letters were sent out. She reminded people when they receive the certified abutter notification it's the abutter's responsibility to contact the Planning Office if they have questions so they understand what kind of meeting will be held and what relief they can expect from the meeting. She said it's the responsibility of the person receiving notification to make a quick phone call or visit to the Planning Office.

Ms. Chubb was insulted and disgusted by the suggestion that the Zoning Board or any of the officials on any of the boards are told what to do, or that there is any quid pro quo going on. She found those types of comments irresponsible and had no place in public documents. She's lived in Pelham for fifteen years and served on several boards. There had been nobody on those boards who was looking for financial or any gain by serving. The people cared about the community and wanted an opportunity to give back to the Town. She said the best way to understand how a town works is to get involved with a board. She noted contrary to popular belief that the members would be 'voted out', the Zoning Board members are appointed by the Board of Selectmen. There is currently a vacancy for an alternate for anyone interested in understanding what the Board does. She urged people to get involved and fill out an application.

After going through the meeting minutes and variance criteria, Ms. Chubb believed 90% of Ms. Senator's appeal related to Planning Board issues. She was comfortable with the fact that they kept people speaking only to the variance issue and not to the other issues. She found that Ms. Senator's appeal had no new information and was insulted by the baseless accusations. She suggested that people coming in front of the Board find out the Board's general role before accusing them of not doing their job. She reiterated they took their job seriously. In terms of the appeal, Ms. Chubb saw that Ms. Senator had issues with water and the Bayberry development. She also knew that Ms. Senator's neighbor complained about her cutting down trees in a Wetland Conservation District. She noted trees helped absorb water and when they are removed it doesn't leave water with a lot of places to go. Ms. Chubb ended by reiterating that she saw nothing new in the submission or anything that required a rehearing.

Ms. Ryan agreed with the other Board members.

Mr. McNamara commented that he wasn't present for the hearing, but he had reviewed the meeting minutes and appeal. He said the only concern he had was the hardship criteria, which was more applicable with the second appeal (Ms. Moore). He told the Board he agreed with the comments that had been made regarding the first appeal (Ms. Senator).

Mr. Kearney concurred with the Board's comments. He said one of his reasons for allowing everyone to speak was because they had the right to do so. He believed the relief offered would mitigate a lot of the issues being brought up by members of the public. During the meeting he wanted to listen to everyone about the challenges so he could make a good decision on whether to grant a variance. In looking at the meeting minutes and everything submitted, there wasn't anything he could point to that would require him to take a step back and do something different. Mr. Kearney didn't believe Ms. Senator's appeal contained any new information that would make him want to reconsider.

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

**SHOW OF HAND VOTE:**

**#ZO2018-00001**

**Appeal by Carol-Ann Senator:**

**TO RECONSIDER THE CASE:**

Mr. Kearney- Did not raise his hand

Ms. Chubb- Did not raise her hand

Mr. McNamara – Did not raise his hand

Mr. Hennessey- Did not raise his hand

Ms. Ryan- Did not raise her hand

(0-5-0) The motion failed.

**TO LET THE VARIANCE STAND AS-IS:**

Mr. Kearney- Raised his hand

Ms. Chubb- Raised her hand

Mr. McNamara – Raised his hand

Mr. Hennessey- Raised his hand

Ms. Ryan- Raised her hand

(5-0-0) The motion carried.

**THE CASE/VARIANCE WILL STAND and NOT BE REHEARD**

**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). Motion for rehearing requested by Margery Moore, 5 Foreman Lane, Map 24 Lot 12-205**

Ms. Chubb understood by the statement that Ms. Moore was challenging the hardship issue by saying the Board decided the variance on a financial hardship. She didn't feel it was accurate and recalled specifically telling the public that the applicant didn't have to come in front of the Board or create a second plan; they could have built something that met the criteria. The applicant spent time and resources that they didn't have to. Ms. Chubb recalled discussing the hardship in relation to the cul-de-sacs and environmentally right thing to do; the length of road and amount of property that would be used. One of the things the Board discussed during the previous meeting was the purpose of the ordinance. She noted that the issue was not that the applicant couldn't build. It was the 'bigger picture' and purpose of the ordinance being 'smart growth' done in a way that was environmentally conscious. While the submission might not meet the traditional definition of hardship (i.e. lot shape, land slope), Ms. Chubb felt there was a proven hardship in that the applicant showed concern for the environment and a way to not surrender the whole purpose of the ordinance. She didn't see anything new in the appeal that the Board didn't already discuss or consider. She didn't see that the Board made any sort of mistake in considering the hardship criteria. She believed they did it adequately and correctly.

Mr. Hennessey reiterated that the Board didn't consider financial hardship as falling under the hardship rule. He said they looked at the land; in most cases it is the configuration. In this case, he said the cul-de-sac was an unusual layout. In his opinion there was a hardship in making the cul-de-sac wider than it is and made no sense to push the whole thing back into the lot line. Mr. Hennessey felt there was a hardship running with the land. Financial hardship was not one of his considerations. Ms. Ryan agreed that it made no sense to push the cul-de-sac back.

Mr. McNamara stated that he reviewed both the request for rehearing and the meeting minutes. He said his initial concern was the hardship argument where there was an alternative that could be developed; however, in reading the minutes and listening to Ms. Chubb and Mr. Hennessey, he agreed with them. He thought the developer differentiated the land itself enough such that hardship was an issue and particularly the alternate that didn't require the hardship. Mr. McNamara ended by saying his concern was allayed and Mr. Hennessey (during the January 14, 2019 meeting) made the point of saying "*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 believed the applicant successfully addressed the hardship criteria.

Mr. Kearney concurred. He believed the Board addressed the hardship issue in its proper context and not in a context of 'cash/money' savings for the applicant. He saw no new information and felt the Board had satisfied the question.

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

**SHOW OF HAND VOTE:**

**#ZO2018-00001**

**Appeal by Margery Moore:**

**TO RECONSIDER THE CASE:**

Mr. Kearney- Did not raise his hand

Ms. Chubb- Did not raise her hand

Mr. McNamara – Did not raise his hand

Mr. Hennessey- Did not raise his hand

Ms. Ryan- Did not raise her hand

(0-5-0) The motion failed.

**TO LET THE VARIANCE STAND AS-IS:**

Mr. Kearney- Raised his hand

Ms. Chubb- Raised her hand

Mr. McNamara – Raised his hand  
Mr. Hennessey- Raised his hand  
Ms. Ryan- Raised her hand  
(5-0-0) The motion carried.

**THE CASE/VARIANCE WILL STAND and NOT BE REHEARD**

**HEARING**

**Case #ZO2019-00002**

**Map 42 Lot 10-130**

**PRINCE, Brian - 10 Westview Terrace - Seeking a Variance from Article VII, Section 307-39 to permit keeping, and the use of a gravel pad located in the WCD buffer. The purpose of the pad is for parking a travel trailer.**

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.

Mr. Prince told the Board he had a gravel pad installed just off his driveway on November 29, 2018. The intention of such was to add additional parking spaces. After installation he found out it was in the Wetland Conservation District ('WCD') buffer; not in the wetlands. He explained that hardship existed due to only the front corner of his property was the only area not within the WCD or wetlands. That front corner consists of his leach field and septic tank. He commented that there was no further room to grow on his property; most of the house was in the buffer, the driveway was in the buffer.

Mr. Prince read aloud the responses to the variance criteria as submitted with the application. He told the Board he had attached two documents: 1) letter from Town Counsel stating that his property had vested rights since the development was built prior to any wetlands ordinance, and 2) an approved variance for an adjacent property driveway installation within either the WCD or wetlands.

Mr. Hennessey questioned if the developer posted the 'No Cut' badges on the trees surrounding the property. Mr. Prince answered yes; they are located approximately 30ft. back from where the gravel pad was located. Mr. Hennessey wanted to know if Mr. Prince was the original owner when the decision was made to allow the house to be constructed. Mr. Prince replied he purchased the home from the original owner of the house but wasn't aware of the information at the time of purchase. Mr. Hennessey asked if he was aware of the WCD setback requirement. Mr. Prince answered no; he was only aware of the wetlands by looking at the plot plan. Mr. Hennessey inquired if a permit was required for the pad. Ms. Beauregard said no permit was required. She believed it came to their attention through Code Enforcement being made aware there was some cutting into the WCD.

Ms. Chubb asked what was being parked on the gravel pad. Mr. Prince replied a travel trailer (camper) that could be pulled. Ms. Chubb understood the WCD 'No Cut' was marked and understood code enforcement was called because of cutting. Ms. Beauregard answered yes; however, she didn't know if it was within the wetlands or within the WCD buffer. Mr. Prince explained he removed some brush that was in that area. He circulated photographs showing: 1) the location of the gravel pad and trailer and 2) No Cut badge location

Mr. McNamara wanted to know how deep the pad was. Mr. Prince replied it was less than six inches with a diameter of approximately 25ft.x25ft.

Ms. Paliy asked where the trailer would be parked if it wasn't on the pad. Mr. Prince replied it would be parked on his lawn. Ms. Chubb questioned if there were any fluids in the trailer. Mr. Prince submitted additional pictures after rainfall (of approximately one inch) showing that the area was dry.

Mr. Kearney understood the applicant had moved in after the house was built. Mr. Prince answered yes and explained he signed a contract with the builder when the house was being built to purchase once it was done. Mr. Kearney asked if Mr. Prince thought the house was not in the WCD. Mr. Prince answered yes; he didn't learn of the buffer until two months ago when he received the complaint. Mr. Kearney questioned where the trailer was prior. Mr. Prince replied it was previously at a seasonal camp ground and this was the first time they had it on the property. Mr. Kearney asked for the size of the camper. Mr. Prince replied it is 27ft. It has its own container for water and sewage that is released prior to leaving the camp ground.

Ms. Ryan wanted to know what material the pad was made of. Mr. Prince explained it was gravel from the local quarry that was compacted to be smooth.

Mr. Hennessey wanted to know why it was a request for variance rather than an Appeal of Administrative Decision. Ms. Beauregard replied an administrative decision could always be appealed; however, the applicant chose to request a variance because of the WCD encroachment. She said according to Town Counsel although the applicant vested rights in 2007 to construct the home, it didn't allow for further encroachment given the WCD is an overlay district and applied to all lots.

#### PUBLIC INPUT

Mr. Paul Gagnon of the Conservation Commission spoke on his own behalf and not the commission. He began by saying he didn't know the applicant and didn't wish him any harm. He apologized if his comments would cost him money. Mr. Gagnon stated the Town had regulations to protect the wetlands. They put up signs at the developer's expense that read 'No Cut – No Disturb – Do Not Remove'. He didn't understand why there were signs on the property identifying the buffer but not in the area of the travel trailer. He read aloud a section of a fold-out brochure pertaining to WCDs and clearly states things not to do within the WCD area. Mr. Gagnon explained the problem was not with the small pad it was the fact that the message sent to the residents is to ask for relief after (encroachment) is done; don't ask for approval just ask for forgiveness. He said the buffer protects the wetland. He noted just because the wetland didn't fill up with an inch of water didn't mean it wasn't a functioning wetland. He explained that functioning wetlands filter water. If sediment is allowed to get washed into a wetland it plugs it up like clogging a filter. Mr. Gagnon pointed out that the applicant's lot contains 1.6 acres with a lot of lawn; he's driven by and looked at it on Google. He had a hard time understanding how they could approve filling the buffer on a big lot that has a significant amount of area to park a camper. He discussed the wetland and noted it was so big that Hilcrest Lane was dead ended because of it. He requested that the Board deny the variance, so a precedent isn't set. He said they can't continue to allow wetlands to be diminished.

Ms. Chubb heard mention from Mr. Gagnon that the applicant had a significant property. From what she read in the application, the applicant stated they didn't have anyplace else to put his trailer. Mr. Gagnon felt the Board should conduct a site walk because there was at least a half-acre of lawn. Mr. Prince replied he may have a quarter acre. Ms. Chubb said she would consider walking the site with the Conservation Commission and appreciated hearing their opinion.

Mr. Hennessey was troubled by Town Counsel's letter that stated the parcel need not meet the WCD Ordinance. Ms. Beauregard stated she had contacted Town Counsel to understand what the letter meant. Town Counsel told her the construction of the home was not bound to the WCD; however, anything additional would require a variance to further encroach into the WCD. Mr. Hennessey agreed that the Board needed a site walk.

**MOTION:** (Chubb/Hennessey) To conduct a site walk and invite the Conservation Commission to join them.

**VOTE:** (5-0-0) The motion carried. *(Ms. Paliy is not available to attend)*

Site walk scheduled for March 9, 2019 beginning at 8am. Ms. Beauregard will coordinate the invitation of the Conservation Commission,

The case was date specified to the March 11, 2019 meeting.

**DATE SPECIFIED CASE – March 9, 2019 beginning at 8am**

Case #ZO2019-00002Map 42 Lot 10-130 - PRINCE, Brian - 10 Westview Terrace

**MINUTES REVIEW**

**January 14, 2019**

**MOTION:** (Hennessey/McNamara) To approve the January 14, 2019 meeting minutes as amended.

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

*(Ms. Chubb submitted amendments to the Recording Secretary)*

**ADJOURNMENT**

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

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

The meeting was adjourned at approximately 8:02pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary