

**APPROVED**

**TOWN OF PELHAM  
ZONING BOARD OF ADJUSTMENT MEETING  
October 16, 2014**

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

The Secretary Bill Kearney called roll:

**PRESENT:** David Hennessey, Svetlana Paliy, Bill Kearney, Peter McNamara, Chris LaFrance, Alternate Lance Ouellette, Alternate Darlene Culbert, Planning Director/Zoning Administrator Jeff Gowan

**ABSENT:** Alternate Pauline Guay (excused), Alternate Kevin O'Sullivan

**HEARINGS**

**Case #ZO2014-00019**

**Map 16 Lot 8-41-1**

**EDWARDS, Robert, Sr. - 713 Bridge Street - Seeking a Variance concerning Article V, Section 307-18 to permit after lot line adjustment the operation of small engine repair shop, a non-permitted use, in the Residential District**

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

Mr. Robert Balquist, Engineering Technician with Meisner Brem Corporation, representing the applicant, came forward to discuss the request. The applicant would like the Board to allow a small engine repair shop in the residential district at Bridge Street (Route 38) and Balcom Road. He said the request was for a 'use' variance, not dimensional. Mr. Hennessey noted that the Board didn't make the distinction between 'use' and 'dimensional' anymore.

In reviewing the plan, Mr. Balquist noticed that the proposal would create a non-conforming lot, which was not their intention. He asked if a two-family dwelling was required to have a 2-acre minimum lot size. Mr. Hennessey answered yes. Mr. Balquist stated that Lot 41 after the lot line adjustment would only have approximately 60,000SF (1.39 acres). He believed they needed to 'go back to the drawing board'.

Mr. Hennessey understood that the business was pre-existing. Mr. Balquist answered yes; the business was allowed by variance in 1991. The only thing changing was the lot on which the building would sit as a result of the lot line relocation. The purpose of the lot line relocation was to make the house (703 Bridge Street) more marketable. The owner would like to keep the repair shop with the duplex (715 & 717 Bridge Street) in the rear of the lot. They hoped to sell 703 Bridge Street in the future. To better clarify, Mr. Balquist explained 703 Bridge Street and the repair shop (713 Bridge Street) were a lot. The proposal was to adjust the lot line.

Mr. Hennessey stated that the proposed plan would create a non-conforming lot on Lot 41, which would require a separate variance request. Mr. Balquist understood. He said the only request in front of the Board was what used to be referred to as a 'use' variance. Mr. Hennessey said two separate variance requests were needed. Mr. Balquist understood and apologized.

Mr. Hennessey said the Board would have the case as early as possible on the agenda for their next meeting. Mr. Balquist withdrew his application without prejudice.

**Case #ZO2014-00020**

**Map 31 Lot 11-286**

**RATCLIFFE, Richard & Gail - 22 Woekel Circle - Seeking a Variance concerning Articles VII & III, Sections 307-41-B & 307-8-C to permit an 8ftx1-10ft shed within the Wetland Conservation District**

Mr. LaFrance stated that the abutter to the applicant came in front of the Board earlier in year to request a variance for their shed. He stepped down during that case and will recuse himself from this case as well. Mr. Hennessey questioned if Mr. LaFrance felt he couldn't remain unbiased. Mr. LaFrance said it wasn't that he couldn't remain unbiased, he preferred to remain neutral and stay out of conflicts occurring in the area.

Mr. LaFrance stepped down.

Mr. Hennessey asked Mr. Ouellette to hear the case. Mr. Ouellette let the Board know that living on the pond where the applicant lived, he knew them by name, but there was no friendship. Mr. Hennessey asked if he could give an unbiased and unprejudiced decision. Mr. Ouellette answered yes. Mr. Ouellette was appointed to the case.

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

Mr. Ken Cooley, representing the applicants, came forward to discuss the request. He told the Board that he believed Mr. Ouellette was friends with abutters (who were present in the audience) that were opposed to the request. He felt it may be a conflict. Mr. Hennessey said Mr. Cooley was more than welcome to bring that fact up. He said under New Hampshire State Law, the participants were the only ones who decide whether or not to recuse themselves. He said the decision was up to Mr. Ouellette.

Mr. Hennessey asked Mr. Ouellette if he was comfortable sitting in on the case. Mr. Ouellette stated he was comfortable. He commented that he also sat for the abutter's variance request (for shed placement). It was his opinion at that time as well not to take either side. He hoped Mr. Cooley could accept his statement. He reiterated he felt as though he could sit in on the case.

Mr. Cooley discussed the variance request for an 8ft.x10ft. shed on a beach lot. He provided a brief history regarding the lot, which had been in the same family for years. In 2009 Mr. Cooley's mother and father-in-law (the applicants) purchased the lot. Unbeknownst to them there were encroachments that had subsequently been surveyed. Prior to 2003-2004 there had been a well house/pump house (in the area proposed for the shed that was used to draw water from the lake) that ran across the street and had been removed by one of the abutters (Mr. McCann). When the applicant purchased the property they had the lot surveyed and found some encroachments. Mr. Cooley stated that the project had been in the planning process for approximately one year. Engineering had been done and a Shoreland Permit has been approved by the State Department of Environmental Services ('DES'). Telephone poles have been installed to allow power to be brought to the shed, which will allow power on the property and be used for security of the shed. According to the Shoreland permit the shed can be located 20ft. or better from the shore line. They hadn't realized they needed a 50ft. setback per the Town; this fact was learned when they pulled the building permit. The building permit was issued on a conditional term or face possibly having to move the shed. Mr. Cooley said there was no other clear place to move the shed the logical location was what the proposal showed. He circulated photographs of the lot. A diagram of the lot was

displayed for review. Mr. Cooley read aloud the variance criteria as submitted in the application for variance.

Mr. Hennessey read aloud a letter dated October 16, 2014 submitted by Nancy Lopez and Michael Hackett at 23 Woekel Circle. The letter indicated after the Ratcliffe's purchase, they were told they were no longer allowed to use a dock and beach area at 22 Woekel Circle; the situation deteriorated the friendly atmosphere of the neighborhood. In recent months they received notice that there would be some dredging of the beach area. The letter listed ongoing projects during the past two years. The abutter was concerned about the use of the property and that work was being done without notification. They wanted to know if the applicant's next proposal be for a dwelling/septic. They also were concerned that their view would be blocked further and asked that the shed stay where it currently was, or be removed entirely.

Through the testimony, Mr. Ouellette heard that the Town granted a permit for the shed knowing it was non-conforming. Mr. Cooley said the permit contained conditions. He said they had no problem with the electric and underground utilities. They didn't need a permit for the poles. He was told if the variance failed, the applicant would have to do whatever the Board told them. Mr. Ouellette questioned if the applicant had a hardship put on them from the Town by allowing everything to be installed (eg. shed, utility poles). Mr. Hennessey understood the shed was due to be delivered the day after the applicant applied for the building permit. The poles were already installed and everything was done. He didn't see harm given that the shed was removable.

Mr. Gowan commented it was rare that he would condition a permit upon zoning relief. In this instance he had numerous meetings with the applicant who had asked about setbacks. He believed it was a matter of a misinterpretation; the applicant had gone to Shoreland and done basically everything right from the applicant's perspective, except that the local WCD setback wasn't met. He noted that the issuance of building permit had not been appealed. It was solely the variance in front of the Board. Mr. Hennessey found the approach reasonable.

Mr. McNamara asked how far away the shed was to the water. Mr. Cooley responded it was approximately 21ft. away. Mr. McNamara saw the proposed shed would be immediately adjacent to the neighbor's shed and questioned if that was coincidental. Mr. Cooley believed the photographs explained the situation; if the shed was moved 50ft. away it would be in front of the neighbor's doors and windows. They approached the neighbor to discuss the proposed shed placement; the neighbor simply asked if they would leave it two feet off the property line. Mr. McNamara said the abutter letter (Lopez & Hackett) references a utility pole and electrical line set up. He asked the purpose for such. Mr. Cooley said they added power (and an outlet) to the shed. He noted they lived across the street from the property. Mr. McNamara asked what would be stored in the shed. Mr. Cooley said they would store beach items. He said the electricity was needed for a light and security.

Mr. Ouellette saw that the State permit listed that a security light would be added. He suggested that the Planning Department review what was proposed, but felt the request was reasonable. Mr. Hennessey asked how big the light would be. Mr. Cooley said it would be an LED street light directed downward toward the dock and boat. Mr. Hennessey asked if the light fell under any ordinance. Mr. Gowan said commercial lighting had to be Dark Sky compliant and felt that would be a reasonable approach in this instance.

In past cases involving properties around the water, Mr. McNamara stated the Board had always been concerned with buildings blocking existing views. He said the abutter letter (Lopez & Hackett) asked that their view not be blocked any further. He questioned how their view was currently being blocked. Mr. Cooley didn't believe they were; the submitted photographs showed the sight line to the beach in the

direction the abutter faced. When deciding the proposed location the view was considered, Mr. Cooley said that was the reason it was placed within a group of trees.

#### PUBLIC INPUT

Mr. Robert Berthiaume, 20 Woekel Circle told the Board he was an immediate abutter to the right-of-way and had no problem to the location of the shed.

Mr. Robert Boucher, 10 Katie Lane told the Board he was present at the meeting for a different matter, but had a question regarding the proposal. He questioned why the matter didn't dictate a wetlands order of conditions being that the shed was within 100ft. of wetlands. Mr. Hennessey explained those types of conditions were for Massachusetts. He said New Hampshire required Shoreland compliance (applicant had an approved permit) and the Town had a wetlands setback. The Variance was for that WCD setback distance.

Mr. Ouellette referred to the abutter's letter and questioned if the Board could include the requested stipulation. Mr. Hennessey said the abutter was requesting a stipulation that would bind future actions, which he felt could not be done. He felt the Board had to review what was in front of them. He said the abutter's concern was in regard to a future structure. He noted any future structure would need to come in front of the Board because of the size of the lot; the Board had also been rigorous in watching heights.

Mr. McNamara recalled walking the site during the case on the adjoining parcel and seeing how the area appeared. He noted his concern for blocking views. Mr. Hennessey agreed. He said the Zoning Board wasn't bound by precedent; however it was noted that the Board had granted variances in the area.

Mr. Paliy commented that usually variances, such as the one being considered drew in a lot of public discussion. However, the proposed variance was very 'low key' and she couldn't recall a time when the Board didn't grant that type of variance. She noted views could be blocked by vegetation. Mr. Hennessey said in the past the Board had placed stipulations on height. He called attention to criteria four, which stated surrounding property values may not be diminished. He said if total view of the lake was blocked off the surrounding values would be diminished. He found it interesting there was no request for a site walk. In the past the Board had almost universally done site walks whenever something had come up. Personally, Mr. Hennessey didn't feel a site walk was needed because the Board knew the property. Based on knowledge, testimony and photographs, the Board didn't feel a site walk was necessary.

Mr. McNamara made a motion regarding the proposed lighting.

**MOTION:** (McNamara/Kearney) Condition that any lighting be Dark Sky compliant.

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

**BALLOT VOTE**  
**#ZO2014-00020:** Mr. Hennessey – Yes to all criteria with stipulation regarding Dark Sky lighting.  
 Ms. Paliy – Yes to all criteria  
 Mr. Kearney – Yes to all criteria  
 Mr. McNamara – Yes to all criteria with stipulation regarding Dark Sky lighting  
 Mr. Ouellette – Yes to all criteria with stipulation regarding Dark Sky lighting

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

**VARIANCE GRANTED**

Mr. LaFrance returned to the Board.

**Case #ZO2014-00021****Map 38 Lot 1-137-3**

**CARIGNAN, Cynthia - 26 Slavin Drive - Seeking a Variance concerning Article VII, Section 307-41-B to permit installation of a 2-bay preassembled 24ftx24ft wooden shed to be set on a 3/4inch (+/-) compactable gravel base and fastened to the ground with anchors within the Wetland Conservation District. Access will be from existing driveway.**

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

Ms. Cynthia Carignan and Mr. Ron Comtois came forward to discuss the requested variance to allow the installation of a 2-bay preassembled 24ftx24ft. shed. Mr. Comtois said the prefabricated shed met all the State and local codes. All locations within the lot have been considered; however, due to the slope the proposed was the least evasive location. A packet of photographs showing the land layout (slope and elevation) along with the proposed shed location was provided to the Board. Abutter letters were also provided to the Board for testimony and inclusion in the case file. The Board appreciated the information. Mr. Comtois then read aloud the variance criteria as submitted with the application.

Mr. McNamara asked how far away the nearest house would be to the shed. Ms. Carignan replied the nearest house would be located well over 500ft.-600ft. Mr. McNamara stated the applicant had done a great job at presenting and addressing the criteria, which in turn answered a lot of his questions. He learned that the Wetland Conservation District ('WCD') was only a seasonal vernal pool and that the shed would be accessed from the driveway. He understood the lot size was approximately 3.75 acres, and therefore he found the proposed size of the shed more acceptable. He confirmed no automobiles would be stored in the garage. Ms. Carignan answered no. They may store lawn equipment. Mr. McNamara asked if there would be light or heat in the garage. Mr. Comtois said they had a small generator. He explained they had recently merged two families with three children each. He said the six children were all attending college so they had a fluctuation of storage.

Ms. Carignan told the Board that the company had the structure in their shed brochure, not their garage brochure because it had a wood floor and didn't require a concrete base.

Mr. Hennessey asked when the shed would be put in. Ms. Carignin hoped for delivery by October 27<sup>th</sup>. Mr. Hennessey told the applicant if the variance was granted there would be a 30-day right of appeals. He said at times the Board asked the Conservation Commission to join them on site walks; however, he wasn't sure it was necessary for this case. He asked if the WCD setback had posted markers. Ms. Carignan answered no. She said they had measured from the culvert that ran under the driveway. There were markers from the rear of the house, the back property line and from the cul-de-sac. They measured from the shed to the culvert. Mr. Hennessey said the applicant had shown sensitivity in speaking about the removal of the existing boulder. He was concerned that there be no damage done to the wetlands in the construction or movement of the shed. He preferred that work be done now rather than in the spring when the stream was active.

Mr. Gowan said since the property hasn't been posted for WCD, he will add a condition to the Building Permit that it be done. WCD signs are available in the Planning Department. Ms. Carignan stated they sent pictures to the shed company confirming their equipment could easily access the property without

damage. She was told they absolutely had enough room. Mr. Hennessey said the WCD was important protection to the wetland. Mr. Kearney understood the shed would be easily delivered and erected. Mr. Comtois explained the shed would come in two pieces and be put together on site. The process would take approximately 1.5 hours. The shed will not be ‘stick’ built on site.

Mr. Hennessey opened the hearing to public input. No one came forward. He commented when variances were requested it should be because of an exception; the applicant had done a nice job at pointing out why their lot was different.

**BALLOT VOTE**                    Mr. Hennessey – Yes to all criteria  
**#ZO2014-00021:**                Ms. Paliy – Yes to all criteria  
    Mr. Kearney – Yes to all criteria  
    Mr. McNamara – Yes to all criteria  
    Mr. LaFrance – Yes to all criteria

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

## **VARIANCE GRANTED**

### **Case #ZO2014-00022**

#### **Map 14 Lot 9-132-2**

**OUELLETTE, Lance & SUPPA, Jamie- 54 Simpson Road - Seeking a Variance concerning Articles V & VI, Sections 307-16 & 307-18 to permit a landscaping business to operate in a residential area.**

Mr. Ouellette stepped down.

Mr. Hennessey said a letter had been received regarding abutter notification that would be addressed after the abutter’s list was read. The Planning Department provided him with a list of abutters within 200ft of said parcel. In comparing that list with the list used by the applicant for notification, he saw there were at least two people that had not been notified.

Ms. Paliy didn’t have a direct reason, but wanted to recuse herself. She said doing so may cause a problem because that would leave four seated Board members. Mr. Hennessey explained that recusal was a member’s choice. In the past he’s asked Board members if they had a problem with him hearing case. He asked Ms. Paliy if that’s what she was doing. Ms. Paliy answered yes. Mr. Hennessey said Ms. Paliy didn’t have to be bound by Mr. Ouellette’s response; she could take it into consideration. Mr. Hennessey asked Mr. Ouellette’s feelings of whether Ms. Paliy should hear the case. Mr. Ouellette had no problem with Ms. Paliy remaining seated. He said if she felt there was a conflict (in her own head) she would need to take it up on her own. He personally didn’t have a conflict with her sitting on the case. Mr. Hennessey asked Ms. Paliy if she was comfortable sitting for the case. Ms. Paliy responded yes.

Ms. Culbert recused herself as she was a direct abutter.

Mr. Kearney read the list of abutters aloud. There were no persons present who asserted standing in the case; however there were persons present that had not received notification. Mr. Hennessey asked if there was anyone present who was an abutter within 200ft. that had not been given notice of the hearing.

Ms. Charlotte Moore, 56 Simpson Road came forward. Her husband Richard Moore (also on the property’s deed) was seated in the audience. Mr. Hennessey asked if she was a direct abutter, or within

200ft. Ms. Moore stated the driveway that accesses the property being discussed was directly beside her property. She had not received notification of the hearing; she only heard by hearsay there was another business in the area. Mr. Hennessey said discussion regarding the case should be held.

Mr. Gowan said in this type of situation the person (who didn't receive notification) is typically asked if they mind having the hearing proceed. Mr. Hennessey said he was unsure where the hearing would lead, but suspected there would be a site walk requirement based on information the Board received. If a site walk is scheduled, he said he would ask for re-notification.

Mr. Ouellette explained for the record that he sat at the Assessor's office and reviewed the current assessing map within the 200ft. area and took the information from every person listed on that map; some were family trusts and others were personal residents. He said he asked the Assessor about one or two that he believed weren't on there and the Assessor told him he had to take the information that was on the map.

Mr. Hennessey said an immediate abutter wasn't notified. He believed the abutters should be re-notified. He asked for the Board's opinion and felt the Board would possibly conduct a site walk. He said rather than 'pull the plug' on the hearing he suggested when the Board made a motion for a site walk, he would entertain a motion for re-notification of abutters for that site walk and for a subsequent hearing.

Ms. Paliy questioned if the abutters should be asked if their legal name is on the title or if they have a trust or an attorney where notification would have been sent. Mr. Hennessey said that wasn't the procedure. He believed Mr. Ouellette's statements, but felt an error had been made. He said abutters and people within 200ft., per the usual procedures were entitled to receive notice. It was not for the Board to determine fault; the applicant would need to figure out why people didn't receive notification. Mr. Hennessey said he received a list of abutters from the Planning Department and when compared to the list of what was sent out saw there were at least two names missing. He didn't know why that happened, but felt it was an honest mistake.

Mr. Hennessey didn't want to stop the hearing because people were present. He wanted the applicant to read the variance criteria into the record. He wanted people to have the opportunity to speak and thought the Board may want to schedule a site walk and a subsequent hearing. Mr. Ouellette said he had photographs to be submitted to the Board that could be reviewed while he read the variance criteria. Mr. Hennessey asked how Mr. Ouellette felt about the notification and questioned if he preferred to stop the hearing until re-notification was done. Mr. Ouellette replied he had been diligent with the abutter list. He said if there was an error and the Planning Department had the information, he wished he would have received it because he probably would have walked notification to the abutter's door. He apologized to the Board. Mr. Hennessey said he wasn't aware of the situation until earlier in the day. He said they learned about it from the folks that weren't notified. On that point, Mr. Gowan said by the time they found out it was way past the notification period. He hoped that the people that weren't notified were present and would allow the meeting to proceed. Mr. Ouellette said if the people were present he would like to move forward with the hearing. Mr. Hennessey said he would also like to move forward. However if there wasn't evidence to conduct a site walk the abutter notification would need to be brought up again. Mr. Ouellette reminded the Board (if the variance was granted) they would be subject to a 30-day appeal timeframe. He promised after the hearing to get the names of those people not notified so they could receive notice.

As a point of clarification, Mr. McNamara asked if a subsequent notification would cure the defect that currently existed. As of now notification was not sufficient which meant the entire hearing could be thrown out with any kind of appeal. He questioned if a subsequent notification allow the Board to proceed with the present hearing. Mr. Gowan felt at present the Board could not proceed, regardless of

after-the-fact notification, unless the people that were not notified were present for the meeting and voiced no objection to proceeding. He didn't know that just notifying for the site walk would cure the defect. He believed there were four people not notified among them were the applicants Mr. Suppa (present for the meeting) and Mr. Ouellette (present for the meeting). Based on the information Mr. Hennessey saw there was another family (other than the applicants and the Moore family) who didn't receive notification.

Ms. Moore didn't feel she and her husband had any objection to the hearing going on. She asked if the Board or Mr. Gowan knew if the other person that didn't receive notification had heard about the meeting. Mr. Hennessey had the name, but didn't want to state publicly. He asked if they were present for the hearing. No one spoke out or came forward.

Mr. Hennessey stated based on the opinions of Mr. Gowan and Mr. McNamara, he felt the hearing had to be ceased. He felt the applicant had to re-notify and place the case first on the next agenda (providing re-notification was done).

Ms. Moore asked how close the other person was to the applicant's lot. Mr. Gowan said an abutter was any portion of a property within 200ft. of the subject parcel. He said he didn't review the notification list personally. He told the Board when he heard Ms. Moore was not notified the Planning Department staff verified whether or not she was an abutter. They saw Ms. Moore was a direct abutter. Mr. Gowan was certain that the (missed) notification was an honest mistake. For the record, Mr. Hennessey said he didn't speak to Mr. Gowan about the notification, he spoke to Planning staff who forwarded a list of abutters, included on that list was Ms. Moore's name and another name. Mr. Ouellette apologized to Ms. Moore and stated the missed notification was not intentional. Mr. Hennessey reiterated he knew it was not intentional. Mr. McNamara said it wasn't a matter of the Board's judgment, notification was a legal requirement. He felt the whole process would be thrown into jeopardy if they proceeded at the current meeting.

Mr. Ouellette asked Mr. Hennessey to direct the Planning Department to give them the information. He said it was never offered prior to the meeting. He was unsure how long they had it. Mr. Gowan said they found out too late to re-notify; it wouldn't have met the 10-day notification requirement. Mr. Ouellette said if he were informed, he might have been able to notify by hand so the person could have shown up for the hearing to voice their opinion.

Mr. Hennessey apologized to everyone present for the inconvenience. The matter would be first on the Board's next agenda (after re-notification of abutters).

Ms. Moore apologized and said the situation may have been avoided if they contacted Mr. Gowan earlier than they had. Mr. Gowan said there wouldn't have been adequate time to provide proper notification.

For those present, Mr. Hennessey said the case would be date specified to the November 10, 2014 meeting. Mr. Gowan didn't feel the case could be date specified since abutter notification had to be done. Mr. Hennessey said the applicant had to do a full re-notification of all abutters. He said they should find out why there would be a difference with the Assessor's information.

Mr. Ouellette and Ms. Culbert returned to the Board.

Mr. Gowan said typically an applicant would speak with one of the Planning staff members and look over the tax map to scale off an approximate 200ft. They followed the guideline of anyone that was close would be notified. He believed it was an honest mistake, but was unsure how it happened. There's an instruction sheet that accompanies the application that specifies the applicant and anyone associated with

the project had to be notified. Off the record, Mr. Ouellette stated he sat with the Assessor who pulled a map and helped them designate 200ft. Mr. Hennessey said the Assessor's answer should be the same as the Planning Department.

**Case #ZO2014-00023**

**Map 40 Lot 6-160**

**PAQUETTE, Steven J. - Seeking a Variance concerning Articles V & VI, Sections 307-16-C & 307-18 to permit the construction of a residential structure (a two-family home) in the industrial zone.**

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

Mr. Steven Paquette came forward to discuss his variance request. He explained he had been a resident of Pelham for just under twenty four years, but had grown up in Dracut, MA. near the site being discussed. He became familiar with the property through his family knowing the Gagnon family who resided on Hildreth Street. He's entered into a contract with owner Patricia Lavoie for purposes of the meeting to purchase a portion of the land and construct a two-family residence. He explained his two daughters had bordered horses at the property over the past ten years.

Mr. Paquette told the Board that the proposed lot was an existing lot of record and was one of a few parcels of land owned by Patricia Lavoie. The land is zoned Industrial, while the overall surrounding neighborhood is Residential. In preparation of meeting with the Board, Mr. Paquette had several meetings with Mr. Gowan and various other Town officials dating back to November 22, 2013. He met with the Highway Safety Committee ('HSC') on April 24, 2014 and included their letter with the variance application.

*"The consensus of the HSC is that any land use board and subsequent BOS approval for driveway and building permits be conditioned up Pelham being relieved from all road maintenance responsibility, including snow plowing, and that the residents of the proposed structure will be responsible for communicating directly with the school district resolve any student transportation issues."*

These conditions should be noted on any plans submitted to Pelham Boards. The applicant confirmed there is an existing Dracut, MA fire hydrant at the intersection of Brianna Way and Hildreth Street, approximately 600ft. from the proposed Pelham duplex. Once verified to the satisfaction of the Fire Department, this hydrant would likely negate the need for a fire cistern or sprinkler system installation.

Mr. Paquette had no objection to the HSC comments/recommendations. He then read aloud the variance criteria as submitted with the variance application.

Mr. McNamara believed Mr. Paquette made the point in terms of the specific Industrial versus Residential nature of the area. His concern was Police and Fire response to the area. Mr. LaFrance said emergency response must have some system where they help each other out with mutual aid. Mr. Paquette understood emergency response may be an issue therefore he was in contact with the HSC at the beginning of the review process. Mr. Hennessey read aloud the HSC consensus (as noted above). Mr. McNamara said another concern was the additional land in Pelham (in that same area) that was only accessible through Hildreth Street in Dracut, MA. He questioned if additional land would be opened up for development. Mr. Paquette believed the distinguishing factor was that the lot is an existing lot of record. Any proposed new subdivision would have to come before the land use boards. It was his understanding that wouldn't be positively received. Mr. Gowan clarified that he never suggest whether the Zoning Board, in the context of a variance would be received positively or not. He stated any

development would have to go through Zoning and Planning; a lot line adjustment was different because it was already a lot of record and didn't 'trip' the zoning for extra relief of having to leave the Town of Pelham to access the property.

Mr. McNamara questioned if there was 200ft. of frontage. Mr. Gowan felt that point was irrelevant because it was an existing lot of record and not a new subdivision. The applicant had to go in front of the Planning Board and the Board of Selectmen for the lot line adjustment prior to a Building Permit being issued for a property accessed by a road not within Pelham.. Mr. Hennessey said Zoning stipulates that a duplex has to have 200ft. of frontage. Mr. Gowan replied the proposal wouldn't create a new lot.

Mr. Hennessey saw that notification had been provided to Dracut, MA. He noted Pelham's Zoning made distinction between single-family and duplex homes aside from lot size; however, Dracut did. He asked if there were duplexes in the area. Mr. Paquette said it was predominately single-family. Mr. LaFrance was familiar with the area and believed there was a commercial building just down the street. Mr. Hennessey said the 'nature of the neighborhood' was not a Pelham neighborhood, it was a Dracut neighborhood. Dracut makes a distinction between single-family and duplexes. Mr. McNamara questioned if the Board should be worried about a Town in a different state. Mr. Hennessey replied the criteria (and under Simplex) it's the nature of the neighborhood. He was curious why no one from Dracut was opposing the proposed duplex.

Mr. Ouellette understood the zoning was industrial and questioned if at one point it had been residential. Mr. Gowan said the whole portion of Town was made Industrial possibly in the 1970's. Mr. Paquette said if he had to guess the area was probably made industrial because of the active gravel operation (Gagnon Sand Pit) that was accessed off Mammoth Road. He said the area flooded approximately twenty years ago and believed any industrial use probably ceased to exist at the same time.

Mr. LaFrance stated the case was very unique and couldn't recall seeing a similar application with the proposed change of use. He felt the information provided to the Board was nicely put together.

#### PUBLIC INPUT

Mr. Norm Paquette, 140 Black Oak Lane, Dracut, MA (no relation to the applicant) came forward to question if there were plans for an additional duplex on the other side (rear) of the lot. Mr. S. Paquette replied there wouldn't be an additional duplex. He said the intent was for one duplex; the remainder of the lot would remain open. The proposed lot was considered a single lot. Mr. N. Paquette asked if there was a possibility for the remaining area to be further developed. Mr. Hennessey said it would need to go to the Planning Board and possibly need a road. Mr. S. Paquette reiterated that the proposed lot was an existing lot of record. He was only seeking to modify that lot. He would not go in front of the Planning Board for any kind of subdivision, which would open up an entirely different scope of questions and concerns.

Given the presence of the Dracut, MA. resident, it was Mr. Hennessey's opinion if a further development (subdivision) was submitted he would consider such to be of regional importance and trigger notification to the Dracut, MA. Selectmen.

Mr. N. Paquette understood there was an existing white fence and tree line near the rear of the property. He asked if any trees would be removed in that area. Mr. S. Paquette replied the proposed residence would be on the forward portion of the lot; there was a small vegetated wetland in the center of the lot he had mapped by a New Hampshire Licensed Soil Scientist. He stated it didn't make sense to do anything behind that wetland in the rear portion of the property, which was mainly a field area. He wasn't proposing any changes in the area of the fence. Mr. N. Paquette asked for clarification of the proposed lot line adjustment. Mr. S. Paquette explained that the proposed lot line adjustment would create a 3acre

parcel; the remainder of the land (approximately 25 acres) would remain with the present owner. Mr. N. Paquette asked if there was a potential street that would be going into the parcel. Mr. S. Paquette said there was an area shown on the Pelham tax maps as a right-of-way; however, the Dracut tax maps end at the end of Hildreth Street. He said even Bing maps showed Hildreth Street as continuing through, which is what was shown on the proposed plan. He reiterated all he was requesting was a lot line adjustment to the right of that area. Mr. N. Paquette said he went to the area and took a ride to the end of Hildreth Street. He said he was intimidated at the end because of the posted signs and wasn't able to travel further. Mr. S. Paquette said he'd be happy to provide Mr. N. Paquette with his contact number and meet on site to show what he was proposing. Mr. N. Paquette questioned if he was allowed to walk down the street from Dracut into Pelham. Mr. Hennessey replied he could make a request of the owners. The Board could not grant that right. Mr. S. Paquette said the previous owner posted the signs, but the Town of Dracut maintained the right-of-way.

In looking at the submitted information, Mr. Ouellette saw a possible error. He noted that the location of Hildreth Street on the map should be adjusted. Mr. S. Paquette said it was just a Bing map representation. The proposed plan showed the proper location.

Mr. Gowan clarified that Hildreth Street showed on all the Town's maps. He said in reviewing Town records they could find no evidence that the road was ever closed to gates and bars or discontinued. Without that evidence it remained a right-of-way, which is the reason for the case to go in front of the Selectmen to approve the access from the Town road.

**BALLOT VOTE**                    Mr. Hennessey – Yes to all criteria  
**#ZO2014-00023:**                Ms. Paliy – Yes to all criteria  
    Mr. Kearney – Yes to all criteria  
    Mr. McNamara – Yes to all criteria  
    Mr. LaFrance – Yes to all criteria

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

## **VARIANCE GRANTED**

### **Case #ZO2014-00024**

#### **Map 7 Lot 4-11**

#### **LANGEVIN, Richard & Priscilla - Seeking a Variance concerning Article III, Section 307-12-E to permit an existing garage not meeting the required 15ft. side and 30ft. front setbacks.**

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

Mr. Richard Langevin came forward to discuss the requested variance for an existing garage (installed in 2007) that doesn't meet the side setback requirement. He said the contractor used the existing markers located at the back and front of the lot and staked out the property for the setback. The neighbor that moved in during 2010 had his land surveyed to remove some of the natural buffer and found that one of the markers in the rear of the property was incorrect (by approximately 27ft.). Mr. Langevin said he also hired a surveyor to check the information and found that the neighbor's surveyor was correct. Mr. Gowan said there were a lot of similar problems in the area.

Mr. Langevin read aloud the variance criteria as submitted with the application. Mr. Hennessey read aloud a letter of support for the variance submitted from abutter John O'Loughlin.

**BALLOT VOTE** Mr. Hennessey – Yes to all criteria  
**#ZO2014-00024:** Ms. Paliy – Yes to all criteria  
Mr. Kearney – Yes to all criteria  
Mr. McNamara – Yes to all criteria  
Mr. LaFrance – Yes to all criteria

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

**VARIANCE GRANTED**

**MINUTES REVIEW**

**September 8, 2014:**

**MOTION:** (LaFrance/Paliy) To approve the September 8, 2014 meeting minutes as written.

**VOTE:** (4-0-1) The motion carried. Mr. McNamara abstained; he was not present for the meeting being reviewed.

**ADJOURNMENT**

**MOTION:** (Kearney/Paliy) To adjourn the meeting.

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

The meeting was adjourned at approximately 9:12pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary