TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

2016 AUG 23 A 10: 58

TOWN CLERK
FRAMINGHAM

BOARD OF APPEALS CASE NO. 16-10

PETITION OF REGINALD PEARLESS

DATE OF DECISION: AUGUST 09, 2016

1. **Application**
   This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of REGINALD PEARLESS (hereinafter the Applicant), for property located at 240 GROVE STREET. This Decision is in response to a Petition for a Variance for frontage and lot width to subdivide the lot (hereinafter the Application).

2. **Property Owner and Applicant**
   Reginald Pearless
   240 Grove St.
   Framingham, MA 01701

3. **Location**
   Property is located at 240 Grove Street and identified by Assessors' Parcel ID 078-16-1666-000 (hereinafter the Site).

4. **Board Action**
   After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on August 9, 2016 the Board voted to GRANT the requested VARIANCES by a unanimous vote in favor of the petition of three (3) members sitting on the Application. The record of the vote is stated as follows:

PHILIP R. OTTAVIANI, JR.	YES
SUSAN S. CRAIGHEAD	YES
STEPHEN MELTZER	YES

5. **Proceedings**
   The Application was received by the Board on March 23, 2016 pursuant to MGL, Ch. 40A, §10, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on June 21, 2016 at 7:30 P.M. in the Blumer Community Room of the Memorial Building. It was subsequently continued to 7:30 PM on July 12, and again to 7:30 PM on August 9. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, and Alternate Edward Cosgrove were present throughout the proceedings. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

The Applicant was present with his attorney, Peter Barbieri, who explained the application and argued that there was a hardship justifying the requested Variances due to the configuration of the lot with the inability to access the site over the legal frontage on Grove Street because of wetlands. Board members were confused about the proposed layout of the property, as the proposed access to a new house would be via a shared driveway, and not across the legal frontage. It was determined that a site visit was necessary. Mr. Ottaviani read letters from the Fire Department regarding need for adequate access via the access road, and from the Planning Board Administrator regarding the creation of a new nonconforming lot. Ms. Craighead expressed concern about the lack of access over the legal frontage. Mr. Barbieri confirmed that a permit would be needed for access via the private common driveway, and that an Approval Not Required (ANR) determination would be required in order to create the new lot. Ms. Betty Muto (TMM 12) spoke against the petition. Mr. Kevin Crotty (TMM 7) spoke in favor.

At the July 12 hearing, Ms. Craighead and alternate Mr. Cosgrove were absent, requiring a continuance to the following meeting on August 9. On August 9, Mr. Barbieri reminded the Board of the specifics of the case. He presented a copy of the deed, and a map prepared by the Conservation Commission with notations showing the locations of the abutter's septic field and garage. He explained some history of how the frontage on Grove Street was impacted by the historical construction of the Mass. Turnpike and subsequent conveyance of land along Grove Street to the Town. Attorney Barbieri explained that the Town owned parcel which the subject property abuts adjacent to Grove Street was conveyed to the Town by the Mass. Turnpike Authority despite the fact that the property was taken from the Applicant's predecessor in title. That taking and conveyance to the Town left the property without frontage on Grove Street. Mr. Barbieri also stated that the ZBA as a result of the Taking and conveyance had granted a Variance for frontage for development of the existing house. Board members and members of the audience had no further concerns.

6. Exhibits

Submitted for the Board's deliberation were the following exhibits:

6.1. Application filed with the Building Official for a permit to construct a new house on a proposed new lot, dated 03/21/16.

6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on May 13, 2016.

6.3. Filing fee in the amount of $300.00.

6.4. Memorandum in support of the petition on behalf of the Applicant by Attorney Peter Barbieri.

6.5. Comments from the Framingham Fire Department dated April 14, June 16, June 20, and June 21, 2016.

6.6. Conservation Commission comments dated June 21, 2016.

6.7. Deed transfer stamped "Received" by the Zoning Board Office on August 9, 2016.

6.8. Map produced by the Conservation Commission, depicting the existing parcel, wetlands, and hand notations indicating the location of abutter's septic field and new garage to the

north of the proposed access, stamped "Received" by the Zoning Board Office on August 9, 2016.

6.9. Approved ANR plan entitled "Plan of Land Framingham, Mass." Prepared by Metrowest Engineering, Inc., dated 7/15/86, and approved by the Planning Board on 7/29/86.

6.10. Site plan entitled "Zoning Board Sketch Plan", dated March 15, 2016, prepared by GLM Engineering Consultants, Inc., 19 Exchange Street, Holliston, Mass., depicting the two proposed lots, footprint of proposed dwelling, and proposed driveway accessed via the private common driveway.

Exhibit 6.10 shall be hereinafter referred to as the "Plan."

7. Findings and Conclusions

Based upon its review of the Application, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

7.1. The property is located within the Single Family Residence (R-3) zoning district.

7.2. On March 22, 2016, the Building Official denied the Application for a permit to construct a new dwelling pursuant to Sections IV.E.2 and IV.E.4.b of the Zoning By-Law.

7.3. On May 13, 2016, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Variances from the Zoning By-Law.

7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on May 23 and May 30, 2016 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11. One Town Meeting Member from the affected voting precinct appeared at the hearing.

7.5. The Applicant is seeking Variances for insufficient frontage and lot width, in order to create a new buildable lot from the existing parcel at 240 Grove Street. The existing lot has 196 feet of frontage on the Town owned land on Grove Street. The new lot would have 109 feet and the remaining parcel would have 87 feet on the Town owned land on Grove Street. The lot width of each would be approximately the same as the frontage.

7.6. There are wetlands that preclude access over the legal frontage. The existing house is accessed via a driveway off of a private common drive. The new house would be accessed from a separate driveway off of the same common drive. The frontage on the common drive would be approximately 55 feet.

7.7. The Variance standard established by the G.L. c. 40A §10 and the Framingham Zoning By-Law is a demanding criterion. The Board must find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures, which especially affect such land or structures but do not affect generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Also, the circumstances under which a Variance may be granted are not unlimited.

7.8. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variance is being sought. *The Board finds that this parcel is unique, in that the legal frontage cannot be traversed due to significant wetland area.* Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located.

7.9. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner. *The difficulty accessing the site over the legal frontage would make development impossible without the requested Variances.*

7.10. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law or from the intent of the district in which the Variance is being sought. *The proposed house will have a negligible impact on the neighborhood. It will not be visible from Grove Street, and the abutting property owner has expressed no objection. The Variances may be granted without nullifying or derogating from the intent of the Bylaw.*

7.11. The Board grants these Variances with the following condition:

7.11.1. The proposed house and access shall be located as shown on the Plan.

7.12. This Decision applies only to the requested Variances. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.

7.13. If the rights authorized by these Variances are not exercised within one year of the date of grant of such Variance, such rights shall lapse. The Applicant may request an extension to the one year period by submitting a written Application for extension prior to expiration of the one year period. However it is solely within the discretion of the Board to grant such an extension. An extension shall be for a period not to exceed six (6) months. If the Board fails to act on the request for extension within thirty days of the date of the requested extension, all rights authorized by these Variances shall lapse at the expiration of the one year period. If the Variances lapse, such rights pertaining to the Variances may only be reestablished after notice and a new hearing pursuant to G.L. c. 40A, §10.

7.14. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official

7.15. The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the Town of Framingham.

8. Appeals

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the Town Clerk.

ZONING BOARD OF APPEALS

By: _____
Philip R. Ottaviani, Jr., Chairman