

APPROVED

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT
September 19, 2022**

Vice Chairman Jim Bergeron called the meeting to order at approximately 7:03 pm.

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT ROLL CALL: David Hennessey – present via telecommunications
Jim Bergeron
David Wing
John Westwood
Jeff Caira
Planning Director/Zoning Administrator Jennifer Beauregard
Recording Secretary Jordyn Isabelle

ABSENT: Jeff Caira
Alternate Shaun Hamilton

Mr. Bergeron explained that only four voting members were in attendance at the meeting. He continued that he would be stepping down from the first two cases, explaining that there would be only three voting members on the first two cases. He explained that for any case to pass with only three voting members, there would need to be a unanimous vote in the positive for it to pass.

MINUTES

August 8, 2022

MOTION: (Wing/Westwood) To approve the August 8, 2022 meeting minutes as written.

ROLL CALL VOTE: Mr. Hennessey – Yes
Mr. Bergeron – Yes
Mr. Westwood – Yes
Mr. Wing – Yes

(4-0-0) Motion passes.

RECONSIDERATION OF ZBA DECISION

Case #ZO2022-00017

Map 41 Lot 6-137

VEILLETTE, Brian T. & Nancy L. – 8 Pulpit Rock Road – RECONSIDERATION OF THE VOTE THAT WAS TAKEN ON AUGUST 8, 2022 concerning: Planning Board decision rendered on 6-20-

2022 in case #PL2022-00023, regarding the minor site plan review to request a change in hours of operation and to allow wood splitting on site, also a review of the code enforcement officer's decision relating to the interpretation and enforcement of the provisions of the Zoning Ordinance. Per New Hampshire Revised Statutes Annotated, Chapter 677, request for reconsideration of Zoning Board decision rendered on August 8, 2022 requested by David Hennessey, Chairman of the Zoning Board of Adjustment.

Mr. Groff came forward to represent the applicant. Mr. Bergeron stated that he was stepping down from the case. Mr. Wing was appointed to Chair this section of the meeting.

Mr. Hennessey explained his reasoning for rehearing the meeting, noting that after he looked at the meetings and the request, he believed they had made a mistake in their decision. He asserted that wood splitting and manufacturing is an industrial use, which is in the industrial zone, explaining that the Planning Board was correct in their decision to change the site plan. For more insight into this decision, see the Zoning Board of Adjustment meeting minutes from August 18, 2022.

Ms. Beauregard read the list of abutters aloud. There was no person whose name was not called that is an abutter or has statutory interest in the case.

Mr. Hennessey stated that after looking over the decision of the previous meeting, he believed they erred in their decision. He explained that the more he looked over the Zoning Ordinance, he believed that what the applicant is doing on the property is allowed under current zoning laws. He asserted that what they were doing on the lot with wood being brought to the site, then being manipulated, and then being shipped off site is a form of manufacturing that is a valid industrial use. He explained that since it is a valid use, then it would be well within the purview of the Planning Board to issue a site plan on the lot. He urged the Planning Board to consider the concerns of the abutters and to establish rules moving forward.

Mr. Groff questioned the jurisdiction of the Board to reconsider their vote that was taken, as they are not the selectmen, one of the people affected by the decision, or a property effected by the decision. He did not believe that a court of law would agree with the Board's decision to reconsider their vote. Mr. Hennessey asked Ms. Beauregard if that would be correct. She replied that the Board was within the 30 days right to appeal.

Mr. Groff stated that he looked at all of the records at the Planning Department in reference to the case and explained the history of the lot. He summarized that the lot was a car dealership in 1980's that allowed between 10 and 20 cars on the lot. He noted that the car dealership was being operated without a variance for 9 years; operating until January 3, 2003 when the lot was bought by JCL Reality, LLC. The property was sold again in 2004 to 72 Bridge Street Reality, LLC. He noted that these were two real-estate developers, indicating no evidence that the house was used residentially or commercially during those few years. Mr. Groff continued that the property was bought in 2007 by John Cuccinello. Mr. Groff informed that Mr. Cuccinello received a site plan from the Planning Department subject to a favorable letter from the Fire Department. He stated that the set conditions for the lot were that there needed to be low barrier walls provided to contain all mulch, the mulch must be at least 30 feet away from buildings and lot lines, fire extinguishers she be provided, and a monitored fire alarm system must be installed. He asserted that there are no low barrier walls containing the mulch and that there is at least one mulch pile on a lot line currently. He stated that this was granted on the assumption that there was a variance for lot size on the property. He explained that while there is a notion that variances run with the land, variances actually run with use. He asserted that if a variance is not used for a year, then the variance is lost. He stated that since there was no commercial or residential use on the lot for several years, then the variances for those would be lost. Mr. Groff continued that since the house is a residence, it is considered a non-conforming use in the industrial zone, meaning that under zoning ordinance 307-8 – a nonconforming use cannot be re-established if it was

discontinued for a year. Mr. Groff asserted that the applicant wanted to have a minor home occupation, which would not be allowed in the industrial zone without a new variance – meaning she would need a variance for her minor home occupation as well as for her residence on the lot. Mr. Groff further continued that noxious, hazardous, or offensive uses are also not allowed – stated that a chainsaw produces loud noise, smoke, and dust and would certainly disturb the neighbors. He stated that the applicant was now asking to operate from 7:00 am to 8:00 pm, which is loud and offensive. He added that they also use a two-cycle engine to burn oil. Mr. Groff asserted that log splitting is not an allowed use, as it is not listed in the Table of Allowed uses, disputing that log splitting is a form of manufacturing.

Mr. Wing stated that Mr. Groff brought up good points regarding the validity of the variances on the lot to begin with. Ms. Beauregard stated that they had met with Town Council on if they Board had the jurisdiction to reconsider their decision. She read aloud from *The Zoning Board of Adjustment in New Hampshire: A Handbook for Local Officials*:

The board may reconsider their decisions provided it is done within the statutory 30-day appeal period of the original decision. "...we believe that municipal boards, like courts, have the power to reverse themselves at any time prior to final decision if the interests of justice so require. We hold that belief because the statutory scheme established in RSA chapter 677 is based upon the principle that a local board should have the first opportunity to pass upon any alleged errors in its own decisions so that the court may have the benefit of the board's judgment in hearing the appeal.

Ms. Beauregard summarized that Town Council believed that the Board did have the right to reconsider their decision.

Mr. Wing opened the discussion to the Public.

Ms. Nancy Veillette of 5 Lori Lane came forward to address the Board. She informed that she had a letter from Ms. Barbara Nicholls, objecting to everything going on at 8 Pulpit Rock Road. Ms. Veillette asserted that she believed the applicant was in violation of noxious, hazardous, or offensive laws. Mr. Wing stated he believed that particular law was in reference to special conditions as opposed to the non-special conditions of the industrial zone. Ms. Beauregard stated that it would be up to the Board to decide if what is being requested is a noxious, hazardous, or offensive use.

Ms. Sara Beggan of 8 Pulpit Rock Road came forward to address the Board. She informed that she is the original applicant of the minor site plan revision to the 2007 site plan that was issued. She stated that she was under the impression that the undersized lot variance stays with the land, and if that is assumed then her lot does allow for industrial use. She stated that she considers wood splitting as manufacturing, which would be allowed. She then showed a picture of the log splitter that was questioned in the previous meeting to better show the size to the Board.

Mr. Wing closed the discussion to the Public.

Mr. Westwood stated that this was a difficult case. He stated that he believed that it should be approved. He stated that the lawyer did an excellent job presenting the information. He believes that there were some mistakes that might have been made, but he did not believe that nothing has changed from the previous meetings. He stated that while he is not happy about it, he is satisfied that everyone understands the errors that may have been made.

Mr. Hennessey stated he agreed with Mr. Westwood, noting that it is a difficult case. He stated that he feels personal responsibility for not recognizing that changing the nature of the wood differs from a commercial use and an individual homeowner who is splitting logs in their backyard. He believed that it was obvious

that it was a manufacturing use. He stated that the town attorney agreed with him on the case. Mr. Hennessey asserted that he agrees that there have been egregious problems with the way the site has been managed over the years and that it needs to be cleaned up. He disagreed that the original variance on the car dealership is expired, noting that he is not sure why that variance was approved though. He stated that the lot was made a legal lot under industrial use, so they need to look at if the applicant is doing what is valid in the industrial zone – if it is legal, it is up to the Planning Board to manage.

Mr. Wing stated that Mr. Groff raised interesting points regarding how the variance went. He noted that if this is not favorable to the applicant, they could appeal. Mr. Wing continued that he rewatched the Planning Board meeting where they heard the request for the site plan change and read the minutes for that meeting as well. His observation was that the Planning Board heard testimony, deliberated, and voted on the site plan, which is within their charge. He noted that he empathized with the abutters. Mr. Wing stated his agreement with Mr. Westwood and Mr. Hennessey that there are some violations present, which would be best handled by the code enforcement officer to investigate. He reiterated that he believed the Planning Board was within their right to make the decision on the site plan.

Ms. Beauregard clarified that a “yes” vote would be to approve the appeal and override the Planning Board’s decision and a “no” vote would be to uphold the decision of the Planning Board.

CASE #ZO2022-00017

ROLL CALL VOTE:

Mr. Westwood	–	Yes
Mr. Wing	–	No
Mr. Hennessey	–	No

APPEAL DENIED. PLANNING BOARD DECISION RENDERED ON JUNE 20, 2022, ON CASE# PL2022-00023 STANDS.

Mr. Wing explained that there is a 30 day right to appeal.

REQUEST FOR REHEARING

Case# ZO2022-00014

Map 31 Lot 11-22

PAGE, Andrea & BILAPKA, Bruce – 49 Woekel Circle – Seeking a Variance concerning: Article III, Sections 307-8 C and 307-12 Table 1 of the Zoning Ordinance to permit construction of a 2 stall garage 24’ deep by 26’ wide with a walk up storage area, on an undersized lot with no frontage, on a public way and inadequate front and side setbacks.

Mr. Wing asked if the Board thought there enough new information was presented to rehear the case. Mr. Hennessey stated that he believes that they should have invited the Conservation Commission to come and weigh in on this. He stated he voted “no” the first time and that they should reconsider, especially considering the increase in impervious services and how that may affect the pond.

Mr. Wing stated that he had voted “yes” the first time and did not think that any new information had been presented and that the case does not need to be reheard.

CASE #ZO2022-00014

ROLL CALL VOTE:

Mr. Hennessey	–	Yes
Mr. Westwood	–	No
Mr. Wing	–	No

CASE WILL NOT BE REHEARD.**Case #ZO2022-00018****Map 23 Lots 11-343 & 11-344**

16 Springdale Realty Trust – 16 Sprindale Lane & Springdale Lane - Seeking a Variance concerning Article III, Section(s) 307-8C, 307-12, 307-12 Table of Dimensional Requirements, 307-13, 307-14 & Article VII, Section(s) 307-37, 307-39, 307-40 of the Zoning Ordinance to permit construction of a replacement Single family dwelling on Map 23 Lot 11-343 where this property is approximately 4,625 +/- sf. in size, with the new home proposed 3' off the western lot line, 1' from The Springdale Lane ROW, a 12' easterly sideline and 44' from the pond, with a proposed deck 36' off the pond, and to allow construction of a detached garage on Map 23 Lot 11-334 with the structure proposed to have a 15' westerly side lot line setback, 25' rear lot line setback, 8' to the easterly side lot line and 18' from the Springdale Lane ROW on a lot of approximately 4,342 sf. in size. Both of these lots have 0' of frontage on a Town road where a minimum lot size of 1 acre and a minimum of 200' of frontage with a minimum front setback of 30' and a 15' side/rear setback and a 50' lake side setback is required in the Residential District and to allow development of the lot in accordance with RSA:41.

Mr. Hennessey recused himself from the remainder of the meeting. Mr. Hennessey encouraged people to apply to join the Board, stating that this meeting is a perfect example of why it is important for there to be alternates on the Board.

Mr. Wing read the list of abutters aloud. There was no person whose name was not called that is an abutter or has statutory interest in the case.

Mr. Maynard asked to be moved to the following meeting. Mr. Bergeron stated this would be the first case on the next meeting agenda.

CASE DATE SPECIFIED TO OCTOBER 17, 2022.**Case #ZO2022-00019****Map 24 Lot 12-75**

PULTAR, Lisa & Shawn – Little Island Park – Seeking a Variance concerning Article III, Section(s) 307-12, 307-14 of the Zoning Ordinance to permit construction of a new single family dwelling on a lot of approximately 12,784 +/- sf. in size with 0' of frontage on a Town road where a minimum lot size of 1 acre and a minimum of 200' of frontage is required in the Residential District and to allow development of the lot in accordance with RSA 674:41

Mr. Wing read the list of abutters aloud. There was no person whose name was not called that is an abutter or has statutory interest in the case.

Mr. Maynard asked to be moved to the following meeting. Mr. Bergeron stated this would be the second case on the next meeting agenda.

CASE DATE SPECIFIED TO OCTOBER 17, 2022.**Case #ZO2022-00021****Map 36 Lot 10-368-16**

JOHNSON, Daniel & Jillian – 27 Brandy Lane – Seeking a Variance concerning Article VII, Section(s) 307-37, 307-39 of the Zoning Ordinance to permit property owner to add fill to improve the grade in the backyard in an area that had been previously disturbed during original construction in 1995, which encroached into the 50' WCD setback.

Mr. Wing read the list of abutters aloud. There was no person whose name was not called that is an abutter or has statutory interest in the case.

Mr. Daniel Johnson came forward to address the Board.

Ms. Beauregard read aloud from 307-37 and 307-39 of the Zoning Ordinance, which the applicant was requesting relief from.

Mr. Johnson read the five criteria for a variance into the record.

Mr. Bergeron asked for background information from the Planning Director. Ms. Beauregard replied that the applicant contacted the Planning Department to complete this project. She informed that this is an already established lot and the area is already being used as a yard. She continued that because it falls within the WCD, they were not able to give him permission to continue without this Board's approval. Mr. Bergeron asked what the encroachment was now. Ms. Beauregard replied she was not sure, though noted the applicant provided some pictures for reference.

Mr. Wing asked if this should rather be a special permit. Ms. Beauregard replied that they are looking to fill in where the WCD district goes through. He then asked if the Conservation Commission should weigh in on the case. Ms. Beauregard replied that the Board could ask for that if they wanted to. Mr. Bergeron asked if the Conservation Commission has seen this property in the past. Ms. Beauregard replied that she did not believe this property has seen conservation. Mr. Wing asked if that could be a stipulation that the applicant receive a favorable letter from the Conservation Commission.

Mr. Johnson informed that the yard has a steep slope at the back of his yard where he wants to fill it 3-4 feet to make it safer for children playing in the back yard. Ms. Beauregard stated that they believe the builder had cleared the lot prior to the applicant occupying the lot and encroached on the WCD. Mr. Johnson stated that the original driveway and a retaining wall original to the house also encroach on the WCD. He explained that he wants to ensure he does this the correct way.

Mr. Johnson showed the Board several pictures to help the Board better understand the conditions of the lot. He explained that they were just looking to complete their yard and did not want to further intrude into the WCD, adding that he would like to add a permanent barrier in the form of a retaining wall or natural stone to aid with this.

Mr. Bergeron opened the discussion to the public. As no one from the public came forward, the discussion was brought back to the Board.

Mr. Westwood asked if there were wet water problems on the lot. Mr. Johnson replied that there was not.

MOTION: (Wing/Westwood) For the applicant to receive a favorable letter of recommendation with set criteria form the Conservation Commission for proceeding with the project.

VOTE: (3-0-0) The motion passes.

MOTION: (Wing/Westwood) For the applicant to receive a favorable letter of recommendation with set criteria from the Conservation Commission for proceeding with the project.

ROLL CALL VOTE: Mr. Wing – Yes
 Mr. Bergeron – Yes
 Mr. Westwood – Yes

(3-0-0) Motion passes.

CASE #ZO2022-00021

ROLL CALL VOTE: Mr. Westwood – 5 yesses Final vote YES
 Mr. Wing – 5 yesses Final vote YES
 Mr. Bergeron – 5 yesses Final vote YES

VARIANCE GRANTED.

1. The variance will not be contrary to the public interest because:

Mr. Wing stated that he did not believe that this would threaten public health, safety, or welfare of the community and does not alter the essential character of the property.

2. The spirit of the ordinance is observed because:

Mr. Bergeron stated that he believed this was observed and not going to have a negative deleterious effect to the WCD. He added that the applicant was also doing everything in his power to protect the WCD and is willing to get input from the Conservation Commission.

3. Substantial justice is done because:

Mr. Westwood stated that he believed substantial justice is done for many reasons, noting that the variance would only affect the applicants. He added that the lot would suffer if the variance is denied.

4. The values of surrounding properties are not diminished because:

Mr. Bergeron stated that they could not see how this could diminish the values of surrounding properties, and if anything – the proposed improvements to the lot could help their lots, but certainly not diminish them.

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

(A) no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because?

(B) If the criteria in subparagraph A above 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.

Mr. Wing stated that the restrictions from the WCD does offer some hardship of the land. He stated that the applicant was looking to grade his property to be more favorable to his use and his children, noting that the grade is a unique aspect of the property. He does not believe it will alter the essential character of the

property by regrading it and is certainly a hardship. He believed imposing the restriction would be unnecessary here, meaning that the proposed use is a reasonable one.

Mr. Bergeron explained the 30 day right to appeal. Ms. Beauregard help him meet with conservation commission

DATE SPECIFIED CASE(S) – October 10, 2022

Case #ZO2022-00018 – Map 23 Lots 11-343 & 11-344 – 16 Springdale Realty Trust – 16 Springdale Lane and Springdale Lane

Case #ZO2022-00019 – Map 24 Lot 12-75 – PULTAR, Lisa & Shawn – Little Island Park

ADJOURNMENT

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

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

The meeting was adjourned at approximately 9:05 pm.

Respectfully submitted,
Jordyn M. Isabelle
Recording Secretary