

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT
March 13, 2023**

Chairman Dave Hennessey called the meeting to order at approximately 7:01 pm.

PLEDGE OF ALLEGIANCE

ROLL CALL

Mr. Cairra acted as secretary for this meeting in absence of Mr. Wing.

PRESENT ROLL CALL: David Hennessey
Jim Bergeron
Jeff Cairra
Alternate Ken Stanvick
Alternate Jason Goucher
Alternate Shaun Hamilton
Alternate Matthew Welch
Planning Director/Zoning Administrator Jennifer Beauregard
Recording Secretary Cassidy Pollard

ABSENT: David Wing
John Westwood – arrived after Case #ZO2023-00003

MINUTES

February 13, 2023

MOTION: (Hennessey/Cairra) To approve the February 13, 2023 meeting minutes as amended.

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

Mr. Hennessey announced to the Board that this would be Mr. Bergeron's last meeting. He thanked Mr. Bergeron for serving on the Board. Mr. Hennessey explained that Mr. Goucher's term is expiring and that he is more than welcome to apply for reinstatement. He expressed to the Board and the public that if anyone would like to apply as a member or as an alternate to please do so. He explained that in the past that alternates have always moved up to full members and if that was their wish then they would need to get their applications in by March 17th. He stated that the interviews with the Selectmen would be done prior to next month's meeting where the elections will take place. Ms. Beauregard confirmed that the Selectmen would be conducting interviews on March 21st.

CONTINUED HEARINGS

CASE #ZO2023-00003

Map 6 Lot 4-175-1

PAWTUCKET ROAD LAND HOLDINGS, LLC – 32 A & B Valley Hill Road -APPEAL FROM AN ADMINISTRATIVE DECISION concerning: Article VII Wetland Conservation District, Section 307-39 Permitted Uses, of the Zoning Ordinance and the Code Compliance Official's Notice of

Violation and Cease and Desist Order dated December 7, 2022 which states the owner filled in 2 jurisdictional wetlands and removed the 50 foot buffers.

Mr. John Bisson from the law firm Cronin, Bisson & Zalinsky approached the Board. Mr. Bisson explained that they are in the same place as last time and that his client is still continuing to have conversations with the Town and with DES. He stated that they are asking for an additional thirty day continuance. He explained that he believes that the issue will be resolved before then.

Mr. Hennessey asked Ms. Beauregard if the Town was in agreement with this request as it was an appeal to an administrative decision. Ms. Beauregard replied that it is her understanding that the Town is actively working with them and that they are working on some sort of agreement. She stated that the Town is in favor of them requesting a continuance. Mr. Hennessey asked if the Town was in agreement to forward this to the next meeting. Mr. Bisson stated that that was his understanding. Ms. Beauregard explained that Code Enforcement Officer Lozowski has no problem with them continuing and/or withdrawing, whatever their wish is.

CASE DATE SPECIFIED TO APRIL 10, 2023.

CASE #ZO2023-00004

Map 15 Lot 8-66

SLAVIN, Carol A. 2013 Revocable Trust – 27 Balcom Road – Seeking a Variance concerning: Article III Sections 307-12, Table 1 & 307-13(A) of the Zoning Ordinance to permit a subdivision of applicant's existing lot containing approximately 1.58 acres into 2 lots, one lot with an existing house containing approx. 0.79 acres where 1 acre is required, and one lot proposed for new construction containing approx. 0.78 acres where 1 acre is required.

Mr. David Groff of 79 Bridge Street and Mr. John Slavin approached the Board.

Mr. Hennessey explained that the abutters list had been read previously and that Mr. Groff had read the five criteria of a variance into the record at the last meeting. Mr. Hennessey stated that there was an informal site walk, which was more of a drive-by and hoped that all the members were able to drive by. He asked if any of the alternates drove by. Mr. Welch replied that he participated in the site walk with Mr. Cairn, Mr. Bergeron, and Mr. Wing. Mr. Hennessey appointed Mr. Welch to sit in for Mr. Wing and vote.

Mr. Groff explained to the Board that if there were any other questions after the site walk that he would be more than happy to answer them, but other than that he believed that they've covered all the criteria. He stated that everybody that was at the site walk saw the condition of the property, the surrounding neighborhood, the odd shape of the lot, and where the house was supposed to be situated if the subdivision eventually gets approved.

Mr. Hennessey explained that it is highly unusual for the Board to take a conforming lot and create two non-conforming lots and that is the issue that was brought to them at the last meeting. He stated that the abutters urged the Board to go and see the property because it did seem to fit into the neighborhood as a non-conforming lot. He explained that he feels that is an important situation because the Board generally doesn't make two non-conforming lots out of a conforming lot and for them to do that it would have to be a result of some form of hardship that made that lot different and unique.

Mr. Hennessey asked the members of the Board how they felt about how the property would fit into the neighborhood as a subdivided property. He explained that they should take in to account the five criteria while thinking about this, but the question of hardship is really what the focus is on. He asked the Board if there was justification for taking a conforming lot and making it into two non-conforming lots.

Mr. Caira explained that he believed the hardship is self-created. He stated that after looking at the tax map the initial subdivision was neatly done and that all the lots are roughly the same size. He expressed that it wasn't a good idea in his opinion to take one conforming lot and turn it into two non-conforming lots. Mr. Welch agreed with Mr. Caira. He stated that the lot being in a neighborhood with oversized lots it doesn't seem to follow the spirit of the ordinance to make it into two non-conforming lots. Mr. Hennessey asked if Mr. Stanvick went to the site walk. Mr. Stanvick replied that he was not there. Mr. Hennessey asked Mr. Bergeron if he attended the site walk. Mr. Bergeron replied that he did and that it's not typical for the Board to change what is in front of them and what is in front of them is a difficult choice. He stated that the hardship does become a self-created hardship as there are other relief forms that could be used. He explained that he listened to Mr. Groff and the story that he told very carefully and there are methods that could be developed, but not this particular method that was presented. Mr. Westwood stated that he drove by the property and that he agreed with what Mr. Welch had said. He explained that it would fit in nice with the neighborhood, but that they are supposed to use the law as far as it leads them rightly. He stated that in this particular case he doesn't see a hardship other than it would be good for the family, but he doesn't think that it falls into the category that the Board is supposed to be following. Mr. Hamilton stated that he agrees with what the Board has said. Mr. Goucher stated that he did not attend the site walk as he was on vacation.

Mr. Hennessey asked if Mr. Groff had anything he would like to say. Mr. Groff replied that he didn't have anything further to say except that the people that attended the site walk saw what the site looked like.

Mr. Hennessey stated that the problem they've run into many times is that the hardship does not run with the proposal. He explained that any hardship must run with the property and that is the real issue.

DISCUSSION

Mr. Hennessey explained that criteria one and two are linked together and that the answer that is put down for the two should be the same. He read that criteria three is substantial justice is done by granting a variance and that the voting members should make their own determination there. He stated that he would argue that the values of the surrounding properties are not diminished in gathering the input from the abutters and looking at the neighborhood. He explained to the Board that if you have a single no in any other criteria that it would still result in a denial. He stated that he doesn't see that this case fits criteria five and that there is a personal hardship, but that is not what the Board is there to vote on.

ROLL CALL VOTE: Mr. Hennessey – 4 noes, 1 yes, final vote “NO”

Mr. Bergeron – 4 noes, 1 yes, final vote “NO”

Mr. Caira – 4 noes, 1 yes, final vote “NO”

Mr. Welch – 4 noes, 1 yes, final vote “NO”

Mr. Westwood – 5 noes, final vote “NO”

(0-5-0) The motion fails.

VARIANCE DENIED.

Mr. Hennessey reminded the applicant that there is a 30-day right to appeal.

FINDING OF FACTS:

- The hardship is self-created.
- The spirit of the ordinance is not observed by creating two non-conforming lots.

HEARINGS

CASE #ZO2023-00007

Map 10 Lot 13-73

HARRIS PELHAM INN INC. – Rte. 38/Bridge Street – Seeking a Variance concerning: Article III Section: 307-12 Table 1, Dimensional Requirements, of the Zoning Ordinance to permit: The construction of a single-family dwelling on a lot for which a Variance was granted on June 9, 2014 but never exercised, containing 20,000 sq.ft. where 1 acre is required.

Mr. Bergeron recused himself from the case. Mr. Hennessey appointed Mr. Goucher and Mr. Welch to vote in place of Mr. Bergeron and Mr. Wing.

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

Mr. Joe Maynard of Benchmark, LLC approached the Board with Mr. David Harvey of Ten Harris Road, LLC who has a purchase and sales agreement to buy the lot. Mr. Maynard explained that the property is along route 38, the land is owned by the Harris family and falls within the residential district. He stated that the lot is about 20,00 sqft in size with over 200 feet of frontage and the proposed home on the lot would meet all building setbacks. He explained that the property has a state approved septic design along with an approved DOT curb cut. He stated that this property was before the Zoning Board back in 2014 and a variance was granted to allow construction on the lot for the same exact proposal that is before the Board now with the only difference being that the previous permit has expired. He asked if the Board had any questions or if he should read the five criteria.

Mr. Hennessey stated that not only had the variance expired, but according to the Planning Directors comments, the driveway permit has also expired. Mr. Maynard explained that it had been reissued by DOT and there is a new septic system approved by DES so both permits are valid. Mr. Hennessey asked is there was anything else that Mr. Maynard would need to renew. Mr. Maynard replied just the variance.

Mr. Stanwick asked if there are any impacts to the WCD or to wetlands. Mr. Maynard replied that he did the duplex lot that is beside this lot and there were wetlands behind that property. He explained that the wetlands were located and flagged at that time and that the limits of the WCD are located on the septic plan provided and they do not come into this property.

Mr. Hennessey asked Mr. Maynard if there was a traffic study done on this lot. Mr. Maynard replied that there wasn't as it would be a single-family residence. He stated that DOT doesn't look at it from a traffic stand point unless its more than 100 trips and in this case it's a single family house so they would be looking at less than ten trips in a day. He explained that they did a site walk with the previous Zoning Board and other than that there are no real outstanding things.

Mr. Hennessey stated that it was a difficult location. Mr. Maynard agreed but stated that the sight lines are really good in both directions which the Board saw at the site walk in 2014. He explained that DOT looked at this and wanted 440 feet of sight line on this road as a state highway and this would meet that in both directions.

Mr. Caira asked Mr. Maynard how far the house is setback from the road. Mr. Maynard responded that it was about 35 feet back from the road and 30 feet is the setback. Mr. Caira stated that the lot looks like it dives down in the back. Mr. Maynard replied that the lot does have some slope, but it's a perfect walk out foundation lot. He stated that the pitch across the lot is just enough to make the walk out work.

Mr. Caira informed Mr. Hennessey that he is a little familiar with the lot, but not really and doesn't know how familiar other members are with it. He explained that he kind of knows where it is but would probably have to make a motion for a site walk.

Mr. Hennessey informed the members of the Board that the fact that they were granted a variance in 2014 doesn't hold now. Mr. Caira stated that he thought there was vernal stream that ran through the lot, but that he could be wrong. Mr. Maynard explained that there is a culvert for DOT under the road so the flow to that can't be blocked, but there isn't a wetland or anything of that sort. Mr. Caira asked if there is any running water on the lot. Mr. Maynard asked Mr. Harvey if there was any water running into the culvert since he was out there recently. Mr. Harvey stated that there wasn't as far as he could remember. Mr. Maynard stated that there is a culvert at the intersection of Youngs Crossing and that it does flow regularly behind the duplex on the abutting lot and feeds the wetlands there. He stated that the road is pretty flat and the culvert on this lot picks up two catch basins across the road so it's not a big drainage area. Mr. Caira asked if this would be a three-bedroom house. Mr. Maynard confirmed that it would be a three-bedroom house approved by DES.

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

Mr. Hennessey opened the floor to the public. No one came forward that was in favor or in opposition to this proposal.

Mr. Hennessey asked the Board if they had any further questions.

Mr. Caira asked Mr. Maynard if there was anything currently on the lot. Mr. Maynard replied that there wasn't. Mr. Caira stated that it's a half-acre lot. Mr. Maynard confirmed that it was just under a half-acre. Mr. Goucher asked Mr. Maynard if anything had been done on the lot prior to the variance expiring. Mr. Maynard responded that nothing had been done on the lot since the previous permit expired. Mr. Goucher asked if they were looking for approval to build right away or just to extend the variance. Mr. Maynard stated that his client would like to start construction this spring.

Mr. Hennessey informed the Public that the Board implemented a rule two or three years ago that variances expire after two years. Ms. Beauregard explained that it was a change in the statutes in 2013 and that the Zoning Ordinance is silent on it so anything after 2013 would expire after two years. Mr. Hennessey stated that variances granted prior to that date would run with the land. He explained that the properties that were granted variances after 2013 would need to begin work within two years of it being granted or it would expire. He explained that that is why the applicant is here in front of them again. He explained to the Public that if they have a variance in hand from those years and have not begun work on the property then they

should contact the Planning Department immediately as they may be losing their right to do what was asked for when they granted the variance.

MOTION: (Caira/Welch) To conduct a site walk.

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

The site walk was set for Saturday March 25th at 9:00 am.

The case was date specified to the April 10th, 2023, meeting.

Mr. Bergeron rejoined the Board.

CASE #ZO2023-00008

Map 23 Lot 11-343

16 Springdale Lane Realty Trust – 16 Springdale Lane – Seeking a Variance concerning: Article III Section(s) 307-8C, 307-12, 307-12 Table 1, 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 a lot that is approximately 4,625 +/- sf. in size with the new home proposed 3' off the western lot line, 10' from the Springdale Lane ROW, a 12' easterly sideline setback, and 44' from Little Island Pond, with a proposed deck 36' off the pond. This lot has 0' of frontage on a town road where a minimum lot size of 1 acre and a minimum of 200' of frontage is required, with a minimum front setback of 30' and a 15' minimum side/rear setback, and 50' lake side setback is required in the Residential District.

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

Mr. Joe Maynard of Benchmark, LLC approached the Board.

Mr. Hennessey asked Mr. Maynard if he had an appeal out on a previous case for this lot. Mr. Maynard replied that that was correct. Mr. Hennessey asked what would happen if the court came in with a decision on that case or this case. Mr. Maynard stated that his experience is that they remand them back to the Board. He explained that the case that is being appealed has both the garage and the house associated with it. He stated that when he left the last meeting it sounded like the garage was the biggest issue, so his client asked him to refile for the house portion, which is a different application than what was previously submitted. He explained that the appeal is being handled by someone else and doesn't know what the recourse of that will be. Mr. Hennessey asked if this was filed with the court? Mr. Maynard stated that it was filed with the Housing Appeals Board. Ms. Beauregard explained that it was filed with the Planning Department, but that that might be an error and that she is in the middle of figuring that part out. Mr. Maynard stated that they asked for another appeal because his attorney was under the impression that they had to ask for another appeal because it was technically a new case. He explained that they were denied in August, they appealed and were granted a rehearing and then they were here last month for the rehearing where they were denied again, so he believes that technically it would be a new case, but he is not sure. Ms. Beauregard stated that her understanding is that if the Board reversed their decision and created a new aggrieved party, then the new aggrieved party would then have the opportunity to request a rehearing of the new decision. She stated that if the outcome was the same decision, then you would move onto the courts.

Mr. Hennessey stated that he was nervous about deciding on a case where there is a pending decision in Housing Appeals Board regarding a variance. He stated that there is a 30-day appeal period with the Housing Appeals Board. Mr. Maynard stated that he was aware and that is why it was being filed today. Mr. Hennessey stated that he really doesn't want to decide on this case and that he would leave it up to the applicant as to whether they want it to be heard, but he would suggest that they put this off until next meeting. He believes that by then, the applicant should have a decision from the Housing Board. Mr. Maynard stated that it would be 30 days after that. He explained that in the first 30 days they review it and decide if they want to hear it and then they set a date for 30 days after. He stated that you are heard within the first 60 days and are given your decision 30 days after that. Mr. Hennessey expressed that he really does not want to hear this case. Mr. Maynard stated that his client is here and that he could answer any questions that the Board might have. Mr. Hennessey understood, but if there are conflicting decisions then this is just a quagmire. He stated that even though the facts of the case have changed, he doesn't believe that the Board should be hearing the case while there is an appeal of a decision on a previous similar case out at the Housing Board.

Mr. Joost Verhofstad approached the Board. Mr. Verhofstad explained that they have been working on this for almost two years. He explained that there was an accepted offer on the lot, but there was a problem with the title that took a year to resolve so they're going on two years now. He stated that they are eager to get things going so he asked if it was possible to do this in parallel rather than serially. He explained that the answer he received was that there should be no problem with doing it that way. He stated that he wanted to do this in parallel to try and save some time. Mr. Hennessey asked Mr. Verhofstad if the Board were to approve the variance without the garage and the Housing Appeals Board remands the original case back to the Board, which is what they usually do, what happens? Mr. Verhofstad replied that it would depend on what the Housing Board says, because there are different things that they could decide. He stated that if they were to remand it back to this Board then you can decide that you haven't changed your mind and we can continue to build the house on its own. Mr. Hennessey expressed that he believes that the Board would be giving him two bites of the apple. He informed Mr. Verhofstad that he did vote in his favor and was overruled but doesn't think that allowing two bites of the apple would be right and doesn't believe that it is appropriate for the Board to be handling it.

Mr. Caira stated that in his opinion the Board wouldn't be following proper procedure. Mr. Hennessey stated that he understands that they made the change to appeal to the Board, but he feels that this is getting to be real murky ground. He stated that the applicant has altered what they wanted in order to appease the Board members, but it is their right to do so, but there is an appeal going as well. He reiterated that the Board hearing this case and making a decision would not be correct. He explained that they should not be doing that while the Housing Appeal Board is deciding whether or not this Board made a mistake in the first case if it is remanded back to this Board.

Mr. Bergeron explained that he just became aware that this case was under appeal tonight. He stated that he was under the assumption that the Board was hearing a brand-new case with the exception of the garage being taken out. He explained that he was ready to hear it that way until he heard what Mr. Hennessey had said. He asked if the Board received any legal consult with their counsel. Mr. Hennessey stated that he did not believe so. Ms. Beauregard informed the Board that she started speaking to Town Counsel today having received the request for rehearing today. Mr. Bergeron asked if it would be something that you would need to tell the Board outside of this meeting. Mr. Beauregard replied that she has nothing to tell the Board at this time. Mr. Bergeron agreed with Mr. Hennessey as this is also something that he has never seen before.

Mr. Hennessey explained to Mr. Maynard that he understands his urgency and that they feel like they are being strung along. He stated that he would like to request a continuance from the Members on this case as he would like to go to Town Counsel for his opinion on this. Mr. Maynard replied that he was fine with them continuing it for 30-days, but if Counsel comes back and says there is a conflict then he would like to request another 30-day continuance to see what the Housing Appeal Board decides. Mr. Hennessey stated that they would put this back on the agenda for next month recognizing that there won't be a decision in hand, but he feels that he needs to speak with Counsel. Mr. Verhofstad expressed that he respects Mr. Hennessey's opinion and stated that he asked around, but never asked the Board if this would be okay. Mr. Hennessey stated that Ms. Beauregard informed him that they were going to appeal, but that nothing had been filed yet. Ms. Beauregard had heard it mentioned that there may be an appeal. Mr. Hennessey stated that now that there is an appeal it might put the Board in jeopardy. Mr. Verhofstad stated that they should all get legal opinions and talk next month.

MOTION: (Hennessey/Caira) To date specify until April 10th pending legal counsel

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

CASE DATE SPECIFIED TO APRIL 10, 2023.

SITE WALK – March 25, 2023

Case #ZO2023-0007 – Map 23 Lot 13-73 – HARRIS PELHAM INN INC. – Rte. 38/Bridge Street

DATE SPECIFIED CASE(S) – April 10, 2023

Case #ZO2023-00003 – Map 6 Lot 4-175-1 – PAWTUCKET ROAD LAND HOLDINGS, LLC – 32 A & B Valley Hill Road

Case #ZO2023-00007 – Map 10 Lot 13-73 – HARRIS PELHAM INN INC. – Rte. 38/Bridge Street

Case #ZO2023-00008 – Map 23 Lot 11-343 – 16 Springdale Lane Realty Trust – 16 Springdale Lane

ADJOURNMENT

MOTION: (Caira/Hennessey) To adjourn the meeting.

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

The meeting was adjourned at approximately 7:51 pm.

Respectfully submitted,
Cassidy Pollard
Recording Secretary