

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
May 9, 2022**

Mr. David Hennessey called the meeting to order at approximately 7:00 pm.

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT ROLL CALL: David Hennessey
Jim Bergeron
David Wing
John Westwood
Jeff Caira
Alternate Shaun Hamilton
Planning Director/Zoning Administrator Jennifer Beauregard
Recording Secretary Jordyn Isabelle

ABSENT: None

MINUTES

April 11, 2022

MOTION: (Westwood/Wing) To approve the April 11, 2022, meeting minutes as written.

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

REQUEST FOR REHEARING

Mr. Hennessey explained that the requests for rehearing are not public hearings, meaning that there would be no public input.

CASE #ZO2022-00006

WALKER, Richard & Ethel - 81 So. Shore Drive; Map 31 Lot 11-268 – Seeking a Variance concerning: Article III, Section 307-12 Table 1, & Article VII, Section(s) 307-41A, 307-41B of the Zoning Ordinance to permit an existing seasonal camp structure and garage to be demolished and replaced with a 32' x 36' 2-bedroom yearround residence with a 10' x 36' deck and an attached 24' x 30' garage on a undersized and non-conforming lot with less than 200' of frontage. The construction will be shifted to meet the 15' setbacks but will be located within the 50' WCD setback and the deck and steps will be located 6' from the side setbacks where 15' is required. Also, replacing and relocating septic, setback will be 110' from WCD where 125' is required.

Mr. Caira stated that he would be in favor of a rehearing, believing that the Board could reconsider their decision. He stated that moving a house farther back to put a garage up is too much relief to ask for.

Mr. Wing discussed how there was some contention on if the appeal was within the 30 days, which it was. He expressed that he would vote in favor of a rehearing. He did not believe there was strong enough deliberation from the Board. Mr. Hennessey asked if there was anything specific that the Board erred on. Mr. Wing replied that he did not believe so, just that it would be beneficial to have a point-by-point discussion on the case.

Mr. Bergeron stated he would vote in the affirmative to rehear the case. Mr. Bergeron read aloud from the letter from the Selectmen: *“First, in order for any of these variances to stand, we believe the applicant needs relief from Article III Section 307-8c which reads, ‘Any nonconforming use may continue in its present use except that any nonconforming use of land or buildings may not be expanded.’”* He believed they did err on this section and stated that this was the Selectmen’s strongest point.

Mr. Westwood stated he was undecided on this case. He believed it did not make sense to leave the lot as it is now, and that they had to be careful of following the law. He stated he is willing to vote in the affirmative if that is the general consensus of the Board.

Mr. Hennessey explained that the Selectmen do not need to point out a specific error on the part of the Board, but it is helpful if they do. In an appeal, they are saying we made an error in our process and decision. In this case, they are stating that the Board did not go through the specific points thoroughly enough, and if that is in error then the Board should vote in the affirmative to rehear the case.

Mr. Hamilton stated that if there is a question on if something was not gone over, not gone over enough, and the applicant can bring something new to the table, then they should have a rehearing. He added that if the Board visits the case twice, there should be not question of the decision. Mr. Hennessey replied that he did not disagree with Mr. Hamilton, noting that request for appeals should not automatically regrant a rehearing, as it would set the precedent for every applicant to have two chances to come before the Board.

Mr. Hennessey stated that the precedents that have been cited about other cases regarding hardships were wiped out by the Simplex case. He described the specifics of the case, noting that the court ruled that Board’s cannot just look at the lines of a map and what is listed, they must look at what is actually in the area and the context of the lot. He stated that most of the properties on the ponds do not fit into the current zoning. He asked if they were treating someone unfairly by imposing today’s zoning on a lot that has existed for a long time. He explained that the Simplex case ruled that it would be unfair. Mr. Hennessey stated he was in agreement with the applicant’s lawyer.

Mr. Hennessey stated that there is no distinction between seasonal and year-round use. He explained that all new constructions require Shoreland and DES approval of a modern septic system. He stated that the only way to do that on this lot would be to move the structure that is already there. He explained that a modern septic system and moving the house further away from the pond were both improvements. He stated that they have approved similar cases numerous times.

Mr. Hennessey stated that one of the other points of contention was the garage that the applicant proposed. He stated that the Board of Adjustment is not able to negotiate with applicants on the specifics of their proposal. He asserted that they must either vote in the affirmative or negative. He stated that he would vote in the negative on rehearing the case, especially as a rehearing could be a detriment to the property values of the neighborhood.

Mr. Bergeron stated that he did not believe that the Simplex case was an equivalent comparison to the current case, especially as that case did not deal with dimensions of the lot. He stated that the current lot does not have sufficient dimensions. He asserted that he did not believe that the Board spent enough time on section 307-8c.

Mr. Wing stated that he did agree with Mr. Hennessey that the Simplex case was comparable and added new insight into how the Supreme Court looks at cases similar to this one. He asserted that it would be in the public interest for a state approved septic design and shoreland weigh on for the runoff. He explained that he would vote in the affirmative to rehear the case for the technical process of going through each section point-by-point.

VOTE: (4-0-1) The motion carried.

APPEAL GRANTED.

Mr. Hennessey explained that this case would be on the next agenda for June 13, 2022.

CASE #ZO2022-00007

CAMPBELL, Ronald & Ellen - 80 So. Shore Drive - Map 31 Lot 11-269 – Seeking a Variance concerning Article III, Section 307-12 Table 1 of the Zoning Ordinance to permit development of an existing undersized non-conforming undeveloped lot, created in 1925 (prior to current Zoning Regulations) with a single-family residence, 8’ from side lot line where 15’ is required. Also, seeking to build on a lot consisting of 6,680sf. where 43,560 (1-acre) is required, and lot frontage of 50’ on a private road where 200’ on a class V road is required.

Mr. Hennessey explained that he was confused why this came before the Board. He explained that the Planning Board unanimously recommended to the Selectmen that they turn down the request to build on a Class VI road. He added that the Selectmen had the full power to say there no development can occur on the road, making it difficult for him to understand why it was before the Board.

Mr. Hamilton stated that if he was a voting member, he would deny the request to rehear. He stated that it is not a buildable lot, there is nothing there now, and it is on a Class VI road.

Mr. Westwood stated that he did would vote in the negative to rehear the case.

Mr. Bergeron stated that he did not want to rehear the case. He read aloud from the last sentence of the request for rehearing: *“Lastly, this has been an empty lot for its entre existence with no vested rights to a dwelling. We question this lots vested interests and whether a house can actually be allowed here.”* He explained that this sentence is what carried the legality for the request for a rehearing. He believes that the Board did not look thoroughly enough at the vested use of the property.

Mr. Wing stated that he was in agreement with Mr. Hennessey. He stated that he would vote to rehear the case so that the points can be reviewed. He stated that also agreed with Mr. Bergeron’s statement that the vested interest of the lot was perhaps overlooked in this case.

Mr. Caira stated that he agreed with the previous statements regarding the letter from the Board of Selectmen. He stated he would vote yes to rehear the case.

Mr. Hennessey stated that every person is entitled to their bundle of rights – the right to sell your property, the right to use your property, and the right to build on your property. He stated that if a Town or government chooses not to allow any of those rights, it would be an automatic court case. He explained that due to what is already in the area, the testimony that was given, and the discussions with abutters regarding runoff and protection of the road he would vote to not rehear the case.

Mr. Hennessey explained how the Planning Board and Selectmen can create policy, while the Board of Adjustment must only look at the laws and what is in front of them. He did not feel like it was just to not allow a property owner to build on a lot that was existing since the 1920s, especially as it is similar to the other lots in the neighborhood. He added that it would be better than the other properties in the area, as it would have modern approved septic and well designs. He asserted that he believes the Board decided correctly in the original case.

Mr. Hennessey stated that the Board went through the five criteria for the variance. He explained that the Board should go through each of the five criteria thoroughly. He added if there is a “no” vote on any of the five criteria, then it is an overall “no” vote. Mr. Hennessey asserted that he believed that the Board thoroughly went through the five criteria and that the applicant met those criteria.

Mr. Caira stated that he respected Mr. Hennessey’s opinion, but felt that the case should be reheard.

VOTE: (2-0-3) The motion carried.

APPEAL NOT GRANTED

Mr. Hennessey stated that he hopes that the Selectmen do not take offense to this and that they still can say “no,” though he does not believe that this case should be granted a rehearing.

Mr. Hennessey thanked the Board for the great discussions on both cases.

ADJOURNMENT

MOTION: (Wing/Westwood) To adjourn the meeting.

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

The meeting was adjourned at approximately 8:03 pm.

DATE SPECIFIED – June 13, 2022

CASE #ZO2022-00006 – Map 31 Lot 11-268 – WALKER, Richard and Ethel – 81 So. Shore Drive