

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
August 9, 2021

Chairman David Hennessey calling the meeting to order at approximately 7:00 p.m.

PLEDGE OF ALLEGIANCE

Chairman Hennessey explained that after reading and approving the minutes, he had to recuse himself from the from the first hearing, which is court ordered, so the board had to take that hearing first. He noted that Mr. McNamara would take over the chair for the hearing. Chairman Hennessey then noted that based on a long precedence of the board, they will not take a hearing that will begin after 10:00. This was noted so that everyone was aware that all hearings may not make the evening's cut. Chairman Hennessey then mentioned that they would be taking case 26 out of order after the remand due to it being special exception (without a variance request).

Secretary Matthew Hopkinson called roll:

PRESENT ROLL CALL: David Hennessey – Present
 Peter McNamara – Present
 Matthew Hopkinson - Present
 Jim Bergeron – Present
 Joseph Passamonte – Present
 Alternate John Westwood – Present
 Alternate Jeff Caira – Present
 Alternate David Wing – Present
 Planning/Zoning Administrator Jennifer Beauregard – Present
 Recording Secretary Jill Atkinson – Present

MINUTES:

June 14, 2021

MOTION: (Hopkinson/McNamara) To approve the June 14, 2021 meeting minutes as amended.

 (5-0-0) The motion carried.

July 12, 2021

MOTION: (McNamara) To approve the July 12, 2021 meeting minutes as amended.

 (4-0-1) Mr. Passamonte abstained. The motion carried.

HEARINGS

Chairman Hennessey again noted that he would be recused from this first case. He stated that this case consisted of two variance requests a year ago. At that time, he did not have financial involvement in any way, except that the applicant plowed his driveway. He went on the site walk and voted on that variance.

By the time it came back before the board for a request for a rehearing, Chairman Hennessey had been involved with Mr. Ouellette on a fair amount of work on his house. Under the state law, no one can make anyone recuse but if there's an appearance of a conflict, which Chairman Hennessey thought there was at this point, he believes it behooves the member to recuse on his own. He noted that he did, at that point, and did not hear the request for the rehearing and he is recusing himself once again. Chairman Hennessey noted that are not involved with any further work at his house at this point but because of that previous entanglement, he believes it's only right that he not be part of the hearing. He stepped down and Mr. McNamara took over as chair for this case.

Chairman Hennessey left the room at approximately 7:30 p.m.

CASE #ZO2020-00023

OUELLETTE, Lance & Laurie – 13 Gaston Street – Map 30 Lot 11-149 – Seeking a Variance concerning Article III, Sections 307-7 & 307-8C of the Zoning Ordinance to permit the removal of a lot and roof on an existing Single-Family Home, and increasing the height to accommodate a second floor consisting of 2 bedrooms and a bathroom.

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

Mr. McNamara noted that there had been a site walk on this matter last Wednesday night. All board members were present. There are no minutes from the site walk yet but he believed everyone is familiar with the site from the site walk and they travelled the neighborhood a little bit as well.

Mr. McNamara noted that Mr. Wing will vote on this matter.

Mr. McNamara confirmed that all the voting members were familiar with the package that was sent, including submissions by Mr. Groff, and everyone reviewed.

Mr. Groff, 79 Bridge Street Pelham, came forward to represent the applicants. He noted this is their third time in front of the board. He mentioned there was an appeal to the Superior Court. There was a decision and the case was remanded to the board. The appeal was not an appeal of four of the five variance criteria because the board had voted yes on four of the five, having voted no only on the will not affect surrounding property values criteria. Mr. Groff noted there was a question about whether or not he had to address all of the variance criteria as a result of that appeal. It is his contention that since the board did vote in favor of four of the criteria that that would now be a non-appealable issue since it would be what's called the law of the case. This was discussed briefly at the site walk and he noted that the judge did not rule specifically on that issue and remanded the case to the board so he would be addressing all of the five criteria even though it is his contention that he doesn't have to do that. Mr. McNamara noted his objection.

Mr. Groff noted there is an issue about the status of this property. The town did admit, in the answer, and the judge did find that this is a pre-existing, nonconforming property. As a result, it falls under RSA 674:19. Mr. Groff put a copy of this up on the screen for the board to view.

Mr. Groff reviewed that this is a pre-existing, nonconforming, single-family home on a private way with no town road frontage. It is on an undersized lot, so it does not meet current zoning. It does not have enough setback or land area. Mr. Groff believes the house was built in the '30s, before zoning. Up until 2013, it had been classified by the town as a single family, 1 bedroom home. In 2013, it was reassessed as a 2-bed home. In the past decade, Mr. Groff's client improved the property by installing a current septic system. In 2020, a reassessment discovered that the house had no bedrooms and classified it as a no bedroom home, which is the reason the variance was sought. The request is to raise the ridgeline of the

roof approximately 9 feet to about 28 feet and to lower the pitch of the room to construct two bedrooms and a bath in what is now loft space, which would be the second floor of the structure. The applicant does not have room to expand sideways or front to back so this is the only way this no bedroom could be converted to a two bedroom. He has to go up a certain amount to install two bedrooms under the current code requirements. The variance is being sought to construct a full second floor on the house that current houses a shallow loft area.

Mr. Groff noted a couple of other legal issues. There is no height restriction in our zoning ordinance for single family residence use. There is no easement for views in this neighborhood. There are no covenants, to the best of Mr. Groff's knowledge, that restrict the height of any structures in this neighborhood, which could include a view easement. And as far as Mr. Groff's aware, there is no constitutional right to a view in New Hampshire.

Mr. Groff read aloud the responses to the criteria as submitted with the application. He added an aside that the "surrounding properties" is not defined in our zoning ordinance and he is unaware of any particular case that defines surrounding properties. He believes it would be somebody whose property would be negatively impacted by the proposed construction. In this case, a couple of people argued their views would be impacted. Mr. Groff suggested the views are impacted by a couple of different things, cutting down existing vegetation to create views or removing existing structures which are currently blocking people's possible views. New Hampshire has a construction right to use and enjoyment. He would argue that the use and enjoyment of his client's property, as a single-family home, would outweigh any minimal view restriction that might exist for someone that might want to build a home or improve an existing structure. He also noted that this particular property is built in a dip of the land and is below of the grade of the road that it has the frontage on, which is not the case of the surrounding properties and raising the roof would not impact the surrounding properties. The property is already connected to the NHDES approved septic system. Strict enforcement of the ordinance would mean that nobody could live in the home since it is classified as a single family, no bedroom home, which he doesn't believe is the intent of the ordinance. It is an area in an area of single-family homes where the board had granted variances in the past for expansion and improvement.

Mr. Bergeron noted that Mr. Groff mentioned they have a on file septic system and had referred multiple times to its two-bedroom design. Mr. Groff confirmed with Mr. Ouellette that it was a 2-bedroom design. Mr. Bergeron wanted to confirm that the system approved by DES was two bedroom.

Mr. McNamara introduced into the record all of the materials the applicant attached to his motion for rehearing, as well as the materials that were sent in for this particular hearing. This includes, but is not limited to the house plans, tax card, photos, aerial photos, email from a Mr. Gladu, an email from Susan Snide, assessing assistant with the town, an email from Rosemary Aures, DES, the proposed house plan, a letter from Ellen Grant, Keller Williams Gateway Realty, photos submitted by the abutter, 11x17 copy of the septic design, as well as letters from Maria Shelzi, a real estate professional, and from Paul Guselli from the Guselli Agency, Inc. Attorney Groff did not have any additions.

PUBLIC INPUT

No one from the public came forward to speak in favor of this application.

Ray Gladu, 9 Campbell Road came forward. He confirmed he heard correctly that the bedrooms were going from a zero to a 2 bedroom. Mr. McNamara explained that was correct. He asked Ms. Beauregard that assessor's office had the property listed for years as a 2 bedroom. Ms. Beauregard confirmed that it was listed as a 1-bedroom and then changed, at some point, to a 2-bedroom. Mr. Gladu then asked how many bedrooms this could end up being. Ms. Beauregard stated that it couldn't be more than 2 bedrooms

because they have a 2-bedroom septic design. Mr. Gladu stated that he is opposed to the project because this addition will block the view of the pond from the residents on Andover Street, which will decrease property values. He mentioned that if the board remembers from the site walk that the Ouellette's garage already blocks the view. He noted that really affects Mr. and Mrs. Bibeau and will take whatever view they had away. It will also take the view away from Angela Terry, who has a proposed house on Andover Street. He was unsure of the number. But Mr. McNamara noted the board observed this as Mr. Gladu had pointed it out (the foundation). Lastly, the new home that was built at 17 Campbell, by the Ouellettes, blocked the view of 10 Andover Street. He feels there is a pattern of views of the lake being blocked. The new structure is supposed to be 26 feet high, to the peak, and he questions whether that is 26 feet max as the permit states. The permits for this 17 Campbell Street house were a 2-bedroom, 1 ½ bath and Mr. Gladu believes those have change to a 2 bedroom with 2 half baths so changes have been made to the original plans. He is unsure of the technical reason why it happened. This 17 Campbell Street is the biggest two-bedroom house Mr. Gladu has seen. He believes this fits into if they were allowed to do that to that particular property, what is going to happen to the lake front views. Mr. Gladu knows this is confusing and not an easy decision for the board to make.

Donna Duval, 6 Campbell Street came forward. She questioned whether or not the town had any bylaws or ordinances on blocking views. Mr. McNamara stated that the town does not have any specific ordinances regarding residential height. The board, over the past 25, 30 years, particularly with the type of properties, along the water that are close together, built before zoning, and it often happens if someone wants to improve their property that it could affect abutters, neighbors, the water and the board has been particularly careful regarding heights of buildings to try to ensure that views are not substantially blocked. The board hopefully does this successfully by trying to limit the total height. Mr. McNamara believes in the past they have limited it to 28, 30 and sometimes 32 feet to make a concerted effort that abutters aren't unnecessarily affected. Ms. Duval said she knew that when the board came down, they saw trees and branches and that in the summer, the leaves grow up. But that's just usually for July and August and all winter long she has full view after those go away. She is able to watch the fire rescue training in the winter and has a view of the whole lake from her living room in the summer. Mr. McNamara thanked Ms. Duval for showing the board her property during the sidewalk. Ms. Duval believes that Miss Terry's view would be good once she builds her house.

Jay Bibeau, 6 Andover Street came forward. He noted that he had mentioned last time the board got together that when Mr. Ouellette built his garage, he had told him that it wouldn't be any higher than what Andover Street was and it's a whole story higher than Andover Street. The other house that Mr. Ouellette built took away the corner of the lake. He believes that if Mr. Ouellette builds this current house, it will take away the rest of the lake from their view and they enjoy that a lot and that should be thought of.

John Charest, 5 Methuen Road came forward. The board had been to his house and saw the view he had of the lake. Lance's rental property has taken most of that view, but he still has a little bit of lake view from his house. Adding a second floor to this home will take away Mr. Charest's water view because it is over Mr. Ouellette's house. He will no longer have a water view. He noted that one of the letters in the record is from his real estate agent stating his property value will decrease. Mr. McNamara asked which letter and Mr. Duval said it was from Paul Guselli. Mr. Duval brought to the board's attention that he has been opposing this second floor all along and he has been retaliated against. He also mentioned that there was another person, who was not at the meeting, that was retaliated against also and they almost lost their job. Mr. Charest said he will see this through.

Mr. Bibeau came back to add that Lance has two daughters that have been raised in this house, four people with a no bedrooms and now that his kids are grown, he's going to be adding two bedrooms. Mr. McNamara noted that Mr. Ouellette's personal circumstances or whoever is there is not the province of the board. The board has to look at the property itself in terms of trying to weigh the criteria. Mr. McNamara explained

that as Mr. Bibeau heard earlier, if the variance passes, the house will be limited to 2 bedrooms. He noted that after public input was over, he was going to ask Mr. Groff to comment on some of the issues that were raised.

No one else came forward with questions or concerns.

Mr. McNamara asked Mr. Groff to clear up a couple of the issues raised. He asked Mr. Groff to clarify the number of bedrooms that are on the plans. Mr. Groff explained it was proposed to be a 2-bedroom, 1-bath. Mr. Ouellette confirmed this would be on the proposed second floor. Mr. McNamara asked to confirm the height. He believes that 28 feet was brought out. Mr. Ouellette said the plan has always said 27' 1 3/4". Mr. Groff said they rounded it to 28 feet in case one of the boards was a little fatter than the other boards. Mr. Groff believed the policy if the board was to keep things under 30 feet, which Mr. McNamara said was the usual case.

Mr. Wing asked what was existing, what is being added to with the proposed addition being 2 bedrooms and 1 bath. He asked if there were any bedrooms and bathrooms remaining behind. Mr. Groff replied there are no bedrooms now, so they are adding 2 bedrooms and one bathroom to give a house with 2 bedrooms and 2 bathrooms because there is an existing bathroom on the first floor. Mr. Ouellette added there is a bathroom in the basement that was there when he purchased the house and a bathroom on the first floor, off the kitchen, that will be eliminated. A full bath will be added with the second-floor proposal.

Mr. Groff mentioned there were a few comments about other properties and noted they were only here about this property. Mr. McNamara said he would comment on that. Mr. Groff mentioned the first gentleman that spoke is not an abutter but lives far away from this property, so he was not being impacted by this at all. Mr. McNamara understood what he was saying but noted that Mr. Gladu was saying differently.

Mr. Bergeron noted he didn't hear Mr. Groff answer Mr. Wing's question so he asked him to clarify when all was said and done, if this board looked favorably on this, that the house would have 2 bedrooms. Mr. Groff stated that it can't have more than two and Ms. Beauregard already commented on that. Without going into DES and state rules, that Mr. Bergeron is pretty familiar with, on nonconforming lots and what's allowed for sewage loading on nonconforming lots, it is 2 bedrooms. Noted again for everyone to hear, it is 2 bedrooms total.

Mr. Groff stated he believed the last gentleman that spoke has a variance request before the board and his claim at the prior hearings was that his view was being impacted but it turned out that it wasn't his property that he was talking about. He's coming here for a lot line change to get property to have a view and his pool and pool house were built on someone else's property. He noted that wasn't relevant as far as this variance was concerned but his claim that he is being impacted by this is not strictly speaking true because he doesn't own the property that he built on. Mr. McNamara noted that there are conflicting views.

Mr. McNamara noted that a few people that had spoken spoke of Mr. Ouellette's garage. This is already existing and he doesn't know the circumstance. The garage doesn't concern the board at this point. He clarified they are talking about the present property.

Mr. Groff reiterated that the reason they are there is because they are looking to make the property a legal, conforming 2-bedroom, 2-bath, single family in residential zone.

Mr. McNamara closed the public input and brought it back to the board for discussion.

Mr. Bergeron had two points. He noted a lot of them had done extensive research on the subject of views and that he had spent some time looking for cases in New Hampshire law referring to all the associations he could to get as much information as he could about view obstruction. In New Hampshire, without an actual view easement right in a deeded property, that there is no right to view on lake front property, unless and only if there is a malicious intent by a property owner to deliberately block the view of another person. That would have to be proven that something was done with malicious intent. He was not able to find any case, where it's been proven in court, where obstructing a view would diminish property value. He also wanted to add that because there is no physical expansion to this property, he has asked three times that it was going to be and will continue to be a two-bedroom home. RSA 671:19 was mentioned earlier and that statute deals with what the board can look at and question and the board can apply questions to the alteration of a building provided that the purpose is substantially different from the use in which it was first constructed for. Mr. Bergeron noted this is the same use. This use will bring the structure into the code. He noted that everyone is concerned about ceiling height and roof height but the requirement for life safety code in a bedroom is not being mentioned, a certain net area of glass that a person can get out of in the event of a structure fire. He asked everyone to think about the structure they saw on the site walk and to think about how they would get out of the structure in the event of a fire. Mr. Bergeron's opinion is that the alterations being asked for, by way of variance, to change the bedroom and ceiling heights upstairs to accommodate a window is going to meet life safety codes for safety during fire and this is a reasonable request for a variance.

Mr. Caira mentioned he agreed with Mr. Bergeron on that point.

Mr. Hopkinson noted that the case has been hung up a bit on whether or not the surrounding properties will be diminished in value. He mentioned there have been varying opinions from real estate agents and that they should be taken with a grain of salt because they are all biased in their own views. He noted nobody has come in with an appraiser to comment on whether somebody's value would be affected, and the appraiser would be an unbiased view.

Mr. McNamara went through the five criteria.

Criteria 1 – The variance will not be contrary to public interest.

Mr. Passamonte doesn't believe it will not be contrary to the public.

Mr. Bergeron does not see a conflict with the public interest. He believes bringing a structure up to code had to be in the public interest and believes the variance is not contrary to the public interest.

Mr. Wing believes the variance is not contrary to the public interest for the reasons Mr. Bergeron cited, brining it up to code, adding two bedrooms. Mr. Wing believes Mr. Ouellette has made accommodations to keep the height to a minimum in line with past board decisions.

Mr. Hopkinson agreed it wouldn't be contrary to the public interest.

Mr. McNamara agreed. He believed an improvement to the property, like most variance requests they see, usually result in an overall improvement to the neighborhood and the particular property and not be contrary to the public interest.

Criteria 2 - The spirit of the ordinance is observed.

Mr. Wing agrees the spirt of the ordinance is observed for much of his previous reasoning, the building is not being increased in size and the height on the building is being kept in line with past board decisions.

Mr. Hopkinson believes the spirit is observed as well. He said that with the ordinances, a lot of times they are not very well suited for these lakeside properties. Overall, he thinks the spirit is observed.

Mr. Passamonte believes the spirit is observed for the reasons already mentioned.

Mr. Bergeron said he believes the that 307-7 and 307-8C zoning ordinance are not being affected. He doesn't think there is any abrogation of the spirit of the ordinance.

Mr. McNamara noted that as Mr. Bergeron stated earlier, if this variance is passed, it is bringing a nonconforming use into conformance and improving the overall character of the neighborhood, as well as the property. Mr. McNamara agrees with the rest of the board.

Criteria 3 – Substantial justice is done.

Mr. Passamonte believes it is because it will bring property up to code.

Mr. Bergeron agrees that there will be justice of done by the application of code and life safety to the windows in the bedrooms.

Mr. Hopkinson also believes that with bringing the property up to code, justice is done.

Mr. Wing agrees that substantial justice is done.

Mr. McNamara stated this criteria is a closer one for him than he believed it was for the rest of the board. Although he is voting yes, he believes that based on the testimony they heard and the site walk that there might be some negative affect to the neighbors. As a whole, judged against the improvement to the property and the life safety measures that Mr. Bergeron noted, he voted yes.

Criteria 5 – Unnecessary hardship.

Mr. McNamara wanted to deal with this criteria out of order.

Mr. Wing felt that literal enforcement of the provision would result in an unnecessary hardship if kept as a zero-bedroom property.

Mr. Hopkinson said that the proposed use is reasonable to make a zero bedroom into a 2-bedroom house and having the property be up to code and livable is reasonable.

Mr. Bergeron believes all the lots have vested rights, even though they are on substandard lots. He believes that not granting a variance to someone that wants to bring a structure up to code would be a hardship.

Mr. Passamonte believes it would create a hardship not to bring the property up to code and the proposed use is acceptable.

Mr. McNamara said the proposed use is reasonable given that it is a residential improvement in a residential neighborhood. Also, in terms of if the substantial fair relationship between the public purpose of the ordinance, it seems like a hardship does exist on the property. Mr. McNamara voted yes on this criteria.

Criteria 4 – The value of surrounding properties are not diminished.

Mr. McNamara noted this criteria held the board up last time.

Mr. Wing noted this was a close call for him and last time around he voted no, but that was prior to the introduction of what he believed was the Campbell Road property. He felt this was close, but he would now vote the values are not diminished.

Mr. Hopkinson said that he didn't see anything on the sidewalk that impeded or infringed on a vast view of any of the neighboring properties and doesn't think values of the surrounding properties are diminished.

Mr. Bergeron said he thought Mr. Hopkinson did a good job earlier with his explanation of the biases of different people's opinions relative to real estate agents. He stated that every property valuation he has ever done has been based on a comparable basis, looking at other properties in the area and what they sell for or have recently sold for to determine a base value of the property in the general area. Any improvement made to a nearby property will only have a positive effect on the value of your property. He does not believe that the surrounding property values will be diminished, regardless of the points being made about views. He voted yes on this.

Mr. Passamonte believes property values will not be diminished because everybody's value is increased when an improvement is made.

Mr. McNamara found this one to be very difficult due to conflicting opinions, different real estate professional's letters, the testimony of Mr. Gladu and the Bibeaus and he has sympathy for their positions. Mr. McNamara said that just because there is no view tax in the town does not mean that a property value isn't diminished. He gave an example of having a house with a view of the ocean or a lake and someone building a 4-story house in front of it. The property value is diminished and that is the standard the board has to judge. In Mr. Ouellette's case, Mr. McNamara looked at the letters from the realtors, in particular, Maria Shelzi who apparently grew up on Little Island Pond, so she knows the market. Ms. Shelzi gave a detailed statement about the conditions of the properties in the area on Andover Road and Methuen Road. Mr. McNamara noted, again, that this is not talking about the Ouellette's existing garage. He also said that a proposed home cannot be considered because it is not presently there. He asked the board to fill out their ballots and submit to give him a little time for his consideration.

Mr. Ouellette addressed Mr. McNamara who informed him that public input was closed and the board was now voting.

Case #ZO2020-00023

ROLL CALL VOTE:

Mr. Wing – 5 Yesses; final vote YES
Mr. Hopkinson – 5 Yesses; final vote YES
Mr. Passamonte – 5 Yesses; final vote YES
Mr. Bergeron – 5 Yesses; final vote YES
Mr. McNamara – 5 Yesses; final vote YES

(5-0-0) The motion carried.

VARIANCE GRANTED

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

Mr. Hennessey rejoined the meeting at approximately 8:00 p.m.

Mr. Hennessey restated that the board was moving off the agenda and taking Colleen Gleason's case on Willow out of order because it shouldn't take a long time.

CASE #ZO2021-00026

GLEASON, Colleen – 44 Willow Street Street – Map 28 Lot 7-138-1 – Seeking a Special Exception concerning Article XII, Sections 307-74 of the Zoning Ordinance to permit construction of an attached garage and unfinished basement space adjacent, with a 1-bedroom Accessory Dwelling Unit above.

Mr. Hopkinson 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. Hennessey noted that Colleen and Tom Gleason did not pay him to let them move up in the agenda.

Colleen and Tom Gleason informed the board that they would like to put an in-law apartment on an existing split-level house.

Mr. Hennessey explained that this case was different from the first case. There are not five criteria. There is simply what is in the statute and regulations for accessory dwellings.

Mr. Hennessey ask Ms. Beauregard if they had given the planning department everything, they needed to go over their plans for a special exception. Ms. Beauregard said they had. They had a septic design that was previously existing for 4 bedrooms. The current house had 3 bedrooms, but one was going to be eliminated, removing a closet, and have the building inspector verify that prior to any occupancy being issued. Ms. Beauregard stated that with that change, the septic design would be adequate, the building inspector had reviewed their plans and meet the size requirement and all other requirements are met.

Mr. Bergeron had one question regarding the ADU state law that applies and wanted to make it clear in this case regarding the number of bedrooms. He referred back to Ms. Beauregard confirming a 4-bedroom septic design and clarified how many bedrooms there would be total after construction. Ms. Beauregard confirmed it would be a 2-bedroom house with a 1-bedroom ADU. Mr. Bergeron questioned why the 1 bedroom gets knocked off. Ms. Beauregard replied that it was due to the loading criteria. She explained that typically an ADU is calculated more than just one bedroom and as a whole, typically includes 1.5 bedrooms and loading is higher for an ADU than an addition with a bedroom. Mr. Bergeron confirmed that speaking with regard to perfect conditions with the soil, etc., leaving the third bedroom in the house would put it 1 bedroom over the requirement. Ms. Beauregard confirmed.

Mr. Hennessey opened the discussion to the public. Jason Gleason came forward to speak in favor. He let the board know that the in law would be for him and his fiancé.

There was no other public input.

Mr. Hennessey clarified that these are no longer "in-laws." They are ADUs, accessory dwelling units. By state law, ADUs can be rented at market rate. An owner can occupy either unit, but they have to be on the premises.

CASE #ZO2021-00026

ROLL CALL VOTE:

Mr. Hopkinson – Yes

Mr. Passamonte – Yes

Mr. Bergeron – Yes, septic more than adequate

Mr. McNamara – Yes
Mr. Hennessey – Yes

(5-0-0) The motion carried.

SPECIAL EXCEPTION GRANTED

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

CASE ZO2021-00018

WILSON, Douglas – 49 Hinds Lane – Map 27 Lot 2-100 – Seeking a Variance concerning Article(s): III, VII, XII Section(s) 307-12, 307-39 & 304-74N of the Zoning Ordinance to permit further construction on an undersized lot where a single-family home already exists, also under permitted uses, the applicant is looking to build a desk partially encroaching the 50 ft. WCD (Wetland Conservation District) buffer zone. To permit construction of an attached ADU to an existing single-family home on undersized lot containing 0.73 acres where 1.0 acre is required.

Mr. Hopkinson 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. Hennessey mentioned they would only read the abutter list once even though there were two cases here, a variance and special exception.

Mr. Wilson came forward stating that he was in front of the board of in support of his application for a variance and special exception. He is looking to take a single-family dwelling and extend a footprint of about 720 square feet, which will then consist of an upstairs ADU and a downstairs department for his mother and two nephews. Mr. Wilson said he will be taking the downstairs and making it into a complete ADA compatible unit, noting that his mother is elderly and has an amputation. Mr. Wilson said he absolutely has to make space for his nephews since his sister passed away in January.

Mr. Hennessey noted that he had read the application and this is two separate cases and asked Mr. Wilson to focus on the variance request.

Mr. Wilson read aloud the responses to the criteria as submitted with the application. He added that he will be modifying the downstairs to make it complaint with modern building codes. He noted the current downstairs bedroom does not have a fire escape due to the windows being too small.

Mr. Hennessey asked Mr. Wilson to go over criteria 5. Mr. Wilson stated that by denying the variance, it would create an unnecessary hardship because had the lot just been a littler larger, he would have been able to do this request without a variance. He also said that the context of houses in his neighborhood. His house was built and the lot sizes were divided up many years before the current ordinance was developed. He stated there is no way he can meet the criteria given the historical nature of the setting and its natural environment because he does simply does not have the right size lot.

Mr. McNamara said that in the submitted there was an authorization for a Susan Lemay to act as agent and asked if she was an attorney. Mr. Wilson said she was not. He explained that he was supposed to be shipped out to Kuwait for work and it thankfully was pushed off. He had asked her to step in in case the MOD (Kuwait's department of defense) decided to put his visa forward quicker than September. Mr. McNamara asked Mr. Douglas if he was okay acting on his own behalf and Mr. Douglas said that was correct. Mr. McNamara expressed his sympathies for the loss of Mr. Douglas' and the familial situation

that exists. He informed Mr. Wilson that the board had to concentrate on the property itself, on both of his applications, and not the family circumstance. Mr. McNamara stated that was because if the board ended up granting this variance that it stays with the property and Mr. Wilson may eventually leave and the town cannot later change the designation. Mr. Wilson said that he understood and it was fair.

Mr. Bergeron asked how many people currently reside in the house. Mr. Wilson informed the board it is currently him and his father. He noted that his mother was residing there and his nephews were for a while but have since got their own apartment while they considered doing construction.

Mr. McNamara asked if the 720 feet that Mr. Wilson was adding was adding to the footprint. Mr. Wilson said that is the additional footprint. Mr. McNamara asked what the total footprint would be. Mr. Wilson said he couldn't come up with the number off the top of his head but that the prints were in the package. Mr. McNamara asked if the deck was partially going into the WCD and Mr. Wilson said that was correct. He also mentioned that he already had a shoreline permit for that from the state saying that it passed all state regulations. Mr. McNamara asked how far it was going into the WCD and Mr. Wilson said it was 20 feet.

Mr. Hennessey ask if Mr. Wilson was right on Gumpus Pond and he replied he was. Mr. Hennessey asked if there was anyone behind him and whether or not he'd be obstructing any views. Mr. Wilson told the board that his family had just sold the land behind them and there were no structures there. Mr. Hennessey asked what the total height of the property would be. Mr. Wilson believed it was 28 feet, that he would have to double check but between 27 and 28 feet. Mr. Hennessey confirmed under 30 and Mr. Wilson said it was. Mr. Wilson also noted that looking at the property it actually dips lower so that looking at it from the roadside it wouldn't be quite that high.

Mr. Hennessey opened the discussion to the public. No one came forward in favor or in opposition of the application. Mr. Hennessey closed the public hearing.

Mr. Hennessey asked the board if they had any questions or comments.

Mr. McNamara had a comment. He stated it was nothing against Mr. Wilson, but they were once again in a situation where the board was varying a special exception requirement, in this case, the requirement from 1 acre to 0.73. Mr. McNamara noted that he had concerns about melding the two in the past and continues to have concerns. He understands the cause is a good one and probably for the best, but we are getting smaller and smaller in terms of where ADUs can be put.

Mr. Bergeron asked if he could ask the applicant some questions. Mr. Hennessey said he would reopen the public hearing for Mr. Bergeron to do so. Mr. Bergeron felt it was necessary and the board would be better served. He told Mr. Wilson that he probably noticed in past hearings that he drills down on the effects that the expansion of the housing unit has on the property in regard to sewage loads, wastewater loads. Mr. Bergeron noted that Mr. Wilson had shown a shoreline protection application in his application and noted they had seemed to come back in favor of that and they leave a lot up to the board. Mr. Bergeron also noted that there was a 2-bedroom design in the packet and questioned whether it was approved. Mr. Wilson stated that it's a 2 bedroom (downstairs) plus a 1-bedroom ADU so 3 bedrooms in total. It is currently two bedrooms. Mr. Bergeron said he thought that then explained the drawings the board has with a bedroom on the first floor of the existing structure and a bedroom on the second floor. The drawing after the ADU addition shows the bedroom on the first floor becoming a study. Mr. Wilson clarified that the bedroom on the second floor would become a study. Mr. Bergeron walked through the drawings on the builder's plan with Mr. Wilson and the board. Mr. Bergeron confirms the new plan put the existing house at a 2 bedroom. Mr. Bergeron said he wanted to talk about meeting the requirements of the state statute and town zoning in regard to increased loads on undersized lots. Mr. Bergeron said there was an approval for a 2-bedroom

Clean Solution Design System. He asked if Mr. Wilson had a septic design for the existing structure. Mr. Wilson said there is a septic design and it was his understanding that the current structure can meet the load of a 3 bedroom with an ADU. He said he also has another design that's filed. Mr. Bergeron verified that was the design for the 2-bedroom system with the ADU for the Clean Solutions system in the packet. Mr. Wilson said that he did have all the documents in the packet, but his understanding was the current septic design is loaded for a 3 bedroom already. Mr. Bergeron questioned if that was on file. Ms. Beauregard said that the approval that was submitted in the packet, the approval for construction, is for a 2 bedroom with a 1-bedroom studio apartment so the total of the 2 bedrooms of the home and a 1-bedroom apartment. Mr. Bergeron clarified with Ms. Beauregard whether or not the loading requirements for the lot were satisfied as far as she knew in the application. Ms. Beauregard said they were as long as Mr. Wilson was keeping 2 bedrooms in the main house, which is what she believed the plan showed. Ms. Beauregard said it was a little confusing because the study was marked twice. Mr. Wilson said he would have to check the plans. The downstairs should not have a study. The upstairs should have a study and doesn't have closets and he is not adding closet space.

Mr. McNamara asked Mr. Wilson for clarification on his mentioning an apartment earlier. He questioned whether it was different from the ADU and Mr. Wilson explained it was the same.

Mr. Passamonte questioned whether Mr. Wilson was only finished two floors. Mr. Wilson confirmed it was just a first and second floor, just two floors.

Mr. Bergeron stated he was looking to make sure that the loading requirements were satisfied. He said he had done a drive by and there were some slopes on the property. He said there appeared to be a vented septic system and Mr. Wilson confirmed. Mr. Bergeron asked whether Mr. Wilson would be constructing another septic, a Clean Solution System. Mr. Wilson explained that he believed he understood where the confusing was coming from. Mr. Wilson said he understood his current septic design had already been qualified to meet the 3.5 load so he wouldn't have to add to it. He got a new septic design so that if the system fails in the future, he already had a filed and approved design. Mr. Bergeron explained that being somewhat familiar with lot loading requirements for undersized lots that some won't perk out for the proposed bedrooms, and he wants to be sure that this lot could handle the load. Mr. Bergeron questioned whether the deck that would be encroaching on the WCD would be done on tubing or full foundation. Mr. Wilson stated it would not be done on full foundation and there was a complete design for the deck in the packet the board members had. Mr. Wilson said the state had looked at it at went as far as saying how close the boards had to be to ensure drainage. He believed there would be rock underneath it to ensure full drainage and it would be as good as it can get to be environmentally friendly. Mr. Wilson also mentioned that he has reduced the size of the build since he got the shoreline permit. He said their plans versus his updated plans were in the packet.

Mr. Passamonte noted that he sees 3 finished floors in the plans. Mr. Wilson said the basement is shown and it is unfinished with windows. Mr. Wilson explained that the property was on a hill with the back being exposed compared to the front of the house. He said the septic design showed the elevations, which the board members commented were too small on the drawing.

Mr. Hennessey asked if it had been reviewed by the building inspector. Ms. Beauregard confirmed it has.

Mr. Hennessey closed the public hearing again.

Mr. Hennessey said the question he had was the further inclusion into the wetlands. The wetlands being the lake. He stated that on the other hand, he is deliriously happy that they have a 0.7 -acre lot on the lake. He said this is a balancing act and he doesn't think it's unreasonable.

Mr. Hopkinson commented that he doesn't think the use is unreasonable. His only concern is the further encroachment in towards the lake. He mentioned he would rather see the deck expands sideways, not towards the wetland.

Mr. Hennessey said that looking at the design, he doesn't feel it's unreasonable. Mr. Hopkinson agreed. Mr. Hennessey noted that Mr. Hopkinson, Mr. McNamara and himself all share the aversion of pushing towards the lake. He said that he knows Hinds Lane pretty well and this will fit into the neighborhood and won't be out of place. There will be no blockage of views. Mr. Hennessey personally thinks the variance request is reasonable. He sees nothing out of sight going through the five criteria. Mr. Hennessey said it's not going to affect values, it's reasonable, it's a unique site on the lake.

Mr. Hopkinson said that it makes him cringe a bit to see the deck going towards the lake. Water displacement towards any type of wetland throws a red flag up for him. But he doesn't feel that it's very unreasonable looking into everything. He mentioned that any type that type of situation comes up in front of the board it is alarming to him, regardless of the structure type.

Mr. Hennessey mentioned that if any board member had spoken up, he would have asked for a site walk. He said that any board member can ask for a site walk and it is often done on a pond. Mr. Hennessey said he is very familiar with Hinds Lane and was involved when the town purchased land on that road. Mr. Hopkinson said he didn't feel the need for a site walk. He felt the board had enough plans in front of them. He just wanted to mention that this was more of an exception for him than the rule. Mr. Hennessey agreed that the board doesn't take further pushing into the setbacks lightly.

Mr. Bergeron confirmed the vote was just for the variance request. Mr. Hennessey said he was correct. They would not be taking the two cases together.

CASE ZO2021-00018

ROLL CALL VOTE:

Mr. Hennessey – 5 Yesses; final vote YES
Mr. McNamara – 5 Yesses; final vote YES
Mr. Passamonte – 5 Yesses; final vote YES
Mr. Bergeron – 5 Yesses; final vote YES
Mr. Hopkinson – 5 Yesses; final vote YES

(5-0-0) The motion carried.

VARIANCE GRANTED

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

CASE ZO2021-0001800019

WILSON, Douglas – 49 Hinds Lane – Map 27 Lot 2-100 – Seeking a Variance concerning Article(s): III, VII, XII Section(s) 307-12, 307-39 & 304-74N of the Zoning Ordinance to permit further construction on an undersized lot where a single-family home already exists, also under permitted uses, the applicant is looking to build a desk partially encroaching the 50 ft. WCD (Wetland Conservation District) buffer zone. To permit construction of an attached ADU to an existing single-family home on undersized lot containing 0.73 acres where 1.0 acre is required.

Mr. Hennessey noted there is no criteria for Mr. Wilson's second case. He asked Ms. Beauregard if Mr. Wilson's plan meets all the criteria. Ms. Beauregard said it does. The plan from Meridian states it is a 2-

bedroom design and a studio apartment. The state has approved the plan for the use of 2 bedrooms and a 1-bedroom ADU.

Mr. Hennessey confirmed with Mr. Wilson that he is the owner of the property and he is going to be living on the premises. Mr. Wilson said he is the owner and will be living upstairs in the ADU.

Mr. Hennessey asked if there were any questions from the board. There were none.

No one came forward to speak in favor or opposition of this request for a special exception.

Mr. Hennessey asked Mr. Wilson if he had anything to add. Mr. Wilson said he had nothing to add except to say he believed it meets all the requirements and it is under 1,000 square feet.

Mr. McNamara asked Ms. Beauregard if it meets the 76% common wall criteria and Ms. Beauregard said the criteria no longer exists.

Mr. Bergeron noted that coming into this, the only thing that he was apprehensive about was the septic loading. He understands the lot size. He said he had taken a drive by and the property has a steep slope. Mr. Bergeron was glad to hear the current system, a high vent/low vent system, fairly modern system, was in place and belonged to the applicant. He noted that on the plan this wasn't totally clear to him. Mr. Bergeron is now comfortable with the decision that he is going to make.

There were no other comments from the board.

CASE ZO2021-00019

ROLL CALL VOTE:

Mr. Hennessey – Yes
Mr. Bergeron – Yes
Mr. Passamonte – Yes
Mr. McNamara – Yes
Mr. Hopkinson – Yes

(5-0-0) The motion carried,

SPECIAL EXCEPTION GRANTED

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

CASE ZO2021-00020

MANN, Shawn M Revoc Trust – 6 Hemlock Drive – Map 15 Lot 8-191 – Seeking a Variance concerning Article XII, Section(s) 307-74D of the Zoning Ordinance to permit an Accessory Dwelling Unit to be utilized within the existing structure without receiving an updated NHDES approved septic design.

Mr. Hopkinson 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.

Joe Maynard, Benchmark, LLC, came forward on behalf of the Shawn Mann Trust. He explained that there were two requests before the board. The first request is a variance to the requirement to do an updated septic system design on the property. He explained that there is a newer septic system that was designed and installed for the property in 2006 and is in good working order. Mr. Maynard explained this is a 1.7-

acre property, not a small lot. He explained the second part of this is a special exception to allow an in-law, an ADU within the structure.

Mr. Hennessey said he was curious whether or not the board can give a special exception without having an updated septic system design. Mr. Mann said his take was the board can. He said that if the board can't, he can move forward with getting an updated design. He said he is trying to help the estate finalize some things that were started on this property 5 to 10 years ago. Mr. Maynard said he has been in the property and has pictures of the ADU and that it looks old. Mr. Maynard believes that it has been in the house a long period of time was not sure when it was actually constructed.

Mr. Hennessey confirmed this is an existing accessory dwelling, which the board is seeing some of. He said the town is encouraging people to come to the planning board to see if it is possible to make these existing ADUs legal.

Mr. Maynard said that when he looks at land for ADU purposes, his understanding is that the primary objection from the state law is that they have to show loading criteria. He explained there are a lot of different options for septic systems today and that one can pretty much be fit anywhere for any number of bedrooms. The biggest factor driving how many bedrooms a property can have has to deal with the lot size. Mr. Maynard believes this is why the town has a 1-acre requirement for an ADU. Mr. Maynard explains that when loading is looked at, they look at the soils, the size of the lot. He explains that this property has water tables at 54", a group 2 soil, which is a sandy soil higher perk rate. Mr. Maynard gave an explanation of how the state looks at site loading and on bigger lots, such as this property, it's not an issue. Mr. Maynard believes that a new septic design done because of the lot size and that it was a new approval.

Mr. Hennessey asked Ms. Beauregard if the board can approve a special exception, which doesn't abide by the rules that have been established for such a property. Ms. Beauregard explained that would be up to the board. A variance can be issued to anything that is within the zoning ordinance and it would be up to the board. Mr. Hennessey questioned again that the board can issue a variance to break their own rules. Mr. Maynard said that's what a variance is. Mr. Hennessey explained a variance was basically an exception to the rules because there is a hardship. Mr. Hennessey asked Mr. Maynard to explain what makes this property different than others. Mr. Maynard explained his take was this lot was different because of its proximity in town and the soils group that it has and the fact that there's an existing plan that's already been installed. He said that a lot of times when permits are drawn on these there isn't a state approved system on the lot.

Mr. Hennessey asked Mr. Maynard to go through the 5 criteria with special emphasis on hardship. Mr. Maynard read aloud the responses to the criteria as submitted with the application.

Mr. Hennessey asked who owns the property. Mr. Maynard said it is owned by the estate and the daughter lives in the house. Mr. Hennessey confirmed with Mr. Maynard that the daughter was part of the trust. Mr. Hennessey noted that she is the owner so that meets one of the criteria for an ADU. Mr. Hennessey explained that what has changed since this ADU was put in is that ADUs are now rentable units and he feels they should meet as much of the modern criteria as possible. Mr. Hennessey stated that he didn't feel that it was onerous to ask for a design to be on file with the state for a property that has a rentable unit, to have something ready with the state in case there was a problem for the tenant.

Mr. Bergeron said he had to disagree with Mr. Hennessey. Mr. Hennessey stated he was open on this. Mr. Bergeron said he would base it on some things he was clear on and some thing he wasn't. One thing Mr. Bergeron was basing this off of was the underlying soils on the lot that had been addressed by Mr. Maynard. Mr. Bergeron noted that the underlying soils were quality soils for septic design. Mr. Bergeron said he was very confident, and Mr. Maynard has demonstrated, that this property would easily design for a heavier

loading system. Mr. Bergeron said that organizations that he belongs to and Mr. Maynard belongs to have tried to come up with a “cookbook recipe” to fix the problem that Mr. Hennessey asked about with ADUs being built. Red flags immediately go up with regards to sewage loading. Mr. Bergeron said the state can’t come up with a “cookbook” idea for this and parties lobbying in the legislature don’t seem to be getting too far.

Mr. Bergeron stated the board is honored to have an attorney sitting on the board. He referred to an ending sentence in the approval for increased load on sewage and disposal statute, which is 485A:38. The last sentence under this series of rules for loading calculations and what has to be done to allow ADUs states, “Construction of the surge disposal system is not required to satisfy the requirements on this subparagraph.” Mr. Bergeron stated that when he reads this it reads that all these things have to be in place but in closing then says, “Yeah, but you don’t have to build it.” Mr. Bergeron thinks that, as a board, they should be familiar with the areas of town and make case by case, merit by merit decisions on every case. Mr. Bergeron feels that asking the applicant to spend a couple of thousand dollars would create an unnecessary burden or hardship because he knows that this system will prove out. He said he knows this from having his installers license. Mr. Bergeron asked Mr. McNamara to read the paragraph that he was referring to. Mr. Hennessey said the board has the ability to grant a variance.

Mr. Bergeron noted that he worked hard to get the ADUs passed but with the caveat that they be built safely and to protect ground and surface water. If he had any doubt that this property wouldn’t prove out, that he would not be voting to grant the variance.

Mr. McNamara referred back to what Mr. Bergeron asked him to read. He read through the paragraph outload. Mr. Hennessey said the board always new that property owners did not have to put a new system in. Mr. Bergeron said the spirit and intent, when they sat as a subcommittee and drafted this to be compliant with the state ADUs, was to make it as easy as possible and not create any unnecessary burden on property owners. The board put it in front of the board of adjustment to apply the special exception rules and they need to be met. Mr. Bergeron said Mr. Hennessey’s question was whether or not the board could vary what board members see as a requirement to a special exception. Mr. Hennessey explained this could be done by going through the 5 criteria and if it is a hardship, the property is unique, etc. that a variance can be granted for anything in the zoning. Mr. Hennessey noted that he was listening closely to Mr. Bergeron’s explanation because he was nervous about going against the criteria for a special exception. Mr. McNamara noted that just did that in the previous case and he finds this case less intrusive than the previous one. Mr. McNamara said that varying the rules is a slippery slope. Mr. Hennessey didn’t think it was as long as the board was in agreement that there was a high bar. Mr. Bergeron explained that there was a subtle difference between this case and the previous case. This case is a known piece of property with an underlying soil that is positively a soil that can handle a surge load. He noted that he was concerned that the lot could not meet the requirements.

Mr. McNamara noted that Mr. Maynard explained things perfectly and he relies on his expertise. He noted that Mr. Hennessey and Mr. Bergeron make good points. However, reading the paragraph Mr. Bergeron asked him to that because the system was already constructed and in place and will handle the load that the paragraph didn’t apply. He believes that it is saying that construction isn’t required, and the plan can be left on file.

Mr. Maynard said he writes loading letters for people for different types of projects all the time and that he does a lot of soil analysis and loading calculations. He explained prior to 1983, there were no soil loading calculations.

Mr. Hennessey said he appreciated Mr. Bergeron and Mr. McNamara’s input and that this is a slippery slope. He said all cases need to be analyzed to the Nth degree, trying to create a loophole in special

exceptions would be dangers. Mr. McNamara added that if that you start merging the two there will be no such thing as a special exception because if you don't have to meet the criteria you can just get a variance, which Mr. Hennessey agreed. Mr. Hennessey wants the board to understand that the case should be "special," in order to grant the variance.

Mr. Maynard added that he thinks it should have been a 4 ½ bedroom design, not a 4-bedroom design. He thinks what the property owners thought they were getting out of the design wasn't done in the right fashion. He stated again that it is dated inside and seems like it's been there for a while. They are now just trying to get things up to par with the town.

Mr. Bergeron asked what type of system it was. Mr. Maynard said it was a Presby Enviro Pipe system. Mr. Bergeron said that he knows it works.

Mr. Wing has Mr. Maynard to explain good working condition. Mr. Maynard said the system is in the ground. There are no obvious signs that it is failing by having things such as bright green grass about showing nutrients leaking out from fluid. Mr. Maynard said he didn't think the house had seen a heavy load in many years and the system is probably overdesigned for what it is currently being used for.

No one came forward in favor or in opposition of the application.

Mr. Maynard had nothing to add before the public hearing was closed.

The board had no other questions or comments. Mr. Hennessey thanked Mr. Bergeron and Mr. McNamara for their input, and he said they helped him with his decision.

Mr. Hennessey went through the 5 criteria.

Criteria 1 – The variance will not be contrary to public interest

No one had an issue with this criteria.

Criteria 2 – The spirit of the ordinance is observed.

Mr. Hennessey noted Mr. Bergeron helped him a great deal with his criteria.

Criteria 3 – Substantial justice is done.

No issues.

Criteria 4 – The value of surrounding properties are not diminished.

Mr. Hennessey noted he did not see how that was possible in this case.

Criteria 5 – Unnecessary hardship.

Mr. Hennessey said he believed this came down to what Mr. Bergeron was saying. If the board stuck to the rules, would it cause an unnecessary hardship? Mr. Hennessey said this is where Mr. Bergeron got him to change his mind.

CASE ZO2021-00020
ROLL CALL VOTE:

Mr. Passamonte – 5 Yesses; final vote YES

Mr. Bergeron – 5 Yesses; final vote YES
Mr. McNamara – 5 Yesses; final vote YES
Mr. Hennessey – 5 Yesses; final vote YES
Mr. Hopkinson – 5 Yesses; final vote YES

(5-0-0) Motion carried.

VARIANCE GRANTED

CASE ZO2021-00021

MANN, Shawn M Revoc Trust – 6 Hemlock Drive – Map 15 Lot 8-191 – Seeking a Special Exception concerning Article XII, Section(s) 307-74 of the Zoning Ordinance to permit an Accessory Dwelling Unit within the existing structure of a single-family home.

Mr. Hennessey noted the abutters list was read in the first case.

Mr. Hennessey noted there wasn't much to add after the first case.

Mr. Bergeron said it was typical to ask if everything else on file meets the criteria. Ms. Beauregard said with the variance in place they met all the criteria.

CASE ZO2021-00022

ROLL CALL VOTE:

Mr. McNamara - Yes
Mr. Passamonte - Yes
Mr. Bergeron - Yes
Mr. Hennessey - Yes
Mr. Hopkinson – Yes.

(5-0-0) Motion carried.

SPECIAL EXCEPTION GRANTED

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

At approximately 9:17 Mr. Hennessey said the board would be taking a break. They board returned at approximately 9:23.

CASE ZO2021-00023

Lebel Land Holdings, LLC – 1013 Mammoth Road – Map 7 Lot 4-188 & 5-43 – Seeking a Variance concerning Article(s) II & III, Section(s) 307-6 #10 & 307-12, 307-13A #2, 307-13B #1, 307-14 of the Zoning Ordinance to permit lot 7-4-188 to become a duplex lot with 198' of frontage where 200' is required, and to create another duplex lot 7-5-43-B with 192' of frontage where 200' is required. To allow the creation of duplex lots with naturally occurring slope over 20%. To allow a shared driveway for access to the 3 lots and allow two of the lots to not have driveway access from where they have frontage.

Mr. Hopkinson 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. Hennessey asked Mr. Maynard to go through the letter of intent. He explained this was a complicated application. He said the letter of intent that was put with the application helped him understand what was asked for.

Mr. Maynard said they are asking for three things on this application. The first is Map 7 Lot 4-188. He explained that they were before the board a few months ago asking for an accessory unit within this structure and that application was denied. Mr. Maynard said they went back to the drawing boards and looked at the property next door to see what could be done. They are looking to add land to that lot to get it above the 2-acre threshold. This lot has 198 feet of frontage where 200 feet is the requirement for that to be a duplex lot. The second lot is currently a vacant property, Map 7 Lot 5-43. This second property has 392 ½ feet of existing frontage. They are looking to create one conforming lot with 200 feet of frontage and the second lot would have 192.5 feet of frontage. The next part is the creation of duplex lots. There is a section of the zoning ordinance that talks about land outside of WCD and the creation of lots with certain slopes. These properties have a good size hill coming down to Mammoth Road. Mr. Maynard said the lot can have the area that's required on this lot, but it is fragment. He said his understanding was that the lot had to have contiguous area with "no more than the 20% slope occurring across the building envelope." On this property, the building envelope is down on Mammoth Road, where the existing house is, but he could meet the naturally occurring slope requirement between the front and back of the lot. He then said that with the creation of the two new lots he has land at the top of the hill that would meet the requirement, but he can't physically get up the hill to get to it. He would therefore be looking to build on the slope that's down below. This is about a 23% slope, where 20% is the town's maximum. The last part of the request deals with allowing a shared driveway. Mr. Maynard said he has asked for that type of variance on a couple of other occasions. The primary issue in this case is that because of the hill, it sits on the inside of a curve on Mammoth Road, which is a state road and therefore has more site line requirements than the town's requirements. Due to this the property would need 400 feet of site line associated with the driveway. He explained that in order to get 400 feet of site line they would have to excavate down about 20 feet in the first 50 back to get the site line along the frontage of that property itself. He said if they were to do this, they would end up with a flat area of about 50 feet and then a vertical wall behind it just to be able to get into that lot. Mr. Maynard explained he was looking to move the driveway down closer to where the existing structure is on the other lot that his client also owns. Based upon moving the driveway to that location and cutting the slope with a modest cut towards the street he is able to achieve the DOT standards for safe sit distance associated with it. He reiterated there were three parts to the request, dealing with three lots.

Mr. Hennessey said the explanation helped a lot with trying to figure out what the case was all about.

Mr. Maynard said that after he left the last meeting he sat down and tried to figure out what could be done with this land. He explained some of what he went through trying to figure this out. He said he can make the whole thing work reasonably by working with the front section of the lot.

Mr. Maynard read through the five criteria as submitted with the application.

Mr. Hennessey told Mr. Maynard he has gotten very creative. Mr. Maynard said he always tries to make sure things work before coming to the board. He said he sat and did his homework working with this property. He believed that as presented, this is a fair subdivision of the property.

Mr. McNamara asked Mr. Maynard to put his map up on the screen. He asked whether the proposed driveway was around 400 feet long, in which Mr. Maynard confirmed. He asked approximately where the duplexes would be placed. Mr. Maynard said they would be right in the middle of each lot, centered. Mr. McNamara asked if the lots were usable land, aside from the slopes. Mr. McNamara explained there were not wetlands on the property. It is just a hill. Mr. McNamara asked if the slope ran the entire length of the lot. Mr. Maynard said it runs about two thirds of the length. He said on lot A there was about 2 acres of usable land at the top. The other lot is fragmented with the slope. He explained there is a subdivision behind this land that has a driveway that goes within about 50 feet of the lot line. That division has terraced the slope to reach their buildable area. He explained that was a private driveway that services two homes.

Mr. McNamara commented it was a pretty steep slope. Mr. Maynard said that this would be a walk out front of the house instead of a walk out basement and they would work with the grade.

Mr. Bergeron asked Mr. Maynard to simply some things for him. He said the two parent properties are two lots and asked if the first lot would be 5-43 and the second lot would be 4-188. Mr. Maynard explained that 5-44 is the 8-acre property and 4-188 is the .46-acre lot. Mr. Bergeron asked if he heard that 188 would have a duplex. Mr. Maynard said he was looking to get it approve to potentially be a duplex. Mr. Bergeron told Mr. Maynard that was the best attempt he'd ever seen to, "circumnavigate the intention of a properly shaped lot for the use intended," and he will not support that concept. He said that he would never have a lot shaped like that happen while he was on any board for that intent. He said there was no practical way that Mr. Maynard would be able to do that. Mr. Bergeron said that was the most irregularly shaped lot that he had ever seen proposed. Mr. Maynard said they had originally asked for a variance to allow an accessory dwelling unit within that structure. There is vacated room on the second floor of that structure since the variance was denied. He said he could make that an up and down duplex with that structure if he had the 2-acres and a variance for frontage. Otherwise, the property would remain a single-family.

Mr. Passamonte explained he didn't have one of the pages in his packet, so he was reviewing it. He asked if it had gone to the planning board for lot line adjustment or did they need a variance first. Mr. Maynard and Mr. Hennessey said that a variance was required first.

Mr. Bergeron said if this request got past the board that he believed it would be considered a minor subdivision. He confirmed that the way it was proposed there would be 6 units in the property. Mr. Maynard said it wasn't looked at that way. It was just looked at by lots. Mr. McNamara said a 3-lot subdivision with 6 units. Mr. Bergeron said he had never seen that done on a common driveway on a 23% slope.

Mr. Wing asked Mr. Maynard to clarify a few things. He asked if the building on lot A would be built about midway, where it said lot A on the drawing. Mr. Maynard just it would be just below that. He was trying to run with the slope in order to put the driveway in. The driveway would be an 8% slope with the houses uphill of the driveway about 50 feet. Mr. Wing asked if the same was true with lot B. Mr. Maynard said it was and on the drawing, it was closer to where it said lot B. The last lot is just the existing house as it sits.

Mr. Hennessey interrupted to poll the board. They had previously stated they would not start any hearings after 10:00. The board agreed. Mr. Hennessey apologized to those cases left on the agenda. He noted this was the first time in a long time that they had not finished an agenda before 10:00. He assured them that if they were on the agenda for tonight that they would be first on the agenda for the September meeting. Mr. McNamara asked if Mr. Hennessey was going to date specify those cases. Mr. Hennessey said he would date specify all the remaining hearings to the September 13 meeting in the order of which they were marked on the agenda.

No one from the public came forward to speak in favor or in opposition of the proposal.

Mr. Hennessey noted this was an unusual proposal for the board. He left the public hearing open so the board could ask questions.

Mr. Hopkinson said he is not a fan of shared driveways, never mind for the 6 units. There would be 6 units using a shared driveway on Mammoth Road. He said that the variance for the usage of a driveway at a 23% angle for 6 families on Mammoth Road poses a risk within itself. He said shared driveways can make the community look like there isn't cohesion. He said they can look hodgepoded and forced in. Mr. Hopkinson said that he had never looked at this property personally. He was concerned with the slope and

water displacement coming onto Mammoth Road that he was concerned about ice forming on the driveway where cars are trying to enter and exit. Mr. Hopkinson said he had a lot of concerns about the proposal in general, not about the road frontage, but the slope of the driveway, the shared driveway and the fact that it's on Mammoth Road.

Mr. Wing said he also didn't have a problem with the frontage, nor did he have a problem with the slope. He said he thinks there are at least 2 or 3 properties that he drives by on Mammoth Road with similar slopes. He can't recall whether or not those properties had ice issues but felt that would need to be addressed by the homeowner. Mr. Wing's hesitance is the duplex on the last lot. He said the duplex on the other two lots are in character with the other structures in the area that aren't too far away. He reiterated the issue was with the duplex on the other small lot. He said it was creative to put the duplex up and down.

Mr. Hopkinson added that his main concern was the slope was at the entry of the driveway and it seems to go up 80% of the driveway.

Mr. Passamonte expressed his concern with the odd shaped lot, area C. He always wanted to see how the houses would be proposed in conjunction with the driveway. He said to him it looked more or less like a private road with driveways coming off to the houses.

Mr. Caira agreed with Mr. Passamonte, that it looked like a road that forks off into the lots. He said he also agreed with Mr. Hopkinson about the danger having the slope in the front of the lot going out onto the road.

Mr. Bergeron said his concerns were with the slopes, the shape of the lot, the private driveway and the length of the private driveway on the slope. He felt this could be designed with a real road, if necessary, that would guarantee some safety. This is not 3 single-families but 3 duplexes. Mr. Bergeron restated that he is not in favor of granting a variance.

Mr. McNamara said he also did not have concerns with the frontages on the lots. They are close enough. He had some concern, not a lot, on the driveway. He said if it was done correctly that having one access come off was much better than three individual driveways on that stretch of a dangerous road. Mr. McNamara's concerns were with the unusual shape of the lots and the large slope. On the other hand, Mr. McNamara said that is a lot of land and there has to be some use of the land. He said if the board denies this, they are almost denying the opportunity for any reasonable use of the property.

Mr. Hennessey said that was his problem. He is hearing the board and their concerns. He felt that with 8 acres of land with that much frontage the board ought to cut the applicant slack. He said this is a time when the town is under a microscope for not having enough smaller units built. He asked the board to think about that.

Mr. Maynard said the 23% slope is not the angle of the driveway. The slope is if you were coming straight up the hill right in the center of the frontage. The DOT has strict driveway regulations. He explained the DOT regulations in relation to this driveway. He said this driveway would have a gradual grade and the maximum grade of the slope of the driveway is at 8%. The driveway is following the length and being built into it. He said he wouldn't create a driveway that would have drainage and ice issues. This driveway would have to meet the town's ordinance. It would be 14 feet wide and would have some sort of a turnoff associated with it. He said they will have to put drainage uphill of the houses. The final planning board design for the driveway will have drainage measures associated with it. Mr. Maynard said he knows Mr. Bergeron's position on odd shaped lots. However, he is trying to keep lots A and B rectangular and is trying to make the residual lot comply with something. He pointed out the current house has a circular driveway and part of this would be the driveway going up the hill to the two lots. He explained the DOT regulations for driveways and how this would fit in. Mr. Maynard said looking at this from a development

under today's regulations, if he had to build a road into the property, he would basically need a mining permit because that's how much work he would have to do grading this lot to meet ordinances. He noted that the principal business of his clients is owning and renting property. Mr. Maynard said he won't let something go that's going to have issues and the plans would need planning board approval.

Mr. Bergeron asked Mr. Maynard if he had been on Bush Hill and seen the work that was being done to produce a 400-foot line of site. Mr. Maynard said he drives by and shakes his head. Mr. Bergeron said he understands some pieces of property are difficult. He said it would be hard to make an exception without more detail. He commented that the driveway did look like a roadway cut into some driveways. He feels the way that it's intended to be used is not the best. Mr. Bergeron said that if it was a different type of property with different types of topography, he could get it. He said that Mr. Maynard said that this could be developed conventionally but it was too expensive to the applicant. Mr. Bergeron wasn't sure that created an unnecessary hardship. He said Mr. Maynard had said it had the potential for a full-blown subdivision and maybe that's the direction this property should go.

Mr. Maynard said his take is that it's not practical to make a conventional subdivision because of the size of the cut needed to make a conventional road.

Mr. Bergeron explained that the area where you enter could be a road that comes up gently and turns around with a cul-de-sac and come back. Mr. Maynard was shaking his head no. Mr. Bergeron asked how a driveway could be put with all the little driveway but not build a road up to standard. Mr. Maynard said he can put a driveway built to standards. He explained that to put other cuts into the property doesn't make sense.

Mr. Hennessey noted it wasn't a planning board meeting. There were no other questions regarding zoning. Mr. Hennessey closed the public hearing.

Mr. Hennessey discussed the five criteria.

Criteria 1 – The variance will not be contrary to public interest

Mr. Hennessey said he was interested in the three board members with planning board experience regarding the slopes. He explained he had a different take on the common driveway. He didn't like the idea of a bunch of individual driveways coming into a turn on one of the most dangerous roads in the town. Mr. Hennessey like the combination of the driveways into one, single outlet. He felt that although the town didn't traditionally like common driveways that this case called for it.

Mr. Passamonte said he was looking at it like a private road. He didn't see where the houses are or how long the driveways are going to be. Mr. Hennessey said that was for the planning board. He said this board gives the variance for the concept of the common driveway as part their evaluation of the zoning. He said the planning board would get into the details of where the driveways would be. Mr. Hennessey said if Mr. Passamonte felt that all common driveways are not in the public interest that is fine and a lot of people feel that way. Mr. Passamonte said he was not opposed to common driveways but didn't feel there was enough information there. Mr. Hennessey said Mr. Passamonte needed to separate between zoning and planning and that type of detail would go in front of the planning board. Mr. McNamara noted it would be a substantial expense to do the engineering without having a variance granted.

Mr. Hennessey went back to Mr. Bergeron's discussion of the third, hatchet shaped lot. He said that if the board members felt the configuration of that lot wasn't in the best interest of the public they would say no on this criteria.

Mr. McNamara said it had to be a marked deviation that affects public safety for it to be contrary. It has to be a substantial danger.

Mr. Hennessey said he was okay with this criteria but if the board feels that it is not in the best interest of the public, a marked deviation from the best interest, that they would vote note. Mr. Hennessey and Mr. McNamara said they feel it meets this criteria.

Criteria 2 – The spirit of the ordinance is observed.

Mr. Hennessey asked if anyone had a problem with the small deviation from the 200-foot frontage. No one had an issue.

Mr. Hennessey asked if anyone had a problem with a creation of a duplex lot on a slope of 23% versus 20%. No one came forward with an issue.

Mr. Hennessey said the third request had to do with the shared driveway. He didn't see an issue but asked people to speak up if they had an issue. Mr. Passamonte said he understood about splitting planning and zoning. Mr. Hopkinson asked at what point you would say a road needs to be placed. Would it be eight units versus the six or ten units? He asked what the protocol was. He said looking at it from a safety perspective, he questions how a firetruck would get up it in the snow or an ambulance. Mr. Hennessey said Mr. Maynard had answered that and said there was a 5 to 8% grade across the driveway. Mr. Hennessey said that was in the lower range of grades in the town and it wasn't an excessive grade. Mr. Hopkinson said he understood that. However, the board didn't know where the houses were going to be placed or where the driveways would come off of the proposed driveway. Mr. Hennessey said this was all the information they wouldn't get until the board approved it and then planning would look at it. Mr. McNamara said planning may even change it drastically and they may have a problem with the grade. Mr. McNamara said if Mr. Maynard can't come up with an adequate driveway that the planning board wouldn't accept it. Mr. Hopkinson questioned why they could put a driveway but not a road. Mr. Hennessey explained that the requirements for a driveway are far less than the requirements for a road. Mr. McNamara noted the expense of a road versus a driveway. Mr. Hopkinson said what he was getting at is that it is a financial hardship and how can you vote yes on a financial hardship. Mr. Hennessey said the board does it all the time. Mr. Hopkinson said they're not supposed to though. Mr. Hennessey said that there has to be consideration for what is doable and what isn't and the financial aspect is part of that. Mr. Hennessey explained that if the proposal had to go straight up a 30% slope that he would vote against it because the grade would be excessive, but he didn't have a problem at 23%. Mr. Hopkinson said they have to be consistent of where the hardship is, is it on the land, the wallet.

Criteria 3 – Substantial justice is done.

Mr. Hennessey said he understands Mr. Maynard and he has 8 acres and is trying to maximize his yield off the land and has come up with a creative plan. Mr. Hennessey said he is not sure that that land, where it is located and the slope, should have 6 dwelling units on it. He said the board has had the discussion before that not every parcel of land ought to be developed to its legal fullest. Mr. McNamara asked if Mr. Hennessey would be okay if the proposal was for 3 single family homes with everything else being equal. Mr. Hennessey said no. He feels this is the place for duplexes. There are other duplexes in the area, it is heading up to some industrial stuff. He's not sure this should be three lots. He said the board has turned down lots that met all the criteria on paper, but they knew other factors. Mr. Hennessey said he thinks this a rough parcel to try and put three lots in that area. Mr. McNamara noted that even if the board grants the variance, the planning board might not approve three lots. Mr. Hennessey that he didn't want to dump this case on planning. He said the board needed to make a judgement call. He said they need to look at substantial justice. The board wants the landowner to get what they should out of the property that they

have. Mr. McNamara questioned is the benefit to the public outweighed by the detriment to the community. Mr. Hennessey said he is not sure in this case and this is a tough spot to try and put three lots.

Mr. Bergeron said he liked what Mr. Hopkinson said about where there's a driveway, there can be a road. Mr. Bergeron didn't believe it was unfair or a burden to ask the applicant to "step up the game" in order to get the maximum yield. He said if the property could hold more than three duplexes and was built under conventional conditions, he wouldn't have an issue but was not okay with waiving slope and road requirements for the sake of that.

Mr. Hennessey said there are three exceptions that the board is being asked to grant.

Mr. Westwood said he had more of a learning question. He said the board had a case several months ago that the planning board had to approve most of. He said the only thing he understands is the board has to do the variance. Mr. Hennessey said, yes, they had to vote on the request. Mr. Westwood questioned whether the board would want to know where planning stood first on the rest of the issues. Mr. Hennessey said that Mr. Maynard needed the variance before he could go to planning. Mr. Westwood understood the variance was needed first. He was wondering if the cart was before the horse with the case or if the variance was something that would be voted first. Mr. Hennessey said the variance is voted on first. He said Mr. Westwood had a lot of good points and there was a lot of planning board type stuff brought before them. Mr. Hennessey said the board had to look at the five criteria and that's what he was trying to look at.

Mr. Hennessey said in regard to substantial justice, Mr. Maynard has a claim. There are 8 acres. He has a right to develop land and maximize his return. Mr. Hennessey said he is not sure that the parcel, regardless of the size, calls for three lots.

Criteria 4 – The value of surrounding properties are not diminished.

Mr. Hennessey noted that Mr. Maynard noted in his application that this is a mixed-use area. It is an area with single family homes and duplexes. Mr. Hennessey and Mr. McNamara don't believe this will affect surrounding values.

Criteria 5 – Unnecessary hardship.

Mr. Hennessey said this is usually the big criteria. This is a weird, 8-acre lot, strange shaped lot with a big slope on a busy road. He said Mr. Maynard offered a creative solution to get the most out of the land. Mr. Hennessey said there is a hardship on this land but he's not sure it is to the level of 3 variances to get 3 different lots.

Mr. McNamara said in his view it might qualify.

Mr. Hennessey said he disagrees. He feels there is no doubt that they could put two houses on the land, either single family or duplexes. Mr. McNamara confirmed Mr. Hennessey's issue was with the three lots. Mr. Hennessey said it was asking too much of the hardship. He feels there is a hardship and he deserves a variance but three separate lots out of the parcel is too much given where and what it is. He said there could absolutely be an agreement the other way and looked for board feedback.

Mr. Bergeron said that taking a parent property over 8 acres and immediately seek 3 variances that the best effort is not being put forward to develop the land. Mr. Bergeron sees that as an issue. He also feels that where there is a driveway, there can be a road.

Mr. McNamara questioned whether that was precisely why it was an unnecessary hardship. Mr. Bergeron questioned the strict application. He asked was it to build something that can be safely and reasonably accessed by fire equipment. Mr. Bergeron said they would have to have a complicated legal agreement to keep the driveway in good condition. He said we all count on the town to fix our tax funded roadways when they fall into disrepair. He said that this has to be looked at 30 or 40 years from now and feels this is Pandora's Box.

Mr. Hennessey said that he has dealt with Hollis and Boxford extensively and private roads have not been detrimental to the property values in those towns. He said that he is talking about single family houses off of common roads.

Mr. Bergeron said that at one time in the zoning there was a regulation that driveways could be required to be built up to town road standards. Ms. Beauregard said that it used to be that if more than 2 houses were being served by a single driveway that the driveway had to be brought up to town standards.

Mr. Hennessey said in general he is not against common driveways. He said Mr. Bergeron is right about this one being a problem. He said they need to get back at the three zoning requirements. Mr. Hennessey said he would vote yes on criteria 1 and 2. He would vote no on criteria 3. He feels that three variances on a property at this location is too much. He said he would vote yes on criteria 4. He said he did not see either one criteria five. He said there are provisions for good reasons. Mr. McNamara said they need to look at special conditions of the property and a couple meld together. Mr. Hennessey said fair use is a reasonable one. He said no on B. He said the land can be used. Mr. McNamara said he heard Mr. Hennessey but he was going to vote yes on everything. Mr. Hennessey said he completely understand. Mr. McNamara questioned that by voting on the variance request that didn't mean that was what was going to be allowed. Mr. Bergeron disagreed. He said if the planning board is handed something problematic that they can't fix it. Mr. Hennessey said looking at the zoning he felt it didn't meet their criteria.

CASE ZO2021-00023

ROLL CALL VOTE:

Mr. McNamara – 5 Yesses; final vote YES
 Mr. Bergeron – 5 Nos; final vote NO
 Mr. Passamonte – 2 Yesses, 3 Nos; final vote NO
 Mr. Hennessey – 2 Nos, 3 Yesses; final vote NO
 Mr. Hopkinson – 3 Yesses, 2 Nos; final vote NO

(1-4-0) Motion failed.

VARIANCE DENIED.

DATE SPECIFIED CASE(S) – September 13, 2021

Case #ZO2021-00024 – Map 1 Lot 5-127-1 – BOUTWELL, Nathan – 1406 Mammoth Road

Case #ZO2021-00025 – Map 34 Lot 1-10-9 – CHEUNG, Kai & Jennifer – 7 Wilshire Lane

CASE #ZO2021-00027 – Map 30 Lot 11-162 – CHAREST, John – 5 Methuen Road

ADJOURNMENT

MOTION: (Mr. McNamara/Mr. Passamonte) To adjourn the meeting.

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

The meeting was adjourned at approximately 10:30 p.m.

Respectfully submitted,
Jill M. Atkinson
Recording Secretary

The meeting was adjourned at approximately 9:10 p.m.

Respectfully submitted,
Jill M. Atkinson
Recording Secretary