

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
July 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, Peter McNamara,
Alternate Matthew Hopkinson, Planning/Zoning Administrator Jennifer
Beauregard

ABSENT: Svetlana Paliy, Alternate Deb Ryan, Alternate Richard Rancourt,
Alternate Heather Patterson, Alternate John Westwood

Mr. Hopkinson was appointed to vote.

PLEDGE OF ALLEGIANCE

HEARINGS

Case #ZO2019-00011

Map 36 Lot 10-191-21

MCLEAN, Stephen – 73 Grouse Run - Seeking a Variance from Article III, Section 307-12 of the Zoning Ordinance to permit a shed greater than 8' in height to be constructed within the 15' rear setback and the 30' front setback.

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. McLean came forward to discuss the variance request. He would like to place an 8ftx12ft shed within the 15ft. rear and 30ft. front setbacks. The shed will store tools and lawn equipment. He displayed the plot plan which showed the house location, existing propane tank, leach field and proposed location for the shed. He stated the placement and design of the shed had been proposed to the Garland Woods Association and approved. It will be a Reeds Ferry shed with siding and roof to match the house. The area of the shed will be properly landscaped to blend into the environment. The shed itself will not require a concrete foundation or addition of drainage pipes.

Mr. McLean read aloud the responses to the variance criteria as included in the application.

Mr. McNamara inquired how close the shed would be to each setback. Mr. McLean replied 8ft.-10ft. from the rear and approximately 27ft. from front. Mr. McNamara asked if it would be a one-story structure. Mr. McLean didn't have the exact height but guessed it was approximately 9.5ft tall. Mr. McNamara questioned if any alteration of the land needed to be done (i.e. cut or fill). Mr. McLean replied they would abide by the recommendation of Reeds Ferry to have crushed stone; if approved they would slightly cut down the front corner of the lawn to allow the door to swing open.

Mr. Hennessey saw a letter from an abutter that stated there may be some drainage issues coming from the shed location. He confirmed there would be a gravel base and not concrete. Mr. McLean replied that was

correct. Mr. Hennessey understood there would only be roof runoff and questioned where it would go. Mr. McLean replied the lot had an existing bed that channeled the water to a low point and into a wetland area. Mr. Hennessey said the shed roof would create some impermeable surface. He asked if there had been any issues with runoff going into the wetlands. Mr. McLean wasn't aware of any. He said some mulch from a bed ran down to a low point but didn't reach the wetland portion.

Ms. Chubb was concerned that the applicant indicated there were other areas available to place the shed. Mr. McLean replied it would place the shed directly behind the house. Ms. Chubb understood there were other areas the shed could be located without the need for a variance. Mr. McLean replied hypothetically there were.

PUBLIC INPUT

Ms. Chubb read aloud letters from abutters that were submitted for consideration: 1) Stephen Wolniak – in opposition to proposed location but support placement in an alternate location to the southern side of McLean property, and 2) William Thistle – no issue with request if abutting landowners are in agreement with it.

Mr. Paul Drewniak and Russell Smith, 9 Caribou Crossing read aloud a prepared letter citing their opposition to the proposal. They displayed a plot plan of the cul-de-sac with surrounding properties and a detailed plot plan showing Mr. McLean's lot with the location of the proposed shed. Mr. Drewniak stated they agreed that a shed added functional use to a property and have discussed an alternative location with Mr. McLean toward the left/rear of the property (still within the 15ft. setback) and out of the direct line of sight of most homes. They agreed that Mr. McLean's property posed certain challenges with grade and septic infrastructure; however, they were in staunch disagreement with the assessment that the proposed location remains the only suitable spot for a shed. Mr. Drewniak spoke about their reasons for opposing the variance. Starting with aesthetics - location of shed from their home (approximately 50ft from their front door, within line of sight from any location along front of property and most homes on cul-de-sac). Photographs showing line of sight from street were displayed. He stated they solicited the opinion of a licensed real estate agent who stated the proposal appeared to be in an outlining location which may prompt concern with prospective future buyers and detract from favorable curb appeal. Mr. Drewniak and Mr. Smith didn't agree with Mr. McLean's assessment that the location of the shed wouldn't detract value/curb appeal. They displayed a photograph of the walkway in front of their home and the view of the adjoining property line from the front looking to the back of the lot. They photoshopped a depiction of a shed in the location of the proposed structure.

Regarding alternate site availability, Mr. Drewniak told the Board they had discussed with Mr. McLean the ability to site the proposed shed along the same adjoining property line shifting it to the left rear of the lot. This was their preferred location. They agreed that the alternate location would require more site preparation, up to and including leveling and the installation of several footings. The plot plan showing the lot, proposed location and alternate location was displayed. Mr. Drewniak understood there was a buried propane tank toward the wetland setback that eliminated a portion of the lot for consideration. He stated they had communicated several times with Mr. McLean via text and in person since May 28th that they would approve of a site location abutting the property line (as shown) and angled such that the shed was aligned in an aesthetically pleasing configuration. A photograph showed how it could be placed. A copy of the text thread was attached to the letter for reference. They weren't aware of any impediment for a shed being installed in the alternate location, other than additional time/money required to prepare the site. Mr. Drewniak understood Mr. McLean indicated if the variance was denied he would be unable to place a shed on his lot. He said this was more of a statement of preference than one of fact.

Mr. Drewniak addressed the comment regarding citing approval from the Garland Woods Homeowner's Association ('HOA'). He said the variance application references statements from the HOA having

approved of the design and placement of the shed. It was their understanding that the HOA board had not taken a formal vote on the matter or approved any siting for the project. Mr. Drewniak submitted an inquiry and received a response (June 20th) indicating that the HOA board would defer the matter to the Zoning Board meeting for determination/ruling. He commented that Mr. McLean included a copy of an email thread with the variance application referencing a siting picture that was sent between three parties (Mr. McLean, the HOA board president and them) using personal email accounts. He noted the HOA board president was also an abutter.

In summary, Mr. Drewniak and Mr. Smith agreed with Mr. McLean's desire to install a shed on his property and have worked together to determine a site that was in their collective best interest. However, Mr. Drewniak and Mr. Smith don't agree with Mr. McLean's aesthetic and hardship claims and believe they are statements of preference and not land use fact. They would be pleased to have the Board walk the site to view the proposed and candidate locations.

Coming forward were Mr. Robert Tessitore, 63 Grouse Run, an abutter and Garland Woods Homeowner's Association President and Ms. Jean McCarthy, 98 Grouse Run also of the Garland Woods Homeowner's Association. Mr. Tessitore told the Board that the HOA didn't have siting approval in their covenants; the covenants don't speak to sheds or their location, they only speak to the 'architectural' manner of buildings needing to look like other buildings. He said the proposed shed was approved by him via a personal email; however, the email was a correspondence by Garland Woods approving the shed if it fit the perimeters (of the Board/Town). He reiterated the shed was approved by design and not by siting the location.

As an abutter, Mr. Tessitore told the Board he had no opinion as to what direction the Board voted.

Ms. McCarthy explained that the rules in the HOA covenants are somewhat vague therefore they couldn't tell Mr. McLean he couldn't put the shed in the proposed location. She said the covenants had not been broken by what they were trying to do. Mr. Hennessey asked if she was noticed for the hearing. Ms. McCarthy replied she saw the notification because of being the Treasurer of the HOA.

Mr. Hennessey wanted to know if the shed would be within the wetland setback if it was moved to where Mr. Drewniak and Mr. Smith suggested. Mr. Tessitore couldn't answer. Ms. Beauregard was aware of Wetland Conservation District ('WCD') setbacks in the corner of the lot. She said the wetland was located on an abutting parcel. Mr. Tessitore stated there were signs indicating where the WCD was located, which was not on Mr. McLean's property. Mr. Hennessey noted if the location was within the WCD setback it would be of concern to the Board.

Mr. McLean stated the pictures displayed by Mr. Drewniak and Mr. Smith were not accurately shown to scale and had the shed on the property line. He found the angles to be misleading and asked that the Board dismiss that idea. He commented that the area proposed by Mr. Drewniak and Mr. Smith would require tree removal and footings to be set into the environment and within close proximity to the underground propane tank. Regarding value of surrounding homes, Mr. McLean stated the area would be properly landscaped; he wouldn't compromise the neighborhood or his lot. He spoke to the referenced text messages and noted they were sent prior to his full understanding of the Zoning rules and didn't feel they represented the entire case. He also explained that his lot had limited privacy, therefore he would like to have the shed and construct an environmentally friendly landscape design to provide more privacy in that location.

Mr. Kearney wanted to know if there was a spot on the property that the shed could be located that would fit inside the setbacks. Mr. McLean replied it could 'technically' be placed directly outside of the house (within 5ft). Mr. Kearney inquired how far the house was located from the setback. Mr. McLean believed it was approximately 50ft.-60ft. from the corner of the garage to the proposed location. He displayed a plot plan showing the house location and proposed shed location. He supported the Board conducting a site walk.

MOTION: (Hennessey/McNamara) To conduct a site walk.

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

A site walk was scheduled for August 3, 2019 beginning at 8am.

Mr. Hennessey stated his concern for the WCD setback and asked Ms. Beauregard to show the location on an overlay plan. Ms. Beauregard replied she would provide a clear plan for the Board.

The case was date specified to August 12, 2019.

Case #ZO2019-00012

Map 31 Lot 11-5

WELSH, Ashlee – 42 Spring Street – Seeking a Variance from Article III, Section 307-8.C of the Zoning Ordinance to permit extending a single-family home on an existing non-conforming lot keeping the same footprint and number of bedrooms on a lot that is less than an acre and has less than 15’ setback from one corner of the property by adding an additional floor.

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.

Ms. Welsh came forward to discuss her variance request. She told the Board that she recently became the owner of the home (at 42 Spring Street); it was built by her grandfather. The house was in the area of the pond (not on the pond) and taken on damage through the years and was currently in a general state of disrepair. She was requesting a variance to expand the home and re-build on the existing footprint. The proposal is to do a partial demolition and construct a chalet-style home with a small loft (approximately 12ft higher than the current height). The number of bedrooms would remain the same. Ms. Welsh noted there was no one immediately to the east of the property; therefore, no home would have a blocked view to the pond. She saw that her request was very similar to a variance granted in April for a home on Wood Road that had been hit by a tree.

Ms. Welsh read the responses to the variance criteria as submitted with her application.

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

Mr. McNamara heard mention that the height would be increased by 12ft and wanted to know the present height. Ms. Welsh commented that the foundation sat up approximately 3ft. and they were able to measure the height using a tape measure.

Ms. Chubb appreciated that Ms. Welsh went through meeting minutes to review how the Board made decisions. She informed Ms. Welsh that every property was different and the Board had no requirements to follow precedent.

Mr. Hennessey inquired if there was a State approved replacement septic system. Ms. Welsh replied there was an existing State approved septic system on the lot large enough for a two-bedroom. She said she reached out to the Health Officer and understood a new septic design wasn't needed because they weren't increasing the number of bedrooms. She said if the variance was granted, they would ensure everything met the codes. Mr. Hennessey wanted to know when the house was last used year-round. Ms. Welsh replied her mother used the property approximately a year ago. Mr. Hennessey asked if the property had a cesspool. Ms. Welsh replied the tank was between 500-1000 gallons and there was a leach field. Ms. Beauregard noted if the number of bedrooms was staying the same, they didn't require a septic design. Mr.

Hennessey wanted to ensure it was a working septic system. Ms. Beauregard believed the applicant had been in contact the Town's Health Agent.

BALLOT VOTE Mr. Kearney – Yes all criteria
#ZO2019-00012: Ms. Chubb – Yes all criteria
Mr. McNamara – Yes all criteria
Mr. Hennessey – Yes all criteria
Mr. Hopkinson – Yes all criteria

(5-0-0) The motion carried.

VARIANCE GRANTED

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

Case #ZO2019-00013

Map 8 Lot 9-85-6

THE DOREEN SZMYT FAMILY REVOCABLE TRUST OF 2011 – 44 Hayden Road – Seeking a Special Exception concerning Article XII, Section 307-74 of the Zoning Ordinance to permit the construction of an 800sf accessory dwelling unit within a portion of the basement.

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. Kearney explained the review process for Special Exception.

Representing the applicant was Mr. Shayne Gendron of Herbert Associates. Mr. Gendron explained that the lot was created in 2016 as a frontage subdivision created for David Mendes. The lot contains approximately 275ft of frontage and 4+ acres of land. They originally started construction as a single-family home but through the process the owner decided to convert it to a four-bedroom home with in-law apartment. A State septic design for 5.5 bedrooms was approved on June 13, 2019. A floor plan of the accessory dwelling was submitted with the application. It will be a finished basement apartment with a common floor and access from outside. There won't be any entrances that make the structure look like a two-family building.

Mr. Hennessey inquired if the applicant had met all the criteria. Ms. Beauregard answered yes.

Mr. Kearney opened the discussion to public input. No one came forward. The Board had no further questions.

BALLOT VOTE Mr. Kearney – Yes
#ZO2019-00013: Ms. Chubb – Yes
Mr. McNamara – Yes
Mr. Hennessey – Yes
Mr. Hopkinson – Yes

(5-0-0) The motion carried.

SPECIAL EXCEPTION GRANTED

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

Case #ZO2019-00014**Map 32 Lot 1-146-39**

STEVENS, Andrew J. & Cheryl – 13 Aspen Drive – Seeking a Variance from Article III, Section 307-12, Table 1 of the Zoning Ordinance to permit the construction of a 12'x10' shed that would be constructed within the 15' rear setback (1').

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. Stevens came forward to discuss his request for variance. He was seeking to construct a Reeds Ferry 12ftx10ft. shed in the rear of his property that would be within the 15ft. rear setback. He read aloud the responses to the variance criteria as submitted with the application.

Ms. Chubb understood that the applicant had a place to locate the shed that wouldn't need a variance. Mr. Stevens replied it could be located in the middle of his yard. She confirmed that there was 'technically' a location, it was just that Mr. Stevens didn't like it. Mr. Stevens answered yes. He said another option was to have a smaller shed 10ftx10ft. but he wanted to make sure he had plenty of storage. Ms. Chubb questioned if his neighbors had sheds. Mr. Stevens said there were people in the neighborhood that had sheds, but not direct abutters. He said the neighboring sheds were nice quality that matched the houses. He wanted to keep that type of design. He didn't see any sheds that were considered 'box store' sheds.

Mr. McNamara asked if he would clear any trees. Mr. Stevens answered no.

Mr. Hopkinson heard that the shed would be located one foot off the property line. He commented if repairs were needed, they couldn't be done on the applicant's property. Mr. Stevens replied he would be on 'common' land (owned by the subdivision) to do so and not trespassing on his neighbor's property. He stated he had been maintaining/mowing a portion (a couple feet) of the common land.

Mr. Kearney opened the discussion to public input. No one came forward.

Mr. Hennessey recommended that the Planning Board increase the allowable shed size to a 12ftx10ft.

Ms. Chubb found no hardship. She didn't see the applicant not 'liking' a location as a hardship. Mr. McNamara appreciated Ms. Chubb's points but felt there was a hardship with the layout of the land. He believed the recommendation to increase the (allowable) size would make a difference. He noted that the shed would also be shielded from neighbors and didn't see the harm.

Mr. Hennessey said the applicant commented that the location would be more aesthetically pleasing, which he noted didn't fall under the Board's purview; however, the proposed shed 'fit' the subdivision. He believed if the Board didn't grant the variance it may harm the abutters more than approving it would.

Mr. Kearney echoed the point made by Mr. Hopkinson regarding the shed being one foot off the property line. He felt it would behoove the applicant to shift the location by another foot to allow maintenance to occur inside his property boundaries. Mr. Stevens commented that he currently mowed approximately three-five feet into the common land as it would look unappealing. He said he would continue to go behind the shed and maintain the land whether or not it was moved off the property line. Mr. Hennessey stated Mr. Stevens needed to speak to the Homeowner's Association regarding the common land. Mr. Kearney said maintenance should be done within the property boundaries.

BALLOT VOTE

Mr. Kearney – Yes all criteria

#ZO2019-00014: Ms. Chubb – 1) Yes, 2) Yes, 3) Yes, 4) No, 5) No
Mr. McNamara – Yes all criteria
Mr. Hennessey – Yes all criteria
Mr. Hopkinson – Yes all criteria

(4-1-0) The motion carried.

VARIANCE GRANTED

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

Case #ZO2019-00015

Map 21 Lot 3-101

GODBYR FAMILY REVOC TRUST (Fred Godbyr) – 32 Tenney Road – Seeking a Variance from Article VII, Sections 307-79, 307-40 & 307-41 of the Zoning Ordinance to permit the construction of a driveway to new single-family dwelling 7' from a wetland where 50' is the required setback under the Wetland Conservation District

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.

Representing the applicant was Mr. Joseph Maynard of Benchmark Engineering. He stated they had previously been in front of the Board and conducted a site walk of the property. The lot contains approximately 7.4 acres and has frontage along Tenney Road. There is approximately 2,700SF in the front portion of the lot that is outside the Wetland Conservation District ('WCD'). The original variance was granted in 2008 which included approximately 6,500SF WCD disturbance. Mr. Maynard stated that the driveway on the existing plan didn't work as it had a steep grade from the road with a cross-pitch. He said they were trying to make the plan work. Doing so would involve putting the driveway on the right side of the home and making it a garage-under with a driveway grade of approximately 1%-2%. The current proposal shows 8,500SF of disturbance; of which 2,000SF includes the driveway area and the area to create a swale (alongside the driveway) to filter out sand before drainage goes into the wetland. The remainder of the proposal is per the original variance; the house is the same footprint; the septic is clean solutions and the permitted well remains. In summary they are in front of the Board for a change in the driveway everything else will remain per the original request.

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

Mr. McNamara wanted to know if the lot had sufficient sight distance. Mr. Maynard replied from being on the lot he believed it met the Town's regulations.

Mr. Kearney understood that the swale went for the length of the driveway and questioned if it would be outside the edge of wetlands. Mr. Maynard replied it was outside the edge of the wetland.

PUBLIC INPUT

Mr. Paul Ciampa, 3 Colonial Drive said they had been discussing the project for some time. He said the water problem coming through his yard was prior to 1990; from Town records there were only two houses prior that pertained to runoff. He told the Board he had the undue burden of the project and was receiving more and more water. He stated in previous maps his yard was never wet; there was seasonal pooling and now he had water that was infiltrating his back yard and making him lose approximately 4ft. of elevation. He was losing Oak and Pine trees because of the water situation. Mr. Ciampa pointed out that the March 2019 Assessor's map shows an area of wetland being in his property where he'd never had it. He asked if

there were things that could be done to slow the water rate down or make the driveway permeable. He also wanted to know if any answer was received regarding the validity of the original variance.

Mr. Kearney stated the original variance was granted in 2008 and ran with the land. He said the Town adopted a policy in 2013 that states a variance has a two-year window of execution.

Mr. Ciampa wanted to know why the water issues weren't previously addressed when development was being done on Hickory Hill, Primrose and Gauthier Way. He had come in and spoken about runoff each time. He reiterated he was losing property to water. Mr. Ciampa didn't feel the lot fit the character of the neighborhood; it was a piece of property left over from a 1980 subdivision. He said the proposal might meet the criteria, but he didn't feel he should have the burden from it. He had an engineer friend look at his lot and was told he would need approximately ten truck loads of fill to fill in the spot that was sinking and bring it back to original grade. He wanted to know if something could be done to stop the water from infiltrating.

Mr. Maynard told the Board he had been to Mr. Ciampa's lot and spoken to him about the situation but didn't feel the applicant's lot was the cause of the problems. He commented that detention ponds weren't done in the 1980s or early 1990s when Hickory Hill and Gauthier Way were being done. He understood that the water behind the applicant's lot was flowing toward Gauthier Way and flowed to a big wetland near Jennifer Drive. He noted there was a high water table in the area and having a permeable product wouldn't work. Mr. Maynard said the other way to control water would be to have a detention pond, which in this situation would probably take up 1,000SF of area and the whole lot would have to come up in grade.

Regarding the proposed driveway, Mr. Maynard said he was constructing a swale to slow the flow of water and retain/treat sediment before it goes into the wetland. He said they were trying to make the property work. Mr. Hennessey questioned if there was a culvert under the road. Mr. Maynard answered yes (facing the property its on the left). He said Mr. Ciampa's lot was toward the east. He said it looked like some water was being trapped by the gas line, but he didn't have enough topography to say where water was being generated from. He would need historical topography from a 40-50-acre area to understand what had been done. Mr. Kearney wanted to know if the proposal would have limited runoff going to the neighbor. Mr. Maynard replied yes; however, every impermeable surface would have runoff but what they were proposing wouldn't have any negative effect on those downstream from what they were already seeing.

Ms. Chubb was concerned that the property was significantly wet when they conducted a site walk. She said the finished product would be within 7ft of the wetland and wanted to know the mitigation plan for construction debris, materials, chemicals etc. Mr. Maynard replied it would depend on what was needed for mitigation; the only thing he could think of was washing a cement chute off. The only other thing with an oil-based product was asphalt but it wasn't in liquid form that would run into a wetland. Ms. Chubb wanted to know about the trucks themselves. Mr. Maynard replied he was on construction sites several times per week and found most trucks coming to and from properties were newer vehicles and well maintained. Ms. Chubb was concerned with snow being plowed over the edge of the driveway into the swale. Mr. Maynard believed snow would be pushed straight along the driveway and pushed into the upland area. He said the original variance allowed for a 12ft. yard area out from the house that contained plenty of flat area for snow. He noted someone would need to go out of their way to push snow over the side. Ms. Chubb asked for further explanation regarding the garage. Mr. Maynard explained that the original plan was for an attached garage house and the driveway went straight from the road into the house (with no landing area). When the plan was approved Pelham didn't have a driveway regulation. He said he needed reasonable relief in order to get a driveway into the property because of the grade, which made it perfect for a garage-under proposal.

Ms. Ciampa (seated in the audience) asked if the plan had to go to the Conservation Commission. Ms. Beauregard replied only if the Board sent it to them. She noted if the applicant was seeking a Special Permit

through the Planning Board it would require input from conservation. Mr. Maynard noted the Conservation Chairman (Paul Gagnon) was in the office when he submitted the plan and commented that it was more reasonable than the previous plan.

Mr. Hennessey noted that there wasn't a statutory relationship between the Zoning Board and Conservation Commission. He then spoke to the case in front of the Board. He noted the land had previously been granted a variance. He said they were fortunate to have Mr. Maynard present a less intrusive solution. Mr. Maynard reiterated that his client didn't do the original permitting; he purchased the lot with the variance.

The Board then discussed the variance criteria.

1. Variance not contrary to the public interest:

Ms. Chubb stated she had a hard time with the proposal because she felt it was a leftover lot and intended to be left the way it was for a reason. Mr. Kearney noted that the request was for a driveway; the original variance remained valid. Mr. Hennessey wished the Board was reviewing the request de novo. He understood the original variance remained in place and the Board was now working under the current rules. He felt it was in the best interest to have a driveway that worked and wasn't steep. He stated the variance in front of the Board was in the public interest. Mr. McNamara agreed. He understood from the detailed description that the property was extremely constrained. He said the present situation wasn't preferable, but it's what they had. He believed the version of the driveway in front of them benefitted the public interest. He said when the Board denied the prior variance, they further constrained the property owner's options. He felt in terms of safety concerns and impact to the property and adjoining properties the proposal was a good solution. He didn't feel it was contrary to the public interest. Mr. Hopkinson stated safety was one of his biggest concerns. He noted it wasn't just the owners that would use the driveway. Mr. Kearney said he had to separate himself from the original variance; the owner has the right to execute it. He said moving the driveway and having a better sightline was a plus for the people residing in the home and for those on the road. He didn't feel the request was contrary to public interest.

2. Spirit of the Ordinance:

Ms. Chubb heard testimony that the driveway couldn't be built (as currently on the plan) and the proposed is safer; however, the proposal shows them going into the wetlands and she didn't think they should be doing so. She felt there had to be other ways to create a safe driveway that didn't have the impacts. Mr. Hennessey was concerned about increased runoff if they raised the structure. He wanted to mitigate it as much as possible. He didn't want to see the structure built up more than necessary. He noted the owner had a lot with a variance and a right to build; a responsible engineer decided it was unsafe to build it (as previously designed). He said it made sense to work with them and create something that is safe for the Town. Mr. McNamara agreed given there was so little space that wasn't wet or in the Wetland Conservation District. He felt it would be unfair and also leave them on shaky legal ground if they denied the variance. He believed the proposal showed a consistent way to develop the lot while minimizing the harm. Mr. Hopkinson agreed. Mr. Kearney stated he agreed with everyone and commented they couldn't change what had been done. He felt it was a challenging piece and the proposed driveway would be safer for everyone. He believed if the Board denied the request it would take away from the right of the first variance.

3. Substantial Justice:

Ms. Chubb understood the Board approved a variance in 2008 and the owner at that time didn't act on it. She presumed that someone purchasing property with the intent to build and knowing there were a lot of wetlands would review the history. She didn't feel the problems would be fixed by approving the requested variance. Mr. Hennessey understood there was currently a sunset ruling; however, if he were the person selling the lot, he would assume it was buildable given it had an existing variance that ran with the land. Mr. McNamara felt substantial justice had been done given the reasons previously discussed with the first two criteria. Mr. Hopkinson agreed given that the Board was considering the driveway, not the overall variance granted in 2008. Mr. Kearney concurred.

4. Values of surrounding properties are not diminished:

Ms. Chubb understood the Ciampa's position that water was causing a problem but did not think building on the property would necessarily impact them more than they are already impacted. Her feelings were neutral to the criteria. Mr. Hennessey hoped the applicant would come up with something to help the abutter but understood it wasn't their responsibility. He didn't feel the value of surrounding properties was diminished with the request; however, if the previous plan showing additional height (of the house) was constructed it might diminish values. Mr. McNamara agreed; the proposed driveway improved the value of the subject home and didn't hurt surrounding properties. Mr. Hopkinson didn't feel the proposal added or detracted from the values; he was neutral. Mr. Kearney concurred.

5. Unnecessary Hardship:

Ms. Chubb stated there was a definite hardship. Mr. Hennessey felt part A but also part B of the criteria were met. Mr. McNamara also felt part B was relevant and applicable. He said the property was very confined in terms of space and available land. Mr. Hopkinson agreed there was a hardship based on seeing unreasonable access was previously set up on the property. He felt the proposal showed reasonable and safe access to a property. With all things considered, Mr. Kearney believed the proposal was the definition and spoke directly to the hardship. Ms. Chubb understood she opposed the other members on a lot of the criteria but felt strong about her opinion. She said if the Board denies the variance and a judge comes back allowing it, she would accept the decision.

**BALLOT VOTE
#ZO2019-00015:**

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

(4-1-0) The motion carried.

VARIANCE GRANTED

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

SITE WALK – August 3, 2019 beginning at 8am.

Case #ZO2019-00011 - Map 36 Lot 10-191-21 - MCLEAN, Stephen – 73 Grouse Run

DATE SPECIFIED CASE(S) – August 12, 2019

Case #ZO2019-00011 - Map 36 Lot 10-191-21 - MCLEAN, Stephen – 73 Grouse Run

MINUTES REVIEW

June 10, 2019

MOTION (Hennessey/McNamara) To approve the meeting minutes of June 10, 2019 as amended.

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

ADJOURNMENT

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

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

The meeting was adjourned at approximately 9:34pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary