



MEMORANDUM

To: Planning & Zoning Commission  
Re: Non-Conforming Lots in the R-1 Zone  
Date: March 1, 2023

The R-1 Zone (Lakeside and Village Residential) was created in 1990, when it replaced the RA-1 Zone (Single Family and Conversions) and RA-2 Zone (Lake Residence). The current zone paints with a broad brush, and includes residential properties surrounding Lake Pocotopaug, the Village Center, to the west of the Village along Barton Hill and to the east roughly between Summit Street and Watrous Street. The R-1 area and dimensional requirements are in the table below.

	<b>With Sewer</b>	<b>Without Sewer</b>
Minimum Lot Area (square feet)	20,000	60,000
Minimum Lot Width (feet)	125	150
Minimum Lot Depth (feet)	125	200
Minimum Lot Frontage (feet)	100	100
Maximum Lot Coverage (percent)	20%	10%
Minimum Front Setback (feet)	25	50
Minimum Side Setback (feet)	15	25
Minimum Rear Setback (feet)	25	50
Maximum Building Height (feet)	30	30

The zone encompasses much of the older housing stock in Town, and incorporates many neighborhoods which were created long before the modern zoning regulations were adopted in 1958. The vast majority of the lots in neighborhoods which surround Lake Pocotopaug are far smaller in lot size than the minimum size required in the zoning regulation and are legally non-conforming. As such they can be developed and redeveloped in a manner consistent with the zoning regulations in accordance with Section 8.2.

A breakdown of the non-conforming conditions is below, but in short, 65% of the zone consists of non-conforming lots with regard to lot size alone. Taking into account other bulk requirements such as lot width, depth, and frontage, the number of non-conforming lots increases. A map of the zone showing these non-conforming parcels is attached to this memo as Exhibit A.

R-1 Zone Statistics

6,236 Parcels in Town

1,434 Parcels in R-1 Zone (23%)

965 Non-Conforming Lot Size (65%)

26 Lots conform to Lot Size, but not to frontage requirement.

Following the completion of the centralized sewer system in the 1980's, the vast majority of what were once seasonal cottages began to be converted to year round homes. Many properties were

redeveloped with additions and reconstructions. The existing condition of so many undersized lots has led to a large number of variance requests over the years. In an effort to appease landowners and allow conversions and reconstructions, the Zoning Board of Appeals has been put in a position to approve variances where often time, a hardship, as defined by CT General Statutes section 8-6, may be difficult to prove.

For reference, a hardship must be present to issue a variance. The Board of Appeals may issue a variance *"...solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such bylaws, ordinances or regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured..."* Simply stating a lot is undersized, where an entire neighborhood is made up of undersized lots, is not enough to prove a hardship and case law suggests that doing so will lose in a court appeal.

Considering that well over half of the parcels in the zone are undersized, the reality is that we have a zoning problem. The regulation cannot force properties to merge once their developed, and cannot force homeowners to purchase more than one lot to create conforming conditions. Below is a summary of 5.5 years of variance applications received by the Zoning Board of Appeals.

#### ZBA Statistics - July 1 2016 – December 31, 2022

##### 87 Variance Applications

75 Approved

8 Denied

4 Withdrawn

##### 44 Applications in R-1 Zone (52% of total)

39 for Setback Variances (88% of those in the R-1 Zone)

33 Approved

6 Denied (2 due to neighbor opposition, 4 due to lack of hardship finding)

*Forty-five percent* (39 out of 87) of all variance applications over a 5.5 year period involved requests for setback variances in the R-1 Zone which only encompasses 23% of the total number of lots in Town. This indicates that the current zoning requirements for the zone do not align with the reality of the lot configurations within the zone. As evidenced by the map, the majority of the non-conforming lots surround Lake Pocotopaug. In searching the variance requests, it is evident that the majority of the setback variance requests occur in the historic lake neighborhoods, which are mostly made up of small, non-conforming lots.

Staff considered several options for resolving this issue to lessen the burden on the Zoning Board of Appeals, and reduce the number of variances being requested. Those options included:

1. Reduce bulk and setback requirements for R-1 Zone – The thinking was that for a large part of the zone, the setbacks are simply too large for the lot size, and the minimum lot size. This was ultimately ruled out because the R-1 zone does have significant areas that do meet the requirements and are not subject to as many variances.
2. Create a new zone surrounding the lake and encompassing most of the small lots – This was not preferred simply due to the complexity of the process. There are too many questions to

try to answer, where do you draw the zone lines, how do you make that determination, and are there unfair disadvantages to any particular neighborhoods.

3. Address setback concerns in Section 8.2 – Non-Conforming Lots of Record, similar to the way maximum house size is impacted by lot size in the R-1 Zone. – This approach seems to be the most straightforward. There are no impacts to lots that meet the zoning requirement, and the other requirements remain intact, such as maximum coverage, allowed uses, etc.

The proposal included with this memo is an attempt to create a setback regulation which acknowledges the large number of undersized and narrow lots within the zone, while keeping minimum setbacks consistent with the Building Code and allowing houses of a minimum of 25 feet in width to be constructed. Rather than a strict broad brush setback requirement, the proposal scales the minimum setback down relative to the size of the lot, and includes an aggregate minimum so as to avoid clustering of structures. I have included a diagram with this Memo as Exhibit B in order to demonstrate minimum and aggregate setbacks.

# Exhibit A R-1 Zone Parcels



*This map is for planning purposes only.*

Drawn By: JDD  
Date: 2.15.2023

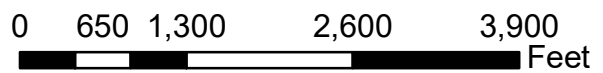
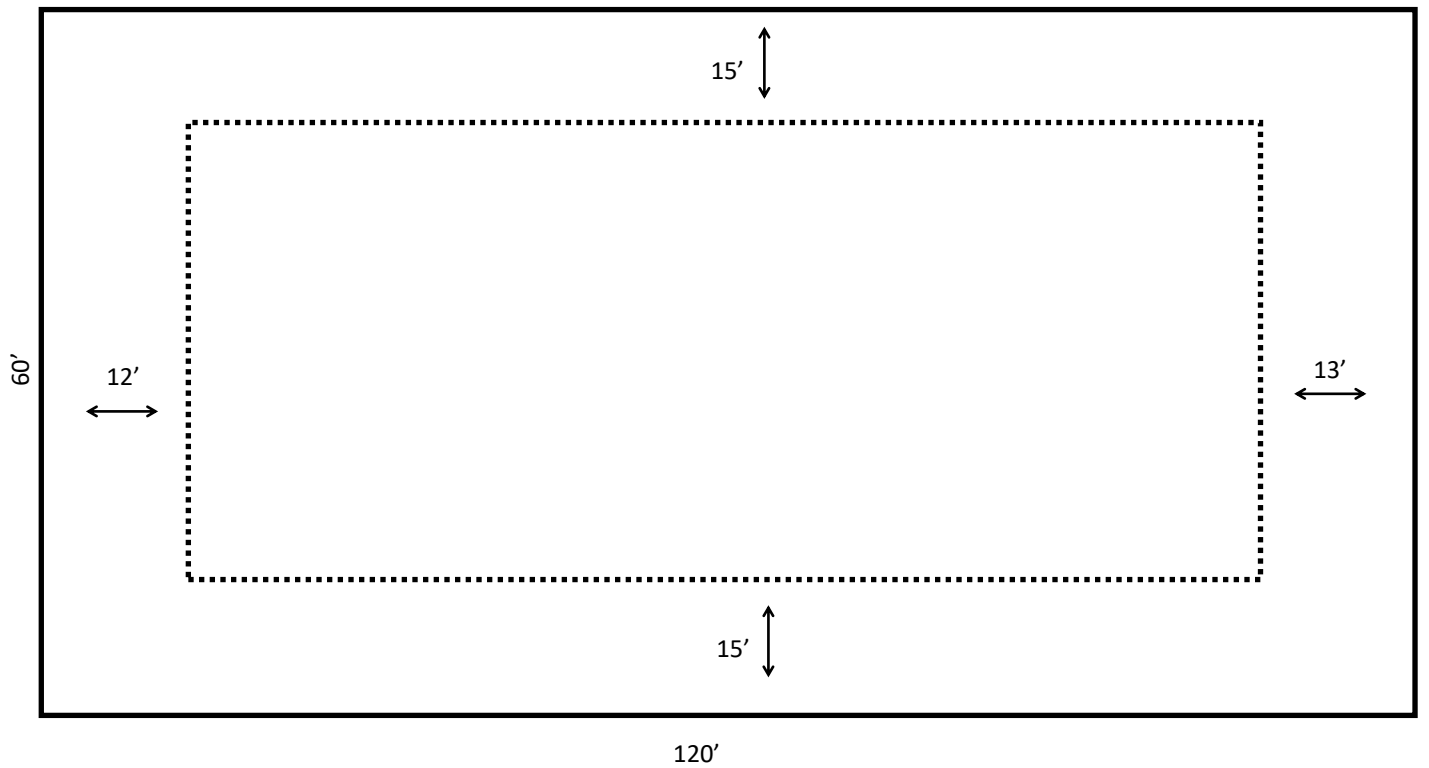
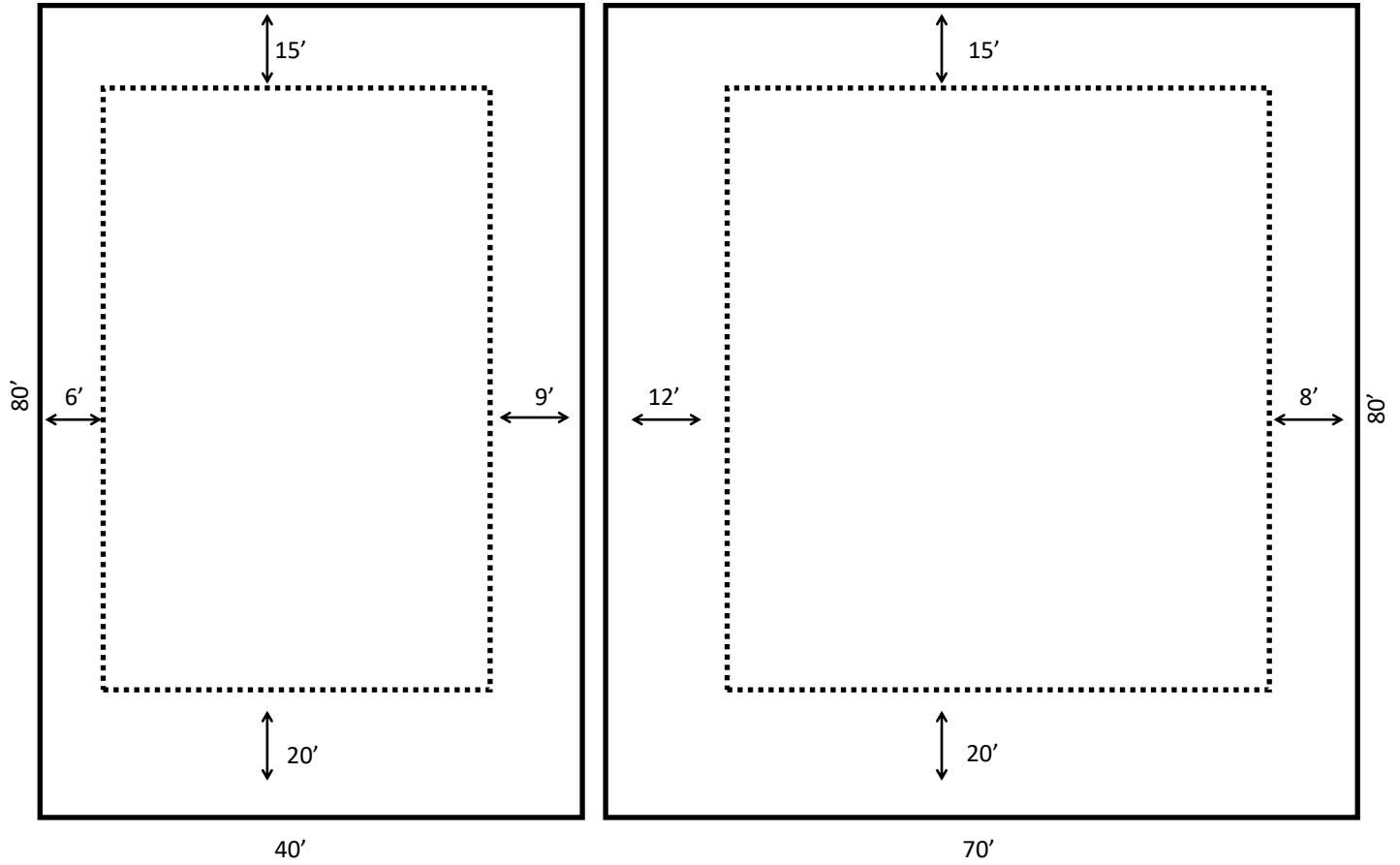


Exhibit B

Examples of Non-Conforming Lots and Proposed Setback Requirements



## ARTICLE 8 - SPECIAL REGULATIONS

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### Section 8.1. Prohibited Uses

1. Any use not specifically permitted by the East Hampton Zoning Regulations.
2. Junk yards, including, but not limited to motor vehicles. (More than one unregistered motor vehicle or parts thereof shall constitute a violation of this regulation.)
3. Solid waste disposal sites, not including municipal transfer stations.
4. Uses or activities which constitute or involve the treatment storage, or disposal of hazardous waste, hazardous materials, hazardous substances or toxic waste as the above terms are defined in the Federal and State Resource Conservation Recovery Act, Comprehensive Environmental Response Compensation Liability Act or Toxic Substance Control Act, or other relevant Acts or Documents. This provision shall in no way be construed to permit or allow by Special Permit other uses or activities not otherwise provided for in this Regulation or Section.

### Section 8.2. Non-Conforming Conditions

Any non-conforming use or building, lawfully existing at the time of adoption of these Regulations or of any amendments thereto, may be continued, and any building so existing, housing such non-conforming use, may be reconstructed in accordance with this Section.

#### A. Interpretation

Nothing in these Regulations shall be construed as authorizing or approving the continuance of the use of a structure or premise in violation of the Zoning Regulations in effect at the time of the adoption of these Regulations. The burden to prove valid non-conforming status shall rest on the owner of the premise in question.

#### B. Rendering to Safe Condition

Nothing in these Regulations shall be construed to relieve a property owner from the responsibility of maintaining or rendering a building, structure or premise to a condition deemed safe and healthful by proper authorities.

#### C. Alteration, Repair and Reconstruction

Any legal existing non-conforming building or structure may be:

1. Reconstructed, repaired or rebuilt, only to its previous floor area, when damaged or destroyed by fire, flood, collapse or other such accidental event.
2. Repaired or reconstructed as made necessary by normal wear and tear. (Effective January 1, 2008)

#### D. Change in Use

No non-conforming use may be changed except to a conforming use or, with the approval by the Planning and Zoning Commission of an application for a Special Permit, in accordance with Section 9.2 to another non-conforming use, not more objectionable, and deemed to be more conforming, provided any aspect of the use is not extended or enlarged (revision effective July 8, 2006).

#### E. Reversion

No part of a conforming lot, use or building may return to non-conformity once such non-conformity is abandoned or extinguished.

#### F. Non-Conforming Lots of Record

1. Lots made non-conforming by changes made to Zoning Regulations may be developed in conformance to these Regulations. Such lots must be legally existing at the time of any such changes in the Regulations, and the burden to prove such non-conforming status shall be on the applicant for such development.
2. Subject to the provisions of Section 8-26a(b) of the Connecticut General Statutes, contiguous, non-conforming lots created prior to adoption of Subdivision Regulations (5/1/49), or existing as the result of divisions not requiring subdivision, shall be considered one non-conforming lot when such lots are of the same ownership and have contiguous frontage.

#### G. Maximum House Size Allowed on Non-Conforming Lots of Record in the R-1 Zone

For the purposes of preventing overdevelopment of undersized lots, promote public safety, and allow for the orderly development of neighborhoods; the following shall be the maximum house sizes permitted on non-conforming lots of record in the R-1 Zone:

Lot Size	Maximum House Size (Habitable space)	Maximum First Floor Area
less than 5,000 sq. ft.	1500 sq. ft.	750 sq. ft.
5,000 - 10,000 sq. ft.	1800 sq. ft.	900 sq. ft.
10,001 - 19,999 sq. ft.	2200 sq. ft.	1100 sq. ft.

#### H. Minimum Required Setback on Non-Conforming Lots of Record in the R-1 Zone

For the purposes of allowing development of undersized lots, promoting public safety, and facilitating the orderly development of neighborhoods; the following shall be the minimum setback requirements on non-conforming, lots of record in the R-1 Zone when the lot contains less than the minimum required number of square feet.

<u>Lot Width</u>	<u>Minimum Side Yard Setback</u>	<u>Minimum Aggregate Setback</u>
<u>less than 50 feet</u>	<u>6</u>	<u>15</u>
<u>50 to 75 feet</u>	<u>8</u>	<u>20</u>
<u>76 to 100 feet</u>	<u>10</u>	<u>20</u>
<u>101 to 124 feet</u>	<u>12</u>	<u>25</u>

<u>Lot Depth</u>	<u>Minimum Front Setback</u>	<u>Minimum Rear Setback</u>
<u>less than 75 feet</u>	<u>15</u>	<u>15</u>
<u>75 to 100 feet</u>	<u>20</u>	<u>15</u>
<u>100 to 124 feet</u>	<u>25</u>	<u>20</u>

#### **H.I. \_\_\_ Enlargement of a Permitted use on Non-Conforming Lots**

Buildings containing a permitted use, but which does not conform to the requirements of the Regulations regarding height, floor area, percentage of lot coverage, setbacks or parking facilities, may be enlarged or altered provided:

1. Such enlargement contains no more dwelling units than now exist.

Additions are constructed in accordance with the applicable yard and height requirements, or with the approval of the Zoning Board of Appeals, are not closer to the lot lines than the existing building or structure (revision effective July 8, 2006).



**EAST HAMPTON ZONING BOARD OF APPEALS**  
**Regular Meeting**  
**June 12, 2023**

<b>DRAFT MINUTES</b>
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**1. Call to Order:** Chairman Spack called the meeting to order at 7:00 pm.

**2. Seating of Alternates:** Present: Vice-Chairman Reed Regular Members: John Tuttle, Margaret Jacobson and George Pfaffenbach. Alternates: Robert Hines and Cathy Ann Clark As well as: Zoning Official Jeremy DeCarli. Absent: Chairman Spack and Bradford Cillizza. Vice-Chairman Reed seated Mr. Hines.

**3. Legal Notice:** Staff read the June 12, 2023 Legal Notice into the record.

**4. Approval of Minutes:**

**A. May 8, 2023 Regular Meeting.** Mr. Tuttle made a motion to approve minutes as written. The motion was seconded by Mr. Pfaffenbach. *Vote: 5-0*

**5. Public Hearings:**

**A. ZBA-23-004: James Bansemer, 15 Tennyson Rd., Increase lot coverage from 20% to 39.3% for construction of a concrete driveway. Map 10A/ Block 81/ Lot 64.** James Bansemer, property owner, discussed abutting lot coverages and dimensions. Mr. Bansemer explained water drainage at the property. Mr. Bansemer explained he would like to install 869SF asphalt or concrete driveway. Mr. Bansemer provided his proposed lot coverage calculations in comparison to abutting parcels. Vice-Chairman Reed stated the Commission could not consider the abutting parcels coverages in relation to his. Vice-Chairman Reed asked for the hardship and Mr. Bansemer replied he did not have a hardship. Mr. Tuttle asked if previous ZBA approval discussed a driveway. Mr. DeCarli explained he reviewed minutes from previous variance approval and reported there were no discussions of a driveway, the two lots owned by Mr. Bansemer needed to be legally combined with the house, not sold separately, the hardship at that time was need for parking and the garage would serve as parking for house across the street owned by Mr. Bansemer. Mr. Tuttle asked what current site conditions were. Mr. Bansemer replied grass. Vice-Chairman Reed asked if there was processed gravel currently. Mr. DeCarli replied the processed gravel is recent and construction was stopped due to lack of permits. Vice-Chairman Reed asked why the application was there as there is no hardship. Mr. DeCarli replied the office received the application and he suggested to the applicant to use gravel or pervious pavers. Ms. Jacobson stated the concrete is less permeable. Mr. Tuttle asked if he used gravel would he need variance and Mr. DeCarli replied no if it was clean stone gravel. Commission Members discussed site drainage and topography. Mr. Pfaffenbach made a motion to deny application ZBA-23-004: James Bansemer, 15 Tennyson Rd., Increase lot coverage from 20% to 39.3% for construction of a concrete driveway. Map 10A/ Block 81/ Lot 64 for the following reason: alternative measures to solve the issue and no hardship. The motion was seconded by Mr. Tuttle. *Vice-Chairman Reed asked for public comments. Patrick Connors, 10 Whittier Road, spoke in opposition of application. Mr. Connors explained there were no permits for construction of driveway, the site grading has been raised with fill and expressed concern with water runoff. Mr. Bansemer explained he installed a silt fence after discussion with neighbor.*

*Vote: 5-0*

**6. New Business:**

**A. Review Text Amendment Regarding Required Setbacks on Non-Conforming Lots in the R-1 Zone: Section 8.2 of the East Hampton Zoning Regulations.** Mr. DeCarli explained PZC is reviewing a change Setbacks on Non-Conforming Lots in the R-1 Zone: Section 8.2 of the East Hampton Zoning Regulations. Mr. DeCarli provided packet and discussed R1 setbacks and lot size. Mr. DeCarli discussed language for proposed text amendment. Mr. DeCarli explained PZC would like comments from the Commission. Commission Members spoke in favor of text amendment. Mr. DeCarli briefly discussed letter addressed to the Commission regarding a neighbor dispute.

**7. Old Business:** None.

**8. Adjournment:** Mr. Tuttle made a motion to adjourn the meeting at 7:31 pm. Ms. Jacobson seconded the motion. *Vote: 5-0*

Respectfully Submitted,



Cheryl Guiliano  
Recording Secretary

# EAST HAMPTON ZONING BOARD OF APPEALS

## Regular Meeting

November 13 2023

### Draft Minutes

1. **Call to Order:** Chairman Spack called the meeting to order at 7:00 pm.
2. **Seating of Alternates:** Present: Chairman Spack, Vice-Chairman Reed, John Tuttle and George Pfaffenbach Regular Alternates: Robert Hines and Cathy Ann Clark. Building Official and Interim Zoning Enforcement Officer, Jim Prue. Office Technician for Land Use, Cheryl Guiliano. Absent: None.  
Chairman Spack seated Mr. Hines.
3. **Legal Notice:** Staff read the November 13, 2023 Legal Notice into the record.
4. **Approval of Minutes:**
  - A. **August 14, 2023 Meeting Minutes:** Mr. Tuttle made a motion to approve minutes as written. The motion was seconded by Vice-Chairman Reed. *Voted 4-0*
5. **Public Hearings:**
  - A. **ZBA-23-007: Tommaso Progano, 12 Terp Road,** Reduce west-side setback from 25' to 16.75' for Garage. Map 06/ Block 14/ Lot 5/6. Wayne Rand attended the meeting on behalf of the applicant. Mr. Rand reviewed the plans for the applicant. The applicant wishes to reduce the setback to 16.75' on the side for the addition of a garage. The 50' setbacks in the front and back yards won't need to be changed. The applicant is looking for only the west-side yard setback to be reduced. There is a large shed off the garage that is in violation and will be torn down. Proposed six evergreens to be planted to shield the house. There is a structure already existing, which would make the member's decisions harder. The property is big, so there wouldn't be a case for owner hardship for the proposed plan. The neighbor to the west attended the meeting. The neighbor expressed his concerns over the visual impact and size of the garage. Mr. Rand stated that the evergreen plantings will shelter and hide that side of the house from view. The Town Building Official, Jim Prue, stated his initial concerns he had for the application. He stated he received the building application and engineer's letter for the project. When he performed his inspection on the property, his concerns went away. He stated that he was happy with what he saw for the 'building side' of the project. The Chairman asked Mr. Prue how he stops people from completing projects before obtaining permits and permission. The Building Official stated that when those cases come in he has the owners apply for permits and get the right trades people to inspect the work and deem it correct. Guy Glaude, of 94 Hog Hill Road, wanted to know if the shed has already been taken down or is still on the property. It was stated that the shed was actually a six by six pavilion. The original structure, a kennel, where the existing garage is built was approved when it was being built. The old concrete was removed and a new, bigger slab was put in for the garage. The land in back of the property is conservation land, so no trees are supposed to be cut down. The members stated that there is no hardship on the

property owner for the garage placement and setbacks of the property. The Chairman asked Mr. Prue what would happen to the garage if the board denies the application. The Building Official stated that the applicant might go to court instead of tearing down or taking care of the denied structure. The members discussed the possibility of the application making a precedent for future applications. For applications and owners that have already built the structure and just come before the board to apologize to get approval after-the-fact. The members stated that there needs to be action for building unapproved structures such as move it, remove it, or negotiate with the land owners or abutters. Mr. Rand asked the members that if the application is denied, if it could be without prejudice so the applicant can come back with another application. The members stated that the application could be withdrawn by the applicant, denied with or without prejudice by the board members, or could be tabled by the board members. Mr. Tuttle made a motion to deny ZBA-23-007: Tommaso Prozano, 12 Terp Road, Reduce west-side setback from 25' to 16.75' for Garage. Map 06/ Block 14/ Lot 5/6. The motion was seconded by Vice-Chairman Reed. *Vote: 4-0*

**B. ZBA-23-008: Flanders Road Estates LLC, Flanders Road,** Increase height size from 30' to 32' 7.5" for single family home. Map 26/ Block 87/ Lot 6. Wayne Rand presented to the board members for a new single family home. The lot has 50 acres and is 250 linear feet into the woods. Mr. Rand's proposal is to increase the house roof height from 30' to 32' 7.5". Mr. Rand stated that a home on Main Street was recently approved for a 33' high roofline. The standard regulation for a single family home construction for roof line height is 35 feet. The surrounding towns have a regulation of 35 feet for roof height. Mr. Rand stated that it could be cut back to be a ten cut roof. Mr. Tuttle made a motion to approve ZBA-23-008: Flanders Road Estates LLC, Flanders Road, Increase height size from 30' to 32' 7.5" for single family home. Map 26/ Block 87/ Lot 6 as presented. The motion was seconded by Chairman Spack. *Vote: 4-0*

**6. New Business:**

**A. Approval of 2024 Meeting Calendar:** Mr. Tuttle made a motion to approve of the 2024 meeting calendar as submitted. The motion was seconded by Chairman Spack. *Vote: 4-0*

**7. Old Business:** The board members briefly discussed the proposed text amendment for R1 Zone. The members spoke against proposed text amendment regarding required setbacks on non-conforming lots in the R1 Zone.

**8. Adjournment:** Mr. Tuttle made a motion to adjourn the meeting at 7:46 pm. Mr. Hines seconded the motion. *Vote: 4-0*

Respectfully Submitted,

Katrina Aligata

Recording Clerk