

**APPROVED**

**ZONING BOARD OF ADJUSTMENT  
PUBLIC HEARING  
Tuesday, March 29, 2022 – 6:00PM  
Lincoln Town Hall, 148 Main Street, Lincoln NH**

Due to the current evolving status of COVID-19, this meeting will be a hybrid meeting to be presented both in person with social distancing encouraged (space limited to 8-12) and via ZOOM Video Conferencing to allow for town wide participation. A quorum of the members of the board will have to be physically present at the meeting. All others are encouraged to attend via ZOOM.

**Join Meeting via Zoom:**

<https://us02web.zoom.us/j/86016771670?pwd=bFRMdGg3VXJjM0J4MnRvajNwZlpvdz09>

**Meeting ID: 860 1677 1670**

**Passcode: 034701**

**Or dial by your location 1-929-205-6099 US (New York)**

**I. CALL TO ORDER at 6:05PM by Acting Chair Jon Ham**

**Members Present:** Acting Chair Jon Ham, Selectman's Representative Jack Daly (via Zoom), Vice Chair Ray D'Amante, Member Mark Ehrman (via Zoom), Member Delia Sullivan, Alternate Susan Chenard.

**Staff Present:** Fire Chief & Code Enforcement Officer/Health Officer/Zoom Host and Moderator Ronald Beard, Planner Carole Bont, Recorder Judy Sherriff (via Zoom). Town Engineer Raymond Korber (via Zoom).

**Guests:**

- **Stuart Anderson** (nonresident, resident of Woodstock, NH) and works for Alba Architects, LLP, 137 Main Street, PO Box 186, North Woodstock, NH 03262-0186.
- **Joseph (Joe) P. Chenard**, (resident) of 11 Liberty Road, Lincoln NH 03251 (Map 107, Lot 061) and owner of:
  - 257 US Route 3 (Map 107, Lot 042)
  - 261 US Route 3 (Map 107, Lot 043)
  - US Route 3 #LO (Map 107, Lot 056)
  - US Route 3 #LO (WS) (Map 107, Lot 055)
  - US Route 3 #LO (Map 107, Lot 051) (Owns with Peter C. Chenard – now deceased)
  - US Route 3 (WS) #LO (Map 107, Lot 044) (Owns with Peter C. Chenard – now deceased)
  - US Route 3 #LO (Map 107, Lot 045) (Owns with Peter C. Chenard – now deceased)
  - US Route 3 #LO (Map 107, Lot 048) (Owns with Peter C. Chenard – now deceased)
  - US Route 3 #LO (Map 107, Lot 046) (Owns with Peter C. Chenard – now deceased)

- 11 Liberty Road (Map 107, Lot 061) (Owns with Peter C. Chenard – now deceased)
- US Route 3 #LO (Map 107, Lot 053) (Owns with Peter C. Chenard – now deceased)
- US Route 3 #LO (Map 107, Lot 047) (Owns with Peter C. Chenard – now deceased)
- US Route 3 #LO (Map 107, Lot 050) (Owns with Peter C. Chenard – now deceased)
- US Route 3 #LO (Map 107, Lot 049) (Owns with Peter C. Chenard – now deceased)
- US Route 3 #LO (Map 107, Lot 052) (Owns with Peter C. Chenard – now deceased)

And Vice Chair of the Planning Board.

- **Kim Halloran** (via Zoom), (nonresident) (ABUTTER) 5 Nicholas Drive, Franklin MA 02038 and co-owner as a co-trustee with Kevin Halloran of the Halloran Heirloom Ownership Trust, 5 Nicholas Drive, Franklin, MA owners of 15 Beechnut Drive, (Map 130, Lot 12).
- **William & Beth Russell** (via Zoom), (nonresidents) (APPELLANTS for Variance), PO Box 336, Sagamore Beach, MA 02562-0336 co-owners of 8 Hay Hill Road (Map 130, Lot 084).

## II. CONSIDERATION of meeting minutes from:

- December 15, 2021 (Acting Chair Jon Ham, Vice Chair Ray D'Amante (via ZOOM), Member Mark Ehrman, Selectman's Representative Jack Daly, Member Delia Sullivan, Alternate Susan Chenard)

**Motion to approve minutes as distributed by Selectmen's Representative Daly**

**Second Member Sullivan**

**All in favor**

## III. CONTINUING AND OTHER BUSINESS. -NONE

## IV. NEW BUSINESS

### 1. Elect a Chair and Vice Chair of the ZBA.

**Selectmen's Representative Daly nominates Ray D'Amante for Chair of the ZBA.**

**Second by Member Ehrman**

**All in favor**

**Chair D'Amante nominated Mark Ehrman for Vice Chair of the ZBA**

**Second by Selectmen's Representative Daly**

**All in favor**

**\*\*ZBA Voted and the new Chair is Ray D'Amante and new Vice Chair is Mark Ehrman\*\***

2. **Appoint Alternate Susan Chenard for a second term at the conclusion of tonight's meeting. Susan Chenard has agreed to serve as alternate for the ZBA.**

**Motion by Selectmen's Representative Daly to serve as a non-voting member for tonight's meeting.**

**Second Member Sullivan**

**All in favor**

3. **Appoint other Alternates, if needed. Selectmen's Representative to act as an alternate tonight.**

**\*Voting members tonight are Vice Chair D'Amante, Member Ehrman, Member Sullivan and Alternate Susan Chenard and Acting Chair Ham.**

4. **Set up a date to review and/or revise ZBA Rules of Procedure.**

ZBA will place this item on the next agenda and have the current rules and proposed changes to review until the next meeting.

5. **6:00 PM. Request for a Variance for two (2) retaining walls greater than four feet (4') in height within the twenty-five-foot (25') front setback area.**

**[Var 2022-01 M130 L084 Russell – Variance for Retaining Walls in front setback]**

**Appellants/Property Owners:** William & Beth Russell  
PO Box 336  
Sagamore Beach, MA 02562-0336

**Appellants' Agent:** Stuart Anderson  
Alba Architects, LLP  
137 Main Street  
PO Box 186  
North Woodstock, NH 03262

**Engineer for Appellants:** Justin Daigneault, P.E.  
Horizons Engineering, Inc.  
34 School Street  
Littleton, NH 03561

**Property Location:** 8 Hay Hill Road (Map 130, Lot 084) 0.69 Acres. The subject lot is known as Lot "MR2" within the development known as "The Landing at Loon Mountain" and is located within the Mountain Residential (MR) District where front, side and rear setbacks are twenty-five feet (25') from the property boundary line.

**Proposal:**

Appellants William & Beth Russell by and through their authorized agent Stuart Anderson of Alba Architects, LLP, request a variance for their property at 8 Hay Hill Road (Map 130, Lot 084) concerning Article VI (District and District Regulations), Section B (District Regulations), Paragraph 2 (Land Use Schedule), Paragraph 4 (Dimensional Chart) of the Land Use Plan Ordinance (LUPO).

The subject lot is within the development known as “The Landing at Loon Mountain” and is located within the Mountain Residential (MR) District where front, side and rear setbacks are twenty-five feet (25’) from the property boundary line. No structures are permitted within the setback area. A retaining wall greater than four feet (4’) in height are defined as a “structure”.

The proposed building plan to build a single-family residence includes two (2) retaining walls greater than four feet (4’) in height within the front setback area. Appellants need a variance to put two (2) retaining walls greater than four feet (4’) in height within the twenty-five-foot (25’) setback area: one being seven and a half feet (7.5’) and one being eight feet (8’) in height.

**Presentation:**

Agent for the appellants, William and Beth Russell, Stuart Anderson addresses the **Facts in Support of Granting the Variance** from portions of the application for variance:

**1. Granting the variance would not be contrary to the public interest because:**

**Answer:** Granting the variance does not alter the essential character of the neighborhood allowing for the construction of a single-family home, nor is it contrary to the zoning intent. Granting the variance does not threaten the health, safety or general welfare of the public as it is located on a private home lot.

**2. Spirit of the ordinance:**

**Answer:** Granting the variance is within the spirit of the ordinance to allow for the construction of a single-family home in a residential neighborhood and the construction of the driveway associated with it. Granting the variance does not cause increased congestion or overcrowding.

**3. Granting the variance would do substantial justice because:**

**Answer:** The proposed project is consistent with the area’s current use. There is no gain to the public that outweighs the loss to the individual.

**4. Granting the variance would not diminish the value of the surrounding properties:**

**Answer:** The proposed project is consistent with the area’s current use and abutting properties. Granting the variance does not block any surrounding views, in fact it allows for further protection of the current view. The proposed use does not decrease property values.

## **5. Unnecessary Hardship**

**Answer:** Without the ability to construct the proposed retaining walls the lot would be unbuildable because of the steep nature the driveway which would be greater than twelve (12) percent pitch. This would be problematic managing the driveway during the winter months and would increase the height of the overall dwelling due to the need to reposition it on the site which would cause a drastic drop on the downhill side.

Mr. Anderson directs the ZBA to review the maps, he has provided, which show the proposed retaining walls. He explains that the walls would more likely be constructed as segmented, prefabricated retaining walls and would be structurally engineered accordingly.

Mr. Anderson states that on behalf of the owners, he is requesting a variance to allow these retaining walls to be constructed and then the subsequent application for a Land Use Permit to construct the home.

### **Discussion:**

Member Ehrman asks Mr. Anderson if he has any drawings or images of any walls constructed that are similar to the ones being suggested. Mr. Anderson responds that he does have some but not with him. He notes that there are other examples around Lincoln (i.e., South Peak) and would be happy to send the board pictures. Mr. Anderson explains that these walls are easier to engineer and install compared to boulder walls, which are subject to potential erosion behind then which can lead to potential failure.

Vice Chair D'Amante asks about the technical aspects of the proposed walls. He asks if they are engineered walls with drainage controls behind them, and will they have mechanical stabilization. Mr. Anderson answers "yes", and adds that it would be subject to the town's structural requirement for a structural engineer to sign off on the design and installation through construction.

Vice Chair D'Amante is pleased with the layout of the site with such challenges. He wonders about the outlets for Hay Hill Road and any of the roads above as the drainage outlet comes out right at this site and goes between the existing and proposed buildings. Vice Chair D'Amante has concerns with potential erosion and asks how far does the pipe go? Mr. Anderson refers to the drawings and confirms that the pipe extends five or six (5 or 6) feet onto the property and clarifies that it's not a pipe but a swale.

Vice Chair D'Amante expresses concern with drainage from "up the hill" as the drainage is going to increase and wonders if the swale can accommodate the increase in run-off. Mr. Anderson responds that The Landing's Phase II projects have to address additional run-off on their property and Town Engineer Ray Korber is familiar with the issue. He explains that the swale bridges multiple lots and will require some kind of mutual agreement between owners.

Vice Chair D'Amante expresses that he feels it would be in both party's interest to maximize the protection to their properties and asks Mr. Anderson if he can discuss this matter with the neighbor. Mr. Anderson explains he doesn't have a relationship with the neighbor but could

potentially explore this. Vice Chair D'Amante feels this is important and would like to see it explored as it will help to protect both properties.

Chair D'Amante asks about the lower road and the stones that have come off of the boulder wall and would like to know where the property line falls. Mr. Anderson believes it is possibly common land that belongs to the association but isn't absolutely sure. He explains the walls are in close proximity to where the transition of the Right-of-Way (ROW) from the Landing Road turns into private property.

Planner Bont shows Mr. Anderson pictures of the stones in question and after some discussion conclude that they are an issue and the homeowner's association is aware that there are retaining walls that were put in as part of the original development subdivision that do need to be addressed. He adds that this is not part of the scope of works as pertaining to this client's project.

Vice Chair D'Amante asks if the homeowner's association acknowledges that they are responsible for fixing the stones that have fallen. Mr. Anderson can't give a definitive answer on that.

**Vice Chair D'Amante would like a submittal from either by the property owners or the homeowner's association to determine where the responsibility lies.**

Mr. Anderson responds, with due respect, that he doesn't think it is necessarily part and parcel of the variance application that's on the table. Vice Chair D'Amante responds that all conditions and issues relative to the site come up when asking for a variance that would include drainage issues in the long run. It's an existing condition that impacts the site's integrity and he thinks it should be addressed.

Acting Chair Ham asks for some clarification regarding the seven (7) foot wall through the wetlands, shown on the drawings, as he doesn't think there can be building in the wetlands. Mr. Anderson replies that that issue will be addressed and there is an acceptable amount of disturbance of wetlands and it is permitted by the state. This wall is not yet built.

**Vice Chair D'Amante asks if the permit from the state is pending. Mr. Anderson replies "yes" and Vice Chair D'Amante feels obtaining the permit is another condition.**

Fire Chief Beard is pleased with the presence of the hammerhead as shown on the drawings, as it will allow a fire truck to turn around.

Town Engineer Ray Korber is asked to join the discussion to help the ZBA with any additional questions or concerns they have with the issues that were just discussed. Mr. Korber starts with the engineered walls and explains that the requirements and criteria are pretty well spelled out and Mr. Anderson articulated them clearly. Mr. Korber is pleased that they are proposing engineered walls vs. boulder walls as the engineered walls are a much better solution particularly for the lots with absolute slopes to them.

Town Engineer Korber discusses a wall, shown on the drawings, that is about twenty-five (25) feet long and four (4) feet in height within the setback. His understanding is that as long as it is four (4) feet or less feet in height, a retaining wall can be built within the setback area. Planner

Bont confirms that a retaining wall isn't considered a structure for the portion of the wall that is less than four feet (4') in height so the portion of the retaining wall that is within the setback area that is four (4) feet or less doesn't require a variance. The other walls do require a variance (i.e., the walls at the entrance drive to the property that are greater than four feet (4') in height where there is about seventy-five (75) feet of wall within the setback limit and the wall that is planned in the wetland area.

Town Engineer Korber wants to clarify for the ZBA that there is approximately one hundred (100) feet of wall that is within the setback relative to this variance. He notes that there is about a twenty-three (23) foot section of wall that is actually over the property line into the ROW.

Town Engineer Korber asks Mr. Anderson if the homeowner's association is OK with that and where would the ditch line for the Hay Hill Road be to ensure there is not encroachment on the ditch line and any stormwater run-off that might come down Hay Hill Road.

Mr. Anderson responds that all projects in The Landing are subject to the homeowner's association review and approval process with is necessary in order to apply for a Land Use Permit. Mr. Korber suggests that Mr. Anderson discuss this matter with Horizons Engineering, Inc., to ensure that the drainage swale along Hay Hill Road is not going to be compromised with the extensional wall into the ROW.

Town Engineer Korber addresses the concern Vice Chair D'Amante raised regarding the pipe that runs between the two properties and he believes that the water is released into the wetland area. He thinks it is something the homeowners should be aware of and monitor in case it becomes problematic.

Vice Chair D'Amante asks Town Engineer Korber if there is a condition that should be considered that addresses future activity upstream of the Russell property. Town Engineer Korber agrees that is an excellent point. He notes that in the peer review process they have taken a good hard look at when they review the Alteration of Terrain Permit for the build out of the infrastructure, the road network, the utilities, etc. There are assumptions that are put into the drainage analysis dealing with what the density of the development is and how each lot ultimately gets built out.

Vice Chair D'Amante clarifies that as a result of what was just discussed is that the Russells, with these conditions, they do not need to worry about upstream development overwhelming their site with drainage as every site has to contain the drainage within the bounds of their own site and delay it.

Vice Chair D'Amante brings up a bit of history regarding the failure of a manhole near the Russell property. He recalls that during the construction of the road the very tall manhole failed and he is concerned about increased drainage entering or exiting it as a failure would be devastating to the Russell property. Town Engineer Korber directs Vice Chair D'Amante to review the drawings and notes that the culvert on Hay Hill Road will direct the water into the woods and down into the wetland area which is a good thing. Town Engineer Korber notes that there are many challenges when building on the steep slopes in Lincoln which can be up to a fifty (50) percent slopes. There is also added complexity as the homes that are being built are

large homes on small lots which requires removing more of the natural vegetation and woodland which helps to slow the rate of flow.

Town Engineer Korber discusses the future challenges the developments will face has to do with the Stormwater Management Ordinance (SMO). He states that the requirements under the SMO includes the submission of an inspection and maintenance plan which will require that the homeowners are actually inspecting and maintaining whatever stormwater mitigation practices they put into their single-family house lots. Town Engineer Korber expresses concern regarding how the Town of Lincoln will need to find a way to confirm that the homeowners are doing what is called for in the inspection and maintenance of the storm water mitigation systems years from now.

Planner Bont asks Mr. Anderson about maintaining the infrastructure in the subdivision. She wonders if there is a long-term maintenance plan in place. Mr. Anderson believes there is a long-term maintenance plan for all of the common land and will follow up, with the HOA, and find out about the plan for maintaining the walls along the road ways.

Selectmen's Representative Daly adds that in the past when there have been failures with boulders falling from walls, those failed retaining walls were repaired by Lincoln Trucking (& Excavating, LLC) at the request of the homeowners and/or the property manager. Planner Bont suggests that a call be made to have the current wall failure repaired.

Selectmen's Representative Daly notes that the repairs to failed retaining walls may be held up due to the wet ground conditions and the current weight/tonnage limit on the roads.

### **Who Owns the Retaining Walls?**

Vice Chair D'Amante asks Planner Bont if she knows which walls are privately owned and which are the responsibility of the HOA in The Landing. Planner Bont replies that she assumes the walls are the responsibility of the HOA as the retaining walls are located along private roads.

Vice Chair D'Amante feels it is appropriate to have clarification. Member Ehrman suggests getting a written statement from the current developer, who is a majority shareholder, as to who is responsible for which walls. Member Ehrman says he believes the HOA is not responsible for the walls rather it is the responsibility of the individual homeowners. He would like concrete evidence proving who is legally responsible for the retaining walls. Member Sullivan adds that it would also be beneficial to find out how the HOA would plan to deal with a wall failure.

Planner Bont replies that if the wall is the responsibility of the homeowner there is not an enforcement mechanism in place to deal with that at this time. Member Ehrman suggests getting the facts by writing a letter to the HOA.

Member Sullivan asks Mr. Anderson if he could keep the walls within the building envelope and out of the setback areas in case the variance is not approved. Mr. Anderson explains that the driveway is the major issue and as it relates to the association's rules. Changing the scale of the house would not make a whole lot of difference. There are two (2) different zoning districts within The Landing development and depending where the lot falls within The Landing there are different setback requirements.

According to Mr. Anderson, this particular lot falls in a more restrictive section and has twenty-five (25) foot setbacks whereas the majority of The Landing only has fifteen (15) foot setbacks. In this case the issue of the setback and the steep slope make it necessary to be outside of the building envelope and within the setback area.



Member Ehrman gives his opinion and states that the question about keeping the walls inside the building envelope and outside of the setback areas doesn't need to be answered and they can grant this variance if they decide to do so. Member Ehrman adds that getting an answer regarding who is responsible for the walls is not an issue that should delay this particular project but the Town and the HOA should continue to acquire the information and facts in order to rationalize the whole process going forward.

Vice Chair D'Amante agrees with Member Ehrman's statement. Member Ehrman suggests including local excavation businesses in the conversation to add another level of expertise to the issue of runoff from uphill lots. Member Ehrman has an idea regarding moving the water laterally which would be more productive than focusing exclusively on fall line drainage in this extremely unusual site as there are pathways to the river that could be less expensive and perhaps easier to modify. Member Ehrman mentions the owner Joe Lynch is planning on encouraging the combining of lots to help find natural drainage pathways for stormwater run-off.

Member Sullivan asks about the neighboring home and wonders if that home had a variance as it looks like the setback is closer than twenty-five (25) feet. Planner Bont is sure as the neighboring home was built before she became planner. She does note that the neighboring home is the home that had a retaining wall failure and avalanche.

Acting Chair Ham asks Mr. Anderson what his thoughts are. Mr. Anderson agrees that it is smart to tackle The Landing holistically in terms of understanding the retaining walls. He feels there probably are complications as to responsibility due to what is written in deeds, what easements for maintenance were granted, etc. He feels defining all of that would be very important.

#### **Public Comment**

Mr. Joe Chanard comments on his concerns with future drainage impacting several homes and believes reconstructing some retaining walls is a good idea and should have been done years ago. He also suggests that if the ZBA needs more data on this issue they could continue the hearing.

**Acting Chair Ham closes public comment.**

**Acting Chair Ham polls the ZBA asking the members if they feel comfortable moving forward or do they want to continue the hearing. The ZBA members agree to move forward with a decision.**

## Decision

### **Review of Finding of Facts, application with facts that support the variance, and the worksheet.**

#### **Facts in Support of Granting the Variance**

##### **1. Granting the variance (would – would not) be contrary to the public interest.**

Granting the variance would **not** be contrary to the public interest because:

*Granting the variance does not alter the essential character of the neighborhood allowing for the construction of a single-family home, not is it contrary to the zoning intent. Granting the variance does not threaten the health, safety or general welfare of the public as it is located on a private home lot.*

#### **Granting the variance would not be contrary to the public interest.**

Acting Chair Ham polls the ZBA asking if they are in favor of #1 with additional conditions and discussions as reflected in the meeting minutes. A vote shows all members of ZBA are in favor.

##### **2. If the variance were granted, the spirit of the ordinance would be observed because:**

*Granting the variance is within the spirit of the ordinance to allow for the construction of a single-family home in a residential neighborhood. Granting the variance does not cause increased congestion or overcrowding.*

#### **If the variance were granted, the spirit of the ordinance would be observed.**

Acting Chair Ham polls the ZBA asking if they are in favor of #2 with additional conditions and discussion as reflected in the meeting minutes. A vote shows all members of the ZBA are in favor.

##### **3. Granting the variance would de substantial justice because:**

*The proposed project is consistent with the area's current use. There is no gain to the public that outweighs the loss to the individual property owner.*

#### **Granting the variance would de substantial justice.**

Acting Chair Ham polls the ZBA asking if they are in favor of #3 with additional conditions and discussion as reflected in the meeting minutes. A vote shows all members of the ZBA are in favor.

##### **4. If the variance were granted, the values of the surrounding properties would not be diminished because:**

*The proposed project is consistent with the area's current use and abutting properties. Granting the variance does not block any surrounding view, in fact is allows for further protection of the current view. The proposed use does not decrease property*

values.

**If the variance were granted, the values of the surrounding properties would not be diminished.**

Acting Chair Ham polls the ZBA asking if they are in favor of #4 with additional conditions and discussion as reflected in the meeting minutes. A vote shows all members of the ZBA are in favor.

## **5. Unnecessary Hardship**

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

*Denial of the variance would create hardship in rendering the lot extremely difficult to develop and create a scenario whereby any development would become uncharacteristic with the abutting properties. With additional conditions and discussions as reflected in the meeting minutes.*

Planner Bont suggests adding: *Part of the uniqueness of the subject lot is the severe steepness of the lot. The proposed retaining wall is within a twenty-five (25) foot setback area and in addition the property boundary line is approximately fifteen (15) feet from the edge of Hay Hill Road. That is a large and significant setback before any building can occur so it has an extra-large building setback. With additional conditions and discussions as reflected in the meeting minutes.*

**Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship.**

**Motion to approve addition by Acting Chair Ham**

**Second by Member Ehrman**

**All in favor**

**AND**

- ii. the proposed use is a reasonable one because:

*The proposed use is reasonable as it is consistent with surrounding properties and within the spirit of the ordinance.*

**OR**

B. Explain how, if the criteria in subparagraph (A) are not established an unnecessary hardship will be deemed to exist, if and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and

a variance is therefore necessary to enable a reasonable use of it.

*Granting the variance would result in the property development being more harmonious with the sloping site. Strict conformance with the ordinance would be to the detriment of the area.*

Acting Chair Ham polls the ZBA asking if they are in favor of #5 with additional conditions and discussion as reflected in the meeting minutes. A vote shows all members of the ZBA are in favor.

**Motion to grant the variance as written with stipulations and conditions by Acting Chair Ham**

**Second Vice Chair D'Amante**

**All in favor**

**V. OTHER BUSINESS: None**

**VI. PUBLIC PARTICIPATION AND OTHER BUSINESS: None.**

**VII. ADJOURNMENT**

**Motion to adjourn by Acting Chair Ham**


**Second by Member Sullivan**

**All in favor**

Respectfully submitted,

*Judy Sherriff*  
Recording Secretary

Date Approved: May 4, 2022

  
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Acting Chairman Ham