

## **Holland Township Board of Adjustment**

### **Minutes of the June 24, 2020**

The meeting was called to order by the Chairman, William Martin:

“I call to order the June 24, 2020 Meeting of the Holland Township Board of Adjustment. Adequate notice of this meeting was given pursuant to the Open Public Meeting Act Law by the Planning Board Secretary on December 13, 2019 by:

1. Posting such notice on the bulletin board at the Municipal Building.
2. Published in the December 13, 2019 issue of the Hunterdon County Democrat
3. Faxed to the Express Times for informational purposes only.

HOLLAND TOWNSHIP BOARD OF ADJUSTMENT

**PUBLIC NOTICE**

**TOWNSHIP OF**

**HOLLAND**

**NOTICE OF CHANGE OF FORMAT OF REGULAR HOLLAND TOWNSHIP BOARD OF ADJUSTMENT MEETING AND PUBLIC PARTICIPATION FOR THE MEETING SCHEDULED FOR 7:30 PM WEDNESDAY**

**June 24, 2020**

PLEASE TAKE NOTICE.

THE MEETING FORMAT HAS BEEN CHANGED FROM IN-PERSON ATTENDANCE AT THE MUNICIPAL BUILDING, 61 CHURCH ROAD, TO TELECONFERENCE DUE TO COVID-19 OUTBREAK AND THE STATE OF EMERGENCY DECLARED BY GOVERNOR MURPHY.

IN LIEU OF IN-PERSON ATTENDANCE, THE PUBLIC MAY ATTEND THIS MEETING VIA TELECONFERENCING AND COMMENT DURING THE DESIGNATED PUBLIC COMMENT PORTION IN COMPLIANCE WITH THE OPEN PUBLIC MEETINGS ACT.

**OFFICIAL ACTION TO BE TAKEN.**

All attendees will enter a waiting room when they first sign in. Once admitted to the meeting, they may be muted.

To make a comment during a Public Hearing or the Public Comment portion of the meeting please use the “raise your hand” function and the host will unmute or recognize you during your comment.

Join Zoom Meeting

<https://zoom.us/j/91957997446?pwd=aEhnNnVjNTZ RcTJSbmZlVXB2Mklscz09>

One tap mobile

1 646 558 8656

Meeting ID: 919 5799 7446

Password: 083523

### **Flag Salute:**

Chairman Martin asked all to please stand for the Pledge of Allegiance.

Identification of those at the podium for the benefit of the recording machine:

**Present:** Jerry Bowers, Ginger Crawford, Bill Ethem, Peter Kanakaris, William Martin, Gail Rader, David Pierce, Esq., Robert Martucci, Engineer, Nick Dickerson for Darlene Green, Planner, Court Reporter Donna Mackey for Lucille Grozinski, CSR and Maria Elena Jennette Kozak, Secretary.

**Absent:** Kelley O’Such (recused) and Michael Welsh

**Guest present:** Tom Welsh, 2019 Fire Chief, representing the Holland Township Volunteer Fire Company.

Let the record show there is a quorum.

**Minutes:** A motion was made by Gail Rader and seconded by Peter Kanakris, to dispense with the reading of the May 27, 2020 regular meeting minutes and to approve as recorded. All Present were in favor of the motion with the exception of Ginger Crawford.

### **Completeness**

There was no completeness scheduled to discuss on the agenda.

## **Public Hearing**

Lawrence Seibel – Block 13 Lot 23 – Old Farm Road

Variance Relief – Direct issuance of Permit for a Lot Lacking Street Frontage NJS 40:55D-35. Rec'd into our office February 5, 2020. The 45-day completeness review deadline is March 21, 2020. Completeness review scheduled for February 26, 2020. Public Hearing scheduled for March 25, 2020. Due to the COVID-19 Pandemic, an extension was granted to May 27, 2020. Board Action needed. Public Hearing carried to June 24, 2020 to do defective notice regarding Zoom meeting. Board Action needed.

Present for the Applicant included:

Attorney Doug Cole, Applicant Lawrence Seibel, Engineer Chris Nusser, Realtor/Resident William Penyak and a few other people from the engineers firm.

The Proofs of publication were scanned to Attorney Pierce and the board has jurisdiction. Hard copies were delivered to Town Hall for the file.

Planner Green was not available to attend this scheduled meeting however, Nick Dickerson from Maser is in attendance.

Attorney Cole presented to the board that the driftway is a common drive shared between lots.

Witness #1 - Tom Welsh, 2019 Fire Chief, representing the Holland Township Volunteer Fire Company. – sworn in by Donna Mackey. 2019 Fire Chief Welsh stated that he met in September of 2019 with the applicant and voiced three concerns:

1. Clearing overgrowth and trees from driveway area
2. Sufficient driveway width with consideration for a pull off area
3. A turn around or loop that can accommodate fire apparatus

The vegetation should be maintained at 13' clearance and an inspection being performed yearly between the Fire Company and the Zoning Officer is an excellent idea.

Attorney Pierce asked to discuss the width of the driveway and the adjustment needed since one area is at 18' and other areas are not. Mr. Welch agreed that 18' width is a good width for two vehicles to pass.

Member Ethem asked about the expectation of the Fire Company to review and approve of attributes and received an affirmative response.

Mr. Welsh stated that there are no obvious grade issues or challenges and that Applicant Seibel is willing to work with everyone on requirements.

Attorney Bullock from the audience had some questions. Attorney Bullock stated that he is representing the neighbors: Roger & MaryAnn Brahler of 120 Old Farm Rd Block 13 Lot 2 and Jacqueline Kuzora of 159 Old Farm Rd Block 13 Lot 22. Attorney Pierce and Attorney Cole spoke with Attorney Bullock at the end of May. Concerns were expressed about the driveway to be paved. Attorney Bullock wants it on the record that Block 12 Lot 2 does not want pavement. Mr. Welsh asked to look at the area in question.

Witness #2 – Christopher Nusser – Engineer with E&LP (Engineering & Land Planning) in High Bridge NJ – sworn in by Donna Mackey. Chris Nusser has appeared before this board and has and will continue to be recognized as an expert witness. Attorney Bullock had no objection to the witness. Mr. Nusser showed the plan and showed lot 23 and lot 22 with the easement on lot 2. He explained that part of lot 2 is paved and is stoned on lot 22 but in need of improvements. There are no changes proposed to traverse lot 2. Engineer Martucci explained that the stone is to be paved or something more compact than loose stone. Attorney Bullock agreed to questions.

All agreed that from a portion of lot 22 to lot 23 it should be paved for access and that the paving is of the stone access. On lot 23 towards the house there should be a turnaround or loop for

emergency vehicles and a pull over where it goes to the 15' marker. Chief Welsh questioned the driveway and the area that is 11' (which is used for lot 2 and lot 22). The section off onto lot 23 is 8' and can be larger in width. Engineer Martucci suggested cleaning as it is gravel and shale at the 8' area and the thought was paving would be better; however if lot 2 is not in favor of paving then that is acceptable. Discussions took place about the Deed of Easement. Engineer Martucci suggested an alternate to paving but expressed concerns about changes to stormwater flows and Mr. Nusser responded that it will not really change it. He said it can remain stone and Chief Welsh said that the area needs to be a maintained hard surface and not necessarily pavement. Attorney Pierce questioned Chief Welsh about the width being increased from 8' to 11" for consistency. Chief Welsh responded that it was acceptable however the critical width to the dwelling is a must. Member Bowers asked Attorney Bullock if the client did not want to pave it or anyone to pave it and the response was that the neighbor does not want it paved PERIOD! Member Kanakaris asked Attorney Bullock if there are objections to widening lot 2 from 8' to 11' and Attorney Bullock stated that it was acceptable. More discussions took place about the survey easements and that there is a 40' easement on lot 2 and lot 22. Attorney Cole to review the title. Attorney Pierce noted that if the easement is 40' then unless there is a restriction in the deed then the area can be expanded and widened with the understanding that it will not be paved. Attorney Bullock discussed the 10'x12' shed on lot 22 which encroaches on lot 2. He has concerns of putting more towards lot 2. Mr. Nusser agrees widening towards lot 2 is needed. Attorney Bullock said that lot 2 withholds consent of paving the easement of lot 2 and does not want use for dwelling of lot 2. He said there is another driveway that is stone. Lot 2 is concerned with runoff on pavement. Mr. Nusser and Chief Welsh agree to a hardened surface and not pavement. Attorney Bullock agreed to the hardened surface.

Chairman Martin asked if anyone else had any additional comments and hearing none, Chief Welsh was thanked for his participation but had to depart the meeting for another commitment.

Attorney Cole redirected everyone's attention back to Witness #2 – Chris Nusser. Engineer Nusser was involved with the plans submitted, has reviewed the material and is familiar with the project.

Secretary insert....

Board Engineer Robert Martucci of Martucci Engineering LLC, prepared an advisory memo dated February 24, 2020 for the board to review. The applicant also received a copy of the advisory memo. The secretary had to convert the memo for the minutes but it basically is as follows:

#### Memorandum

To: Holland  
Township  
Zoning Board  
81 Church  
Road  
Milford, New Jersey 08848

Attention: Maria Elena Jennette Kozak

From: Robert Martucci, P.E. BOA Engineer  
February 24, 2020

Reference: Variance Relief - Direct Issuance of Permit for a Lot  
lacking Street Frontage NJS 4:55D-35  
Block 13 Lot 23, 177, Mount Joy Road  
Holland Township Hunterdon County, New Jersey

Dear Maria:

Our office is in receipt of the following documents on the above referenced application:

1. Application and completed application checklist.
2. Confirmation that taxes were paid on the subject property.
3. List of all properties within 200 feet of the subject property.
4. Certification of Ownership.
5. Site Walk Authorization
6. Fee Calculation form and checks for the Application and Escrow fees.
7. Deed of record for the subject property.
8. W-9 Form
9. Letter to Holland Township Fire Chief from Engineering and Land Planning Associates.
10. Waiver Request from Checklist items from Engineering and Land Planning Associates.

Limit of Disturbance Metes and Bounds prepared by Engineering and Land Planning Associates.

11. "Variance Plan" - 6 sheets prepared by Engineering and Land Planning Associates dated January 10, 2020. The plan includes a site survey prepared by Wayne Ingram, P.E./P.L.S.
12. Photographs of the subject property.
13. Soil Logs and Permeability Tests for the subject property.
14. A letter (email) has been provided by the Fire Chief for the subject property dated September 20, 2019.

The proposed project is for the construction of a single-family dwelling and associated improvements to an existing vacant lot. The lot has no frontage on a public road. An easement for access has been deeded for this lot. A variance and approval of the plans are required from the Zoning Board prior to issuance of a building permit. The applicant is requesting a C variance under a hardship and plan approval. The application is scheduled for a completeness hearing on the next Board Meeting on February 26, 2020.

In order to the Board to hear the application, a completeness determination must be completed. Please be advised that our office has completed the Completeness Review and notes the following deficiencies/comments **in Bold:**

1. Item H-2, Financial Disclosure Statement has been checked "Not Applicable" . **Our office concurs with this notation as the applicant is not a corporation or partnership.**
2. Item H-5 Hunterdon County Health Department Construction Permit Referral Form has been checked as "Not Applicable". **This item must be completed, or a temporary waiver could be granted by the Board provided the applicant notes the reason for the waiver request. The soil testing and septic design should be approved by the Township and County Board of Health prior to approval of the plot plan.**
3. Items H-25 and H-26 Floor plans and building elevations for the proposed building must be provided. **A Waiver is requested by the**

**applicant for the proposed dwelling. Architectural plans were noted to be provided as part of the plot plan approval. I have no objection to granting this waiver provided that the number of bedrooms is noted in testimony and no other bulk variances are required as part of the plot plan approval.**

**4. Item H-27 Highlands Planning Area Exemption must be obtained. The applicant noted that this qualifies for exemption #2 from Highlands planning Area. I concur with this item.**

**Based on the above, I recommend this application be deemed as incomplete unless temporary waivers are granted by the Board for items H-5; H-25 and 26. Item H-2 is not applicable and H-27 is subject to the waiver to be granted.**

Other Comments:

1. Stormwater management must be addressed as part of the plot plan approval. Our office shall review and approve the plot plan for this prior to signing of the plans. This shall include hydrologic and hydraulic calculations, swale design, and flared end section scour whole sizing.

2. Retaining wall design shall be approved by our office prior to signing of the plans.

3. The application must be approved by the Hunterdon County Soil Conservation District.

4. Applicant shall complete required improvements as noted in Fire Chief Tom Welsh's email to the Board Secretary. All improvements shall be noted on the plot plan and our office, and the Fire Chief must review and approve same prior to issuance of a certificate of occupancy. Any maintenance and repair agreements for the access drive must be provided (if noted in book 596) or obtained subject to Board and Attorney comment.

1. Application subject to other agency approvals and comments from the Board Planner and Attorney.

2. Application subject to other engineering comments as required during review of plans and property.

Robert Martucci, P.E., C.M.E.

Secretary insert...at the February 26, 2020 meeting:

“A motion was made by Jerry Bowers and seconded by Peter Kanakaris to grant permanent waivers for Checklist items H5, H25 and H26. At a roll call vote, all present were in favor of the motion. Motion carried.

Some more discussion took place about shortcomings expressed pertaining to emergency vehicles on the land and Attorney Pierce reminded everyone that the board can impose improvements on the property but not the lane. Testimony on the existing lane will be helpful but it's the property driveway the 2019 Fire Chief is talking about.

A motion was made by Jerry Bowers and seconded by Ginger Crawford to deem this application complete and schedule the public hearing for Wednesday March 25, 2020. At a roll call vote all present were in favor of the motion. Motion carried. “

Board Planner Darlene Green of Maser Consulting, prepared an advisory memo dated May 18, 2020 for the board to review. The applicant also received a copy of the advisory memo. The secretary had to convert the memo for the minutes but it basically is as follows:

May 18, 2020

PLANNING REPORT

Board of Adjustment Township of Holland 61 Church Road Milford, NJ 08848

Re: Lawrence Seibel  
Old Farm Road  
Block 13, Lot 23 Review Letter #2  
MC Project No. HLZ-007

Dear Board Members:

Lawrence Seibel, the Applicant, seeks approval to construct a single-family dwelling on the subject site. Lot 23 does not have frontage on a public road but is accessed by a common driveway. N.J.S.A. 40:55D-35 (MLUL) states “no permit for the erection of any building or structure shall be issued unless the lot abuts a street giving access to such proposed building or structure.” N.J.S.A. 50:55D-36 states that where enforcement of Section 35 would cause difficulty or undue hardship, the Board of Adjustment can direct the issuance of a permit subject to conditions that will provide adequate access for emergency vehicles for the protection of health and safety. The Application requires variances, which are detailed in Section B. The following documents, which were submitted in support of the Application, have been reviewed:

1. Plans entitled “Old Farm Road”, prepared by Wayne J. Ingram, P.E. of E&LP, dated January 10, 2020, revised through May 8, 2020, consisting of 6 pages.
2. Planning Board & Board of Adjustment Application Form, no date.
3. Board of Adjustment Checklist for Determining Completeness of Application, no date.
4. Letter entitled “Variance Application”, prepared by Derek Ranger of E&LP, dated January 10, 2020, consisting of 1 page.
5. Letter entitled “Variance Application”, prepared by A. Derek Ranger, P.E. of E&LP, dated May 8, 2020, consisting of 2 pages.
6. Document entitled “Board of Adjustment Section H Checklist”, prepared by E&LP, dated January 10, 2019, consisting of 1 page.
7. Letter entitled “Adamic Hill Road....Block 13 Lot 23”, prepared by Maria Elena Kozak Land Use Administrator, dated January 14, 2020, consisting of 1 page.
8. Document entitled “Description of Limit of Disturbance”, prepared by Wayne J. Ingram, P. L.S. of E&LP, dated January 10, 2019, consisting of 2 pages.
9. Document entitled “Schedule ‘A’ (Deed #90770)”, recorded on October 17, 1975, consisting of 1 page.
10. Site Walk Authorization, dated January 31, 2020.
11. Email correspondence between the Applicant and Tom Welsh, Holland Fire Chief, dated September 20, 2019.
12. Hunterdon County Health Department Application for Permit to Construct/Alter/Repair An Individual Subsurface Sewage Disposal System, Forms 2b and 3c, dated November 15, 2019.
13. Packet of Photographs, prepared by Larry Seibel, received on February 13, 2020, consisting of 8 pages.
14. Copy of Deed from Riegel Paper Corporation to N.J. Power & Light Company, dated 1940, consisting of 2 pages.

A. Existing Zoning and Surrounding Land Use

The property is located in the R-5 Residential District to the southeast of Mount Joy Road. The property does not front on a street and is accessed by a common driveway, known as Old Farm Road, shared by other lots. The property is surrounded by residential uses and is extensively wooded to the east and south. See the image on page 3 for the general location of the site. 1 As per Section 100-46, the bulk requirements for the R-5 District are as follows:

Minimum Lot Area – 5 acres

Minimum Lot Width – 325

Minimum Lot Depth – 350

Maximum Building Height – 35 feet

Maximum Stories – 2.5

Minimum Setback (from the street line) – 75 feet

Minimum Rear Yard Setback – 75 feet

1 Image courtesy of [https://www.highlands.state.nj.us/njhighlands/gis/interactive\\_map/](https://www.highlands.state.nj.us/njhighlands/gis/interactive_map/)

Minimum Side Yard Setback – 75 feet



## B. Variances

The Application requires the following variances:

1. N.J.S.A. 40:55D-35 – Relief for building lot not abutting a street. Section 36 of the MLUL permits the Board of Adjustment to direct the issuance of a building permit for a lot not abutting a street if the enforcement of Section 35 (street frontage requirement) would be practically difficult or result in unnecessary hardship. This potential relief is subject to conditions that will ensure adequate access for firefighting equipment, ambulances, and other emergency vehicles.

The Applicant proposes to construct a home on a lot that does not have street frontage. The Applicant proposes an 11-foot to 15-foot-wide driveway on his site, but no information has been provided on the width, slope, etc. of Old Farm Road, which is the common driveway that accesses the subject site to confirm the site has adequate emergency access.

2. Section 100-111A – Variance for lot frontage. The Ordinance permits lots with a single-family dwelling as a principal use to have no street frontage as long as the lot has at least 500 contiguous feet of frontage along a driftway.

According to Sheet 1, the property has 44.42 feet of frontage on the driftway. And per Mr. Ranger's May 8, 2020 letter, the common driveway is "considered a driftway".

3. Section 100-161A (2)(a) via 100-111A – Variance for width. Section 100-111A permits lots fronting on driftways if they have 500 feet of frontage on the driftway and if the driftway meets the standards in Section 100-161. This particular section requires proof that the owner of the subject lot has approval to use the driftway to a width of at least 40 feet between Lot 23 and the public street.

This office has not received any information that indicates the Applicant has approval to use the driftway and that the driftway "right-of-way" is at least 40 feet.

4. Section 100-161A(4) via 100-111A – Variance for frontage along the driftway. The Ordinance requires at least 500 feet of frontage along the driftway. It appears from the plans the Applicant either has eight feet or just over 44 feet of frontage.

5. Section 100-161A(5)(a) via 100-111A – Variance for traveled way of driftway. The Ordinance requires the traveled way of a driftway to be a minimum of 18 feet in width. The plans do not illustrate the entire length of the driftway, but the traveled way is measured at two points, which indicate a width of eight feet and 11 feet.

## C. Variance Proofs "C" Variances

N.J.S.A. 40:55D-70(c) sets forth the criteria by which a variance can be granted from the bulk requirements of a zoning ordinance. The first criteria is the C(1) or hardship reasons including exceptional narrowness, shallowness or shape of a specific piece of property, or exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or extraordinary and exceptional situation uniquely affecting a specific piece of property. The second criteria involves the C(2) or flexible "C" variance where the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

## D. Design Waiver

The Application does not require any design waivers.

## E. Comments

Based on our review of the above-referenced materials, we offer the following comments. Note that new comments and the current status of existing comments are provided in italics.

1. The Applicant's professionals must provide testimony to support the grant of the variances required by the Application. Testimony must address both the negative and positive criteria requirements of the MLUL.

2. It is unclear if the common driveway to access the site qualifies as a driftway. Testimony shall be provided, which may eliminate Variance #2 on page 3.

Mr. Ranger's response letter, dated May 8, 2020, indicates the common driveway is considered a driftway. However, upon review there are several requirements for a driftway that are not met or full information has not been provided.

3. N.J.A.C. 40:55D-35 requires buildings or structures to have street access before a permit is issued. However, if the enforcement of Section 35 would "entail practical difficulty or unnecessary hardship", then N.J.A.C. 40:55D-36 permits the Board of Adjustment to "direct the issuance of a permit subject to conditions that will provide adequate access for firefighting equipment, ambulances, and other emergency vehicles necessary for the protection of health and safety".

Based on the Site Plans submitted, it is unclear if the proposed 11-foot to 15-foot-wide driveway and its associated 28-foot grade change provides adequate access for fire truck, ambulance, and other necessary emergency vehicles. No information was provided on the common driveway's width, slope, etc. Therefore, it is unclear if a firetruck can navigate the proposed driveway slope or other emergency vehicles can access the common driveway. Testimony shall be provided.

The revised Site Plan indicates the common driveway's width is 11 feet at one point and eight feet at another point. The revised Site Plan also indicates a "-3%", which we believe reflects the grade. However, the grade for the entire common driveway is not noted and the entire length of the common driveway is not illustrated. Ultimately, we defer to the Township's Fire Chief regarding the adequacy of access to the property.

4. Sheet 1 of the Site Plans indicates the existing stone driveway (the common driveway) on Lot 22 and/or 2 is to be paved. Has the Applicant received written consent from the owner of Lot 22 and/or 2 to permit this improvement? Testimony shall be provided.

Mr. Ranger's response letter indicates written approval from the owner of Lot 2 will be provided prior to final approval. With that said, it is unclear how the Board could approve a plan that includes improvements (e.g. paving) on another site where permission has not been granted. We defer to Attorney Pierce if these improvements on Lot 2 and/or 22 requires the amendment of the Application from merely Lot 23 to include these other properties.

5. The Ordinance defines Lot Width as "the straight and horizontal distance between side lot lines at setback points on each side lot line measured an equal distance back from the street line. The minimum lot width shall be measured at the minimum required setback line; provided, however, that the width of the lot between side lot lines at their foremost points (along the lot frontage) shall not be less than 80% of the required lot width except in the case of lots on the turning circle of a cul-de-sac, where the lot frontage shall be at least 50 feet". Due to the unique nature of the lot, it is unclear where Lot Width was measured. Testimony shall be provided.

The Applicant has indicated that the lot width is 1,068.25 feet. However, it appears that the width was measured from the proposed setback line, not the minimum required setback. The lot width measurement shall be amended to align with the ordinance requirement. Despite this discrepancy, we are confident that the lot width will still meet the Ordinance minimum.

6. It is unclear how the 44.42-foot frontage along the driftway was arrived at. The width of the driftway where it intersects with the property line is only eight feet. The Applicant shall provide testimony on the discrepancy.

Should you have any questions with regard to the above comments please do not hesitate to contact my office. We reserve the right to make additional comments based upon further review or submission of revised plans or new information.

Very truly yours,

MASER CONSULTING P.A.

Darlene A. Green, P.P., AICP Zoning Board Planner

Mr. Nusser explained that the driveway is in the most practical location because Block 13 Lot 23 Old Farm Road is on a driftway that connects with Adamic Hill Road. The property needs bulk requirements for not abutting a road and needs frontage of 500' on a driftway. Access of the driftway is used by many homes and dates back to the 1960's. There is no other reasonable access to the property as to the right there are topographical issues and there is no access to the street. It is the same in the other direction. The path was the vision in the subdivision when the lot was created.

The relief needed needs to show that the applicant provides adequate access for emergency vehicles of which the chief's testimony offering conditions is acceptable, that no planned streets in the Master Plan would be impacted which by the nature of a driftway explains this along with statements of Engineer Nusser above. The driftway is a hardship on the lot. The land has been there with deeds dating to the 40's and the 60's. This was all before zoning ordinances existed. An option was discussed that the lot could extend the driftway into the lot to meet the 500' ordinance requirement but there is no point in conformance since this lot is the last lot in the subdivision. To add more to the driftway is adding more impervious and possibly more stormwater runoff and it really is just not necessary and potentially a detriment to the township and the neighboring homeowners.

The letter of the planner was discussed. There are no technical comments other than what has been addressed. Attorney Cole had no further comment. Attorney Pierce asked if any board members had any comment and since no comments were made the public portion was opened. Attorney Bullock state that the objectors disagree with the statement that there is no impact on the surrounding property owners. The driftway is not wide enough for two cars to pass each other. Building a new home on the empty lot is going to add more traffic to the existing driftway. Attorney Bullock also expressed concern with other lots potentially subdividing their land and adding more traffic to the driftway. He asked how much is the limit for the driftway capacity? Adding additional vehicles is a burden to the driftway and in granting this application then Attorney Bullock feels that you are setting precedent for others to add to the driftway. This becomes a burden and negatively impacts the owners.

Attorney Pierce and Engineer Nusser state that action on this application is not a precedent and certainly not for a proposed subdivision. This lot is an existing lot and has the right to be developed as a single family lot. It is permissible under our zoning ordinances. It is not increasing density nor is the lot being subdivided. The access to the lot is what is deficient. All the lots existed for years. There are difficulties living on a private lane but that is part of living on a private lane. The lot allows for the building of a single family home and the applicant is not adding any more traffic than what is allowed for a single family home.

Engineer Martucci asked about the maintenance of the driftway and Engineer Nusser state he was not aware of who specifically other than the easement states that all are responsible for how it exists on their property.

Planner Dickerson asked to clarify Planner Greens memo of May 18, 2020 and Engineer Nusser addressed the items of concern as follows:

Item #3 – regarding Access for emergency service was addressed in testimony by Chief Welsh.  
Item #5 – relief from 100-161A(5)(a) via 100-111A – discussion took place about the Plans being updated to show the frontage of 44.42 feet. There is a hardship for this lot by virtue of the location of the lot on the driftway as there is no frontage. The benefits outweigh the detriment since no one is building beyond this lot as it is the last house in the subdivision. The distance does not help anyone.

Member Rader asked about Attorney Bullock's mentioning of other properties doing a subdivision and Attorney Bullock then spoke up about another lot having over 30 acres and could be subdivided.

Attorney Pierce state that the application before the board is not a subdivision application.

Engineer Nusser stated that the applicant is not suggesting widening out and that a subdivision application is different than what is before this board.

Witness #3 – William Penyak – sworn in by Court Reporter Mackey.

Mr. Penyak was going to talk about a potential subdivision and Attorney Pierce stated that discussion on a potential subdivision is not relevant to what is before the board. Lot 23 is an existing lot and with changes suggested by Chief Welsh for the driftway is promoting emergency access to lot 23 and nothing else.

Member Ethem asked if the findings here can impact the future and Attorney Pierce state that decisions made today are not precedent as they are limited to this situation and this situation alone.

The public portion was opened and Attorney Bullock had a comment about the negative criteria. The present condition of the driftway to Adamic Hill Road is probably 50% in poor condition. The macadam is breaking up and in his opinion, to develop lot 23 is going to further damage the driftway. The clients he represents feel that a bond needs to be posted to fix the road for damage with respect to driftway damage. Attorney Pierce stated that the board does not have the authority because it is a private road. It is an easement and the property owner's legal access under the easement agreement.

There were no other comments from the public.

The board and professionals were asked if there were any additional comments or concerns.

Attorney Bullock representing the Brahlrs of lot 2 stated that in the 70's the Brahlrs were told they could not get relief and yet lot 23 is seeking relief for a driveway on a driftway. Attorney Pierce thanked Attorney Bullock for his statement but advised the board to disregard the comment as Attorney Bullock is not talking from personal knowledge and the Brahlrs are not present at the meeting so it is hearsay.

Witness #3 – William Penyak is available to discuss pull offs however Chairman Martin responded that Chief Welsh presented enough testimony for the board and nothing additional is required.

A motion was made by Jerry Bowers and seconded by Peter Kanakaris to close the public hearing. At a roll call vote, all present were in favor of the motion. Motion carried.

Discussion took place on approving the application as presented with conditions. Conditions considered...remove paving from the plans, change width of driveway on lot 23 from 15' to 18' subject to pre con approval by board engineer, widen the travel length to 11', an annual inspection by the Fire Chief and the Zoning Officer, Maintenance per the Fire Chief and Zoning Officer, all standard regulations, improve travel length of stone to a hardened surface per Fire Chief and Engineer, install a turnaround of 35' on lot 23 with installation of turnaround being completed before issuance of Certificate of Occupancy, vegetation to be below 13' outlined on revised plans, Pull off on driveway of lot 23 to be approved by Fire Chief and Engineer and to be noted on the plans as 15' and 18', and the sub plans and profile to be approved by Fire Company and Engineer.

A motion was made by Jerry Bowers and seconded by Gail Rader to approve the application submitted with conditions outlined above based on testimony given. At a roll call vote, all present were in favor of the motion. Motion carried. Attorney Pierce is authorized to draft a resolution for consideration at the next scheduled meeting.

### **Resolution**

There were no Resolutions scheduled to discuss on the agenda.

### **Old Business**

There was no Old Business scheduled to be discussed on the agenda.

### **New Business:**

There was no New Business scheduled to be discussed on the agenda.

**Public Comment**

Chairman Martin requested Secretary Kozak to unmute everyone for public comment. All were asked if they had any comments at this time and no one had comment.

**Board Member Comment**

There were no board member comments at this time.

Peter Kanakaris made a motion to adjourn. Motion carried.

Meeting ended at 8:55 p.m.

Respectfully submitted,

*Maria Elena Jennette Kozak*

Maria Elena Jennette Kozak

Secretary