

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
April 8, 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 Deb Ryan,
Planner/Zoning Administrator Jennifer Beauregard

Alternate Heather Patterson

ABSENT:

PLEDGE OF ALLEGIANCE

Mr. Kearney stated there were four Board members present for the meeting. He explained for a Variance or Special Exception to be approved there must be three votes in the affirmative. A split (2-2) vote will fail. He further explained he would provide each applicant with the opportunity to have their Case heard or continued to the next scheduled Board meeting in May.

CONTINUED HEARING(S)

Case #ZO2019-00004

Map 29 Lot 7-27-19

PRO-TURF LANDSCAPING OF SOUTHERN NH, LLC - 23 Fletcher Drive - Seeking a Special Exception to Article XII Section 307-76, III to operate a General Home Occupation for the purpose of repairing company vehicles and equipment in an existing garage

The applicants, Mr. Chris Beaudry, Owner Pro-Turf Landscaping and Ms. Andrea Dube, Office Manager Pro-Turf Landscaping came forward to have their case heard.

Mr. Kearney stated a site walk had been conducted and asked if the Board had any questions.

Mr. Hennessey asked Mr. Beaudry if he resided at the location. Mr. Beaudry answered yes.

Mr. Kearney gave the public an opportunity to speak. He said the discussion would then come back to the Board to review the General Home Occupation criteria.

PUBLIC INPUT

Mr. Dan Giarrusso, 4 Fletcher Drive came forward and spoke in favor of the application. He said he had no problem with the applicants; they drove slow and courteous. He said they were a good company and had no problem with them.

Mr. Rob Hardy, 19 Fletcher Drive understood a lot of the objection was trucks and plowing during the winter. He understood the Board had now seen the driveway (during the site walk). He said if he lived at that location, he would be a nuisance during the winter because his wife is a nurse in Boston and he would

be out at 4am clearing the driveway every time there was a snow storm. He didn't feel that point should be part of the discussion or objection. Mr. Hardy said he lived down the street around a blind corner. His children were raised in the neighborhood and were never in danger and he didn't feel trucks were coming up and down the street in any reckless fashion. He said the applicant was a model neighbor and hoped they wouldn't have to rent another building and spend thousands of dollars as they were already spending enough tax money in Town.

Mr. Wayne Pitts, 25 Fletcher Drive understood Pro Turf was applying for the Special Exception and questioned if it should be the property owner. Mr. Hennessey replied it was a resident (of the address). Mr. Kearney said the person who lives in the house is applying for the Special Exception. If granted they would have the ability to run the business; however, if he leaves the location the Special Exception would go away at the same time. Ms. Beauregard explained the Pro Turf company was an LLC of the applicant. Mr. Kearney added that the person applying must be living in the house. Mr. Hennessey noted the Ordinance indicates a 'resident' not the word 'owner'.

Mr. Pitts stated the Board walked the site and saw the inside of the building. He said it was obvious that the building had been used for an automotive garage or repair of equipment of some sort based on its smell. He didn't feel that business fit the neighborhood's criteria as being residential. He understood Mr. Beaudry drove his truck to the site to visit his father and noted there were additional trucks from the business on site since the site walk. He didn't feel any restrictions (placed by the Board) would be adhered to. He said the Town hasn't been able to enforce anything. He commented it had recently been nice not having vehicles at the site. Mr. Pitts told the Board he was a direct abutter and heard all noise. He was not in favor of granting the applicant's request.

Mr. Hennessey stated his concern about the plot plan Mr. Pitts showed him during the site walk. He said there was clearly an encroachment. Mr. Pitts replied he didn't feel the encroachment was something for the Board and was taking care of it in another manner and in the process of having his property surveyed. Mr. Hennessey stated it wasn't a mortgage survey plan; it was a survey signed by a certified New Hampshire surveyor. He took it as valid. He intended to include a stipulation that there be sufficient fencing between the two properties (Mr. Pitts and the applicant) because it was without doubt an encroachment. Mr. Hennessey explained although the Board was bound by a 'yes or no' vote, they were empowered to place stipulations on an approval. He said he would place a stipulation to have sufficient fencing between the two properties to define the lot line. Mr. Pitts replied he didn't know what height of fence would hide the size of the equipment. Mr. Hennessey said the Town had height restrictions; he wanted to define the lot line per Mr. Pitts' survey plan.

Mr. Michael Brawn, 15 Atwood Road was curious if the request would increase traffic. Mr. Kearney asked the applicant to give an estimate to the number of vehicles that would move in and out of the property outside of the single employee vehicle. Mr. Beaudry estimated 2-6 vehicles per day, excluding himself. Ms. Dube noted they had already been utilizing the garage; there would be no increase over that amount. Mr. Brawn was familiar with the property. He had lived in the area prior to Fletcher Drive being built. He was concerned because some of the drivers didn't pay attention and he had nearly been hit a couple times out by his mailbox. He objected to the applicant's request.

Mr. Gary Williams, 20 Fletcher Drive told the Board the traffic was much worse than the applicant was saying. He said traffic was non-stop with 2-6 vehicles per hour. He's observed a commercial vehicle accessing the site at 4am. He didn't feel the applicant was being honest. He recalled the building was originally supposed to be a small garage for the applicant's father; however, a large warehouse was built, and the applicant ran his business out of it. He noted there was continuous traffic all day long. Mr. Williams said no one had been enforcing anything over the years and believed giving the applicant 'permission' would be much worse. Mr. Williams wanted to know what type of fence was being suggested because he didn't think it would be an improvement to the neighborhood. He stated the applicant didn't belong in a

residential neighborhood, they belonged in an industrial zone. He added there was a lot of traffic and believed the neighbors that spoke in favor were having the company service their property, possibly for a good deal. Mr. Williams reiterated that the traffic wasn't a good thing and had changed the neighborhood. He said the traffic had been all the time but agreed with Mr. Pitts that it had been nice during the past several weeks not having additional traffic.

Ms. Chubb asked for the estimated number of vehicles Mr. Williams saw going up and down the street. Mr. Williams believed it was 2-6 per hour, every day of the week; more so Monday thru Friday. It begins when the school busses were out (7am). Ms. Chubb asked if Mr. Williams was seeing Mr. Beaudry's truck or different trucks. Mr. Williams replied he usually saw lots of crews of two; people of all ages. Ms. Chubb questioned if they were servicing properties on the street. Mr. Williams replied they typically serviced several properties on the street on Friday afternoon and ride around on the lawnmower up and down the road in the summertime. Ms. Chubb inquired why it had been quieter over the last several weeks. Mr. Williams believed it was because the neighbors had gone to the new Code Enforcement officer, who in turn must have spoken to the applicant. He asked how long the new officer had been working for the Town. Ms. Beauregard said he had been with the Town for approximately three years.

Mr. Gordon Sonia, 42 Briarwood Road verified what the others had said about the traffic decreasing since the last meeting. He said there was still traffic, but it didn't come up Briarwood like it used to. He said although they hadn't started yet, the heavy equipment would begin to go up and down the road.

Mr. Hardy believed he heard someone say the reason he must have spoken in the positive was because he must be getting a discount on lawn services. He told the Board he wasn't receiving a discount. Ms. Dube stated they didn't do Mr. Hardy's lawn.

Mr. Beaudry told the Board that things had begun to improve since they met with the Code Enforcement Officer in September/October. He said the officer identified some things they were doing that were outside of what could be/should be. Since then, they have been actively working on operating within the guidelines and being more respectful of the neighborhood.

Ms. Chubb inquired how often pieces of equipment (bigger trucks) were requiring service. Mr. Beaudry replied as they break down or need annual maintenance. He said each piece had some sort of monthly repair. They try not to flood the area by bringing everything to the garage at one time. Ms. Chubb asked how many pieces of equipment their location services as opposed to the Pulpit Rock Road location. Mr. Beaudry replied at least a dozen. Ms. Chubb asked if it was accurate to say a dozen pieces per month. Mr. Beaudry explained they had other trucks they used the lift for. Ms. Dube noted (with the lift) they could get to the under carriage, wheels, axles etc. Ms. Chubb wanted to know how many vehicles that would include. Ms. Dube said maybe one or two per day goes in for service and comes out when its fixed. Mr. Beaudry added sometimes a piece of equipment might stay inside the garage for a week. Ms. Chubb said based on the numbers it equaled approximately 20-40 vehicles per month. Ms. Dube pointed out that Mr. Beaudry came and went from the site and the mechanic had a mobile service truck that he took to sites to remotely work on things and to leave and get parts. She described the type of truck driven by the mechanic. Ms. Chubb understood it was no different than the Amazon trucks that drove through neighborhoods. She said she was trying to understand the numbers of vehicles. Ms. Dube stated over the years they ran the business out of the (Fletcher Drive) location and admitted there had been a lot of activity when the office was on site. She said the neighbors have experienced times when there was a lot of traffic to and from the building. She said it slowed way down and they would like to keep it that way. They have a new mechanic who won't work nights or weekends. The other employees start at 7am and are done by 4pm-5pm. She said the crew didn't go into the neighborhood during the day because they were at work. Ms. Chubb questioned why crews were going into the location. Mr. Beaudry said over the prior years they were fixing more equipment at the location than they currently were. Ever since September/October they were actively doing things to limit the amount of traffic.

Ms. Chubb believed during the last several weeks the applicant's company wasn't doing a lot of lawn mowing and wasn't sure how many plows needed to be fixed. She wanted to know what the applicant saw happening in terms of vehicle use and/or repair needs as spring was beginning of lawnmowing and landscaping season. Mr. Beaudry explained winter was typically for maintenance because that's when they got equipment ready for the following season. During the summer it was less because every truck was out working. Ms. Dube said they had already started landscaping this year and would go until it snows. She said every single truck was on the road until something breaks. Ms. Chubb asked if the 'quieter more peaceful' situation with the neighbors would continue as the landscape season is upon them. Mr. Beaudry said it would continue. Ms. Dube said it had been going on for many months at this point; some of the references being made (by the public) were older references to when they had a lot of activity in the neighborhood. She said they were sorry for pushing it. She said it caught up with them and they apologize. Ms. Dube said they are requesting to use the space they have because running a business is hard. Mr. Beaudry stated they were more than willing to work within stipulations to coexist with everyone. Ms. Dube noted they would still have a presence in the neighborhood given that Mr. Beaudry lived there, and they would still mow lawns and need to plow the driveway.

Mr. Hennessey said some of the testimony related to the violation of code. He asked how long the applicant had operated a business from the site. Mr. Beaudry replied the garage was built in 2004. He had worked from the location in different capacities over the years. Mr. Hennessey understood the applicant never had a Special Exception or Variance granted on the property. Mr. Beaudry answered no. Mr. Hennessey wanted to know what assurances the abutters had that they would abide by approval stipulations put on the property when they hadn't for years. Mr. Beaudry said they tried to be as respectful as they could. Mr. Hennessey pointed out the applicant had been running a business in a residential neighborhood without any authority from the Town. Ms. Dube stated they went to the Planning Department and thought they met the criteria for the Special Exception and didn't realize they needed to be granted an exception. It was then explained to them they needed to go in front of the Zoning Board. Mr. Hennessey understood that there were code complaints and violations that went back quite a while. It was hard for him to believe that nobody told them they needed to come in front of the Zoning Board for a Special Exception. He said he would make motions for stipulations and then review the mandatory criteria for granting a Special Exception. He said the process was different from granting a Variance; a Special Exception was basically black and white for the criteria to be met. He doubted the application met the criteria.

Mr. Hennessey made a motion that the hours of operation, except if an emergency is declared by the Town of Pelham for snow removal and the like, be limited to 9am to 6pm on Monday through Saturday. Ms. Chubb seconded. Mr. Kearney offered a potential amendment based on the applicant's testimony that there was one employee who worked 9am-5pm Monday through Friday. Ms. Dube replied they worked roughly 8:00am-5pm Monday through Friday. Mr. Kearney offered a friendly amendment to 'tighten' the hours to 8am- 5pm Monday through Friday. Mr. Hennessey and Ms. Chubb both agreed.

MOTION: (Hennessey/Chubb) The hours of operation, except if an emergency is declared by the Town of Pelham for snow removal and the like, be limited to 8am to 5pm on Monday through Friday.

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

By motion, Mr. Hennessey said he wanted to delineate the applicant's and abutter's property boundaries. He was looking for a residential-style fencing along the border per the survey plan (shown by Mr. Pitts) he saw during the site walk. He believed there needed to be some sort of marker between properties. Ms. Chubb seconded for discussion. She agreed with the idea of having a fence along the border; however, during the site walk she recalled seeing ruts in the mud from where trucks had gone through and hearing where Mr. Pitt's property line was located, those ruts may be on Mr. Pitt's property. She was concerned

about the lifespan of a fence based on the applicant's vehicle access and trucks circling the property. Mr. Kearney believed the applicant's property could be accessed either from the left or right of the building. Mr. Hennessey amended the motion to indicate the applicant would have to access their property per Mr. Pitts' survey plan. Ms. Chubb said if the applicant hits the fence, they would need to fix it. She asked what the length of the fence would be. Mr. Hennessey replied it should go from the street to the back end of the property where the lot dropped off (sloped down). Ms. Chubb recalled seeing arbor vitae that were half dead and questioned if they would be replanted. Mr. Hennessey said the fence needed to go along the (property) line. Ms. Beauregard pointed out if the Special Exception was approved it would still need to go in front of the Planning Board who may have additional stipulations.

MOTION: (Hennessey/Chubb) To install a residential-style fencing along the applicant's and abutter's border per the survey plan as shown (by Mr. Pitts) during the site walk. The applicant is to install the fence on their own property per Mr. Pitts' survey plan. The applicant is responsible for maintaining the fence.

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

Mr. Hennessey was concerned with the area where the lot had a steep drop off. He commented that the applicant had an automotive garage. He said it looked very clean and believed the applicant when they indicated there were no fluids. He was concerned with having an automotive garage close to the drop off. He suspected the Planning Board would add stipulations to their site requirements, but he also wanted to indicate there needed to be bales (or something) to interfere with the flow of any automotive or hazardous materials down the hill. He was concerned with what could be washed off the back of the lot.

Mr. Hennessey requested that the Planning Board consider requiring something (similar to bales) to interfere with the flow of any hazardous materials off the edge of the cliff (at the rear of the property). Mr. Kearney agreed but felt it was a vague stipulation. Mr. Hennessey stated it would be a request from the Zoning Board to the Planning Board to consider the possible runoff from the rear of the lot. Mr. Kearney was comfortable with asking Planning to consider some type of retention or interference with runoff from the back portion of the property. There was no disagreement.

Ms. Chubb heard testimony about people dropping off grass clippings for disposal or to be burned. She asked if that activity was occurring. Mr. Beaudry answered no. Ms. Chubb made a stipulation that it could not happen.

MOTION: (Chubb/Hennessey) To not allow clippings, mulch or other lawn maintenance products and/or materials to be stored or dumped at the location.

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

Mr. Kearney understood there was only vehicle maintenance occurring at the location because of the ability to utilize the automotive lift and there were no lawn mower repairs being done at that facility. He made a stipulation that there will only be vehicle repair done at the facility; no lawn mower repair. Mr. Hennessey seconded. Ms. Chubb asked if Mr. Kearney wanted to define what 'lawn mowers' were. Mr. Beaudry offered the term 'small engines'. Mr. Kearney's concern was noise and understood small engines were considerably noisier than an automotive engine. Mr. Hennessey offered the term 'commercial lawn equipment'.

MOTION: (Kearney/Chubb) Stipulation there will only be vehicle repair done at the facility. Commercial lawn equipment repair is not allowed.

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

The Board reviewed the Special Exception criteria (*as summarized below*).

- 1) *Occupation is secondary and subordinate to the primary residential use and shall not change the residential character of the neighborhood.*

Mr. Hennessey struggled with the fact that the applicant had never come in front of the Board. Based on the size of the building, he didn't know how it received a permit because he felt it substantially changed the residential character of the neighborhood. He noted there had never been a Special Exception or Variance granted to the owner/lot. He reiterated his belief that the structure changed the character of the neighborhood. He noted all criteria had to be met for an applicant to receive a Special Exception and felt the applicant would be denied with just reading the first criteria.

Ms. Chubb commented when driving by she didn't see it the first time and didn't find it as obvious as Mr. Hennessey. She added after she saw it, she couldn't 'un-see' it. At this point she didn't know how she felt about the first criteria.

- 2) *Use shall not consume more than 49% of gross residential living space including accessory structures and shall not change the residential character of the property.*

Mr. Hennessey urged the Planning Board to review the Zoning criteria and change that sentence because it didn't make sense. Gross living area above ground was a standard real estate term, but when coupled with 'accessory structure' it made no sense. He stated this criterion mirrored the first criteria and pointed out that the garage was substantially more than 50% of the size of the structure for the living area. Mr. Kearney agreed.

Ms. Chubb found it interesting that criteria one spoke to the residential character of the 'neighborhood' and criteria two appeared to separate the first clause from the second by having the word 'and'. She was unsure how the Board was supposed to interpret it.

- 3) *Maximum of 2 on-site non-residential employees.*
- 4) *Not permitted in duplex or multi-family dwelling.*
- 5) *One sign advertising business (unlit not to exceed 3SF).*
- 6) *All outdoor storage display and other external indications of business activity shall be screened from neighbors.*
- 7) *Any use that may be objectionable, noxious, injurious or by reason of the product by emissions, odor, dust, smoke, refuse matter, fumes, noise, vibration, heat or excessive illumination is prohibited. Use, storage or disposal of hazardous materials, chemicals, byproducts, medical waste or similar items considered dangerous to health and safety shall not be permitted without full local and State regulatory approval.*

Mr. Hennessey felt the Board couldn't argue that given the nature of the business there was objectionable noise. They heard supporting testimony from the abutters. He said the people living in proximity to the property have objected repeatedly to the noise.

- 8) *Maximum of two registered vehicles to the business may be kept in view. All other business-related equipment must be garaged and screened from neighbor's view*

Ms. Chubb questioned if Mr. Beaudry's truck was included. Mr. Kearney answered yes. Mr. Hennessey said the key words were 'kept in view'. He said if vehicles were in the garage they weren't 'in view'. Ms. Chubb wanted to know if the neighbors could call Code Enforcement if vehicles were parked outside waiting to be serviced. Mr. Kearney answered yes.

- 9) *Deliveries of materials and goods is limited to vehicles customarily associated with residential deliveries.*

Mr. Hennessey felt the criteria was poorly written. He noted the business was in the goods and materials business and so were the vehicles brought in for service. He felt the request violated this criterion. Ms. Chubb stated 2-6 trucks per day (the conservative number provided by the applicant) was not what it was normally associated with a residential delivery.

- 10) *Parking shall be provided off-street and not located within the required side, front, rear setbacks of the property.*
11) *No retail sales other than those permitted.*
12) *Accessory structure building or conversion for home occupation purpose shall be the size, type and style as compatible with the surrounding neighborhood and capable of reversion.*

Ms. Chubb questioned what could be done with a big garage once it wasn't used for fixing cars. Mr. Hennessey was bothered by a discussion during the site walk. He said the question was raised as to what would happen if the business wasn't there and the applicant talked about turning it into a hobbyist garage. He said no one would make the applicant take the garage down. He said if the applicant came to the Board de novo, it would not be allowed. Mr. Hennessey told the abutters that the owner could utilize what they owned on the property. If the Special Exception is turned down the homeowner could do what they want in a recreational/hobbyist way in the structure. He said he wrestled with the request; however, it was black and white, and the Board had to go through the list of criteria. He commented that the use was clearly in violation of criteria #12.

- 13) *If General Home Occupation results in an increase of wastewater to be discharged, it shall be shown that a surface wastewater system has been approved by the State. Water supply and pollution control must be adequate for the conditions of each Special Exception.*

Ms. Chubb understood that all criteria must be met for an approval. Mr. Hennessey believed it would be almost impossible for the Board to grant an approval because of the nature of what was in front of them although it may not help the abutters. Mr. Kearney reiterated that all thirteen criteria had to be met. He said if even one of the criteria isn't met the Board member would have to vote no. He said if the Board member believed all are met, they would vote yes to the Special Exception.

BALLOT VOTE
#ZO2019-00004:

Mr. Kearney – No
Ms. Chubb – No
Mr. Hennessey – No
Ms. Ryan – No

(0-4-0) Special Exception Denied

SPECIAL EXCEPTION DENIED

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

HEARING(S)

Case #ZO2019-00005
Map 17 Lot 12-182

C & E PROPERTIES UNLIMITED LLC - 988 Bridge Street - Seeking a Variance from Article II, Definitions, #10 Frontage and Article III, Section 307-13B & 307-14 - To permit a shared driveway with access to one of the lots through an easement on the other lot.

Mr. Kearney asked the applicant if they would like to proceed with the hearing and four seated Board members or if they would like to continue the hearing to the next scheduled meeting. Representing the applicant was Joseph Maynard of Benchmark Engineering. In speaking with his client, he told the Board they would proceed with the hearing.

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. Maynard described the property as being located on Bridge Street containing approximately 5.5 acres, zoned residential. The property is currently developed with a single-family home that was built approximately in 1946. Mr. Maynard stated they were seeking to ultimately subdivide the property into two lots that will meet proper frontage, land area and other Planning Board requirements. He said what makes the property unique and the frontage difficult was the State has driveway sight distance rules that supersede the Town's rules. On a State road the requirement is 400ft. all-season safe sight distance. He explained 'all-season' meant a driver had to visibly see over a snow bank. The existing driveway doesn't meet the requirement; however, it dated back to when Route 38 was expanded. Mr. Maynard told the Board in order for them to locate a driveway on the property for any development they would need to meet State criteria, which put the driveway in the western-most portion (heading south on Route 38) of the lot. He said they were looking to share the driveway between the two properties (existing and proposed).

Mr. Maynard read aloud the responses to the Variance criteria as submitted with the application.

PUBLIC INPUT

Mr. Jim Bergeron, abutter located diagonally south and across the street from the property. He disclosed before the applicant owned the property the predecessor in title was one of his family members. Being a former Zoning Board member, he felt the proposal was straight forward. The reason was that the lots had been in existence and pre-dated the Town's Zoning. When his uncle took possession of it pre-1946, the idea of frontage and driveway locations weren't discussed during those times. At some time in the 1950s Route 38 was straightened out, speed limits increased making driveway safety (and locations) a big concern. Mr. Bergeron informed the Board that the Department of Transportation was in the process of installing a warning light at about the location of Beacon Hill Road. The light will be triggered by an electronic device (cut into the road) at the base of Ledge Road/Old Gage Hill Road North when a vehicle comes into the intersection. The light will signal 'Traffic Ahead' to vehicles travelling along Route 38 toward that intersection.

Mr. Bergeron believed the request had multiple merits, first the relocation of the driveway which would greatly improve the sight distance. He reiterated that the lot pre-existed Zoning. The benefit would be the owner's ability to utilize their land and the movement of the existing driveway for sight distance. He reminded the Board of a development to the north that was allowed to have a shared driveway for safety. Mr. Bergeron supported the request and hoped the Board supported it. He believed it would greatly improve the area and allow the owner better use of their land.

Ms. Chubb read aloud a letter submitted by William and Joy Bowlan, 974 Bridge Street, a direct abutter to the property being discussed. At the same time a video clip was shown to demonstrate the water on both properties and the proposed driveway being close to wet areas. The Bowlans were concerned with runoff and the possibility of more when an asphalt driveway was built close to the wet area. They wanted to know if the applicant would work with the State regarding run off and if they had a plan for the existing inadequate

drainage crossing Route 38. They asked that the Board add stipulations to any approval regarding water, drainage and not adding additional water to their lot.

Mr. Maynard stated he was aware of the property, ditch and culvert under the street. He said the water flowed from the back of the applicant's lot toward Route 38. The driveway will need a buffer application when they went in front of the Planning Board. He acknowledged that the drainage was substandard and explained the difficulty was getting the Department of Transportation ('DOT') to increase culvert size, which would also increase runoff. He spoke about the existing ditch and the unique difficulties of its formation. He said any work within the ditch would require a wetland permit from the State Wetlands Board. He wasn't clear if they granted permits or not. Mr. Maynard spoke about the driveway and reiterated the proposal showed the only location it could be placed. He understood there would be a wetland buffer impact that would require a permit. He said without a wetland permit there wasn't a lot he could do in that location.

Mr. Hennessey felt the two-lot subdivision made more sense (than the previous withdrawn submission). He said the Board often had to weigh the variances to either approve or not approve. He said the owner could put a duplex on the property by right. He agreed with Mr. Bergeron that moving the driveway was an important change for safety reasons.

Mr. Kearney appreciated Mr. Maynard's efforts from the last meeting to the present meeting. He believed the plan was cut and dry.

Ms. Ryan confirmed that the wetland buffer would be reviewed by the Planning Board. Ms. Beauregard replied it would be a Special Permit submitted to the Planning Board for consideration.

BALLOT VOTE
#ZO2019-00005:

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

(4-0-0) The motion carried.

VARIANCE GRANTED

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

Case #ZO2019-00006
Map 15 Lot 8-241

PRUDHOMME, Matthew - 221 Hobbs Road - Seeking a Variance from Article VII, Sections 307-39 & 307-41B to permit construction of an addition to the existing home to within 38ft. of the edge of wetlands where 50ft. is the required wetlands conservation district setback for a structure from the edge of wet.

The applicant's representative Joseph Maynard of Benchmark Engineering asked to continue the case to the next meeting so the full Board would have an opportunity to hear the request and presentation.

The case was date specified to the May 13, 2019 meeting.

Case #ZO2019-00007
Map 30 Lot 11-327

NAGEL, Kyle & Glenda - 9 Wood Road - Seeking a Variance from Article III, Section 307-8 to permit construction of replacement house with second floor expansion within the same setbacks of the existing house (destroyed by a tree falling onto it)

Representing the applicant was Alden Beauchemin of Keyland Enterprises; also present was family member Jim Nagel and the project builder Steve Carnevale. Mr. Kearney informed there were four seated members of the Zoning Board. An approval would require three votes in the affirmative. He asked the applicant if they would like to proceed. Mr. Beauchemin stated they would like to proceed.

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. Beauchemin told the Board he was a private land consultant, septic designer and wetland scientist. He explained they submitted an application to rebuild an existing house that was recently destroyed by a fallen tree. The new house is being expanded slightly to accommodate updated features and current living essentials. In addition, the new house will meet all current Town building codes and will include an updated State approved septic system. The property is 0.29 acres in a residential zone; the proposed use will be consistent with the other neighborhood residential homes. A photograph was displayed showing the home before the fallen tree. A photograph was then shown of the house with the fallen tree essentially dividing the home in half. Mr. Beauchemin showed an architectural rendering of the proposed home (elevation view), which would be slightly expanded from the existing to include a full upstairs. In speaking with the builder, he confirmed the existing house was 18ft. in height and the proposed structure would be 24ft. in total height. They are currently working on a Shore Land plan. A copy was provided to the Board showing a pre-construction view (existing house and setbacks). They've hired a surveyor to secure the boundary locations. Mr. Beauchemin stated when they submitted the application, they thought the boundary locations were clear and his client would be able to come to an agreement with the neighbor. He said that didn't quite happen, but regardless, they would replace the existing house with a new house in essentially the same footprint. The only difference being the proposed house would have the porch corners 'squared' off. He pointed out in both cases they were able to maintain the existing setbacks. He reiterated there was a discrepancy with the property line. They originally thought they had 17ft, but it appears from recent information they may only have 14.5ft. He reiterated that the setbacks of the structure would not change from the existing lot line.

Mr. Beauchemin read aloud the responses to the variance criteria as submitted with the application.

Mr. Hennessey saw reference to the Shore Land Protection Act but didn't see any related paperwork. Mr. Beauchemin replied he put the full application together for both the new septic system and Shore Land but had held off with submission to work through a boundary issue.

PUBLIC INPUT

Ms. Lisa Graichen Yoram, 11 Wood Road told the Board she was a seasonal resident. She informed her family had been on Little Island Pond for ninety-one years. She had tremendous empathy for the Nagel family and spoke about an incident with her home which required construction of a new roof. She said she was delighted they were rebuilding but still had some questions/concerns. She explained that the applicant asked if she would give them 6"-10" of land. Her lot is 61ft. across the road; 135ft along the eastern boundary, 110ft. on the front and 180ft. between the two properties. When doing the math, taking 10" from the road to the shore equates to 10ft. She said she was very fond of the Nagel family but wouldn't give away her beach area. Ms. Yoram stated she traveled a great distance to attend the meeting because the case was important to them. She was sure there were solutions to the issues.

Mr. Beauchemin stated the Nagel family was very sorry things escalated the way that they did; it wasn't their intent.

Ms. Yoram said her second concern was that her grandfather purchased Lot 19 (the western side – directly abutting the applicant) to catch frogs for fishing, and it contained wetlands. She hoped there was some sort of proper protection measures being taken to deal with it. Her third concern was drainage and runoff. She stated due to other construction projects in the neighborhood water was moving (toward her property) and asked for assurance her property wouldn't become a swamp. Ms. Yoram believed her concerns would be addressed and told the Board they were thrilled to have the Nagels rebuild.

Mr. Kearney asked Ms. Yoram if her property was downhill from the applicant. Ms. Yoram answered yes.

Mr. Hennessey inquired if there would be any increase in non-permeable surface area (roof or additions) to what was previously there. Mr. Beauchemin pointed out that the deck (pre-construction) was reduced in size (post-construction). He said those were issues they would address specifically with Shore Land Protection. The driveway would be a little bigger, but if it's an issue he could minimize it by doing infiltration areas. Mr. Hennessey questioned if the plan would go in front of the Planning Board. Ms. Beauregard answered no. Mr. Hennessey understood the Planning Board was imposing restrictions on the use of asphalt, impermeable driveways etc. in the area around the pond in favor of new construction measures. Mr. Beauchemin believed the Board could make a stipulation that there is to be no net increase in impervious surface. He said he could accommodate that type of stipulation.

MOTION: (Hennessey/Chubb) There is to be no net increase to impervious surface.

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

Ms. Chubb didn't see the septic system location on the post-construction plan. Mr. Beauchemin described the location and showed the location on a plan displayed for the Board.

Mr. Hennessey heard that the applicant and abutter were coming to an agreement regarding lot size. Given the problems on the other side of the pond he asked if the Board could stipulate the submission of certified plot plans prior to construction. Ms. Beauregard stated the applicant would need to provide a certified foundation location plan. Mr. Beauchemin stated he would meet with the abutter to make an agreement and show them what they believe the lot size to be. He said the surveyors have located the existing house and could verify and certify that the new house would meet the setbacks that were existing. Mr. Hennessey urged the applicant to work with the abutter. Ms. Chubb suggested having the applicant document any agreement they make with the abutter.

MOTION: (Hennessey/Chubb) To memorialize any agreement between the applicant and the abutters as to the lot lines as a new recorded deed for both properties.

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

Mr. Kearney understood the current height is 18ft. and the proposed height is 24ft. He wanted to know if the increase in height would create sight issues for the neighbors that would block the pond (view). Mr. Beauchemin replied he hadn't heard any concern. There were trees that previously hung over the house that had been removed. He said if anything the view of the pond would be enhanced.

Ms. Chubb confirmed that the approval would be dependent upon the approval of the septic and Shore Land. Ms. Beauregard answered yes.

BALLOT VOTE Mr. Kearney – Yes to all criteria

#ZO2019-00007: Ms. Chubb – Yes to all criteria
Mr. Hennessey – Yes to all criteria – with stipulations
Ms. Ryan – Yes to all criteria

(4-0-0) The motion carried.

VARIANCE GRANTED

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

DATE SPECIFIED CASE – May 13, 2019

Case #ZO2019-00006 - Map 15 Lot 8-241 - PRUDHOMME, Matthew - 221 Hobbs Road

MINUTES REVIEW

March 9, 2019 – Site Walk

March 11, 2019 – Regular Meeting

March 30, 2019 – Site Walk

MOTION (Ryan/Hennessey) To approve the site walk minutes as written, the meeting minutes of March 11th as amended, and the site walk minutes of March 30th as amended.

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

(Ms. Chubb submitted amendments to the Recording Secretary)

ADJOURNMENT

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

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

The meeting was adjourned at approximately 9:11pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary