

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT
August 14, 2023**

Chairman David Wing called the meeting to order at approximately 7:00 pm.

PLEDGE OF ALLEGIANCE

Mr. Wing informed the Public and the Board of Mr. Dave Hennessey's resignation. He noted Mr. Hennessey's 24 years of service on the Board, his contributions to the Regional Planning Commissions, and his consultation on numerous purchases of Conservation land for the Town. He commended his service to the Town and expressed that his knowledge regarding land use law will certainly be missed and wished him well.

Mr. Wing informed the Public that there is an opening for a full-time member as well as several alternate positions. He encouraged the alternates as well as the Public to apply.

ROLL CALL

PRESENT ROLL CALL: David Wing
Danielle Masse-Quinn
Ken Stanvick
Alternate Matthew Welch
Planning Director/Zoning Administrator Jennifer Beauregard
Recording Secretary Cassidy Pollard

ABSENT: John Westwood
Alternate Shaun Hamilton

Mr. Wing appointed Mr. Welch to vote for the entire meeting.

MINUTES

July 10, 2023

MOTION: (Stanvick/Welch) To approve the July 10, 2023, meeting minutes as amended.

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

REQUEST FOR REHEARINGS

Case #ZO2023-00011

Map 27 Lot 2-102

HUNT, Judy & COOK, Bill (Owners), Cronin, Bisson, & Zalinsky, PC (Applicant) – 50 Hinds Lane – Requesting a rehearing of the denial of a Variance concerning: Article III

Section 307-12 Table 1 of the Zoning Ordinance to permit construction of a single-family residential dwelling on an existing non-conforming lot, where the lot does not meet the minimum requirements of 43,560 sq.ft. or 200' of frontage. This parcel was recently before the Planning Board as part of a lot line adjustment, Case #PL2023-00009, where approval was granted on April 17, 2023, to add 0.19 acres from Map 27 Lot 2-101 resulting in a total of 0.32 acres.

Mr. Wing informed the Public that requests for rehearing's are only discussed amongst the Board. He stated that the Board will either agree to rehear the case at the behest of the applicant or they deny the request which will presumably be appealed to the Housing Appeal Board. He explained that agreeing to the request for rehearing would mean that you thought the Board erred in their decision or perhaps there has been some new information brought forward that would change their decision.

DISCUSSION

Ms. Masse-Quinn explained that she did have the opportunity to look over the request for rehearing documents and she would be in agreement to rehear the request.

Mr. Welch stated that it might be worth rehearing and giving a second chance based on the information provided in the packet.

Mr. Stanvick disagreed as he hadn't seen anything that would substantially change his opinion.

Mr. Wing explained that he believes that some new information has come to light. He pointed out the finding of facts and that Section 307-8 of the Pelham Zoning Ordinance states that non-conforming uses may continue in its present use, which the existing shed could remain in its current use, except that any nonconforming use of land or buildings may not be changed substantially. He explained that the Board essentially used the argument of lack of a vested use. He stated that new information has come to light in the form of a ruling handed down by the State of New Hampshire Housing Appeals Board which states, "Even assuming that the lot benefits from no pre-existing, i.e., vested uses, the applicant still has the right to apply for a variance to allow a use that would be otherwise prohibited under the ordinance. When the ZBA cited lack of vested rights as a basis for denial, it essentially denied the request for the very reason that it was applied for, which is contrary to law. The mere fact that the request violates the local ordinance is not an adequate reason for denial." He stated that he agrees that the case should be reheard.

Case #ZO2023-00011

ROLL CALL VOTE:

Mr. Welch - "YES"

Ms. Masse-Quinn - "YES"

Mr. Stanvick - "NO"

Mr. Wing - "YES"

(3-1-0) The motion passed.

The request for rehearing was **GRANTED**.

Mr. Wing informed the public that the Board will be hearing this as a new case. Ms. Beauregard added that the applicant will need to submit a new application to the Planning Department, with abutters, and mailing labels.

Case #ZO2023-00013

Map 22 Lot 8-85-1

BRIDGESIDE COMMONS, GENDRON, Patrick (Owner), & Cronin, Bisson, & Zalinsky, PC (Applicant) – 579 Bridge Street – Requesting a rehearing of the denial of an APPEAL OF AN ADMINISTRATIVE DECISION concerning: Article III General Provisions, Section 307-13A lot size requirements of the Zoning Ordinance and the Planning Board’s interpretation of the Zoning Ordinance specifically, whether the provisions of the Section listed above are applicable.

Mr. Wing stated that this is an appeal of a decision made by the Planning Board which was heard at the last meeting and now they are requesting a rehearing. He stated that the same rationale would apply, that if they agree to rehear the case they would start over and hear it again in September. He explained that denying the rehearing would be that the Board accepts the findings from the last meeting. He explained to the Board that the reason to grant the request and rehear the case would be if they thought that they erred in their decision, or if they thought that some new information had come to light which they would need to take into reconsideration.

Ms. Masse-Quinn recused herself from the case as she also sits on the Planning Board as Secretary.

Mr. Stanvick recused himself from the case as he is also a member of the Conservative Commission.

CASE CONTINUED TO SEPTEMBER 18, 2023, DUE TO LACK OF QUORUM.

Ms. Masse-Quinn and Mr. Stanvick rejoined the Board.

Case #ZO2023-00012

Map 10 Lot 13-167-6

PICHASACA ZARUMA, Manuel E. – 1197 Bridge Street – Requesting a rehearing of the approval of a Special Exception to Article XII Section 307-76 III of the Zoning Ordinance to permit applicant/owner to conduct his siding business from his home, with no more than 2 registered business use vehicles kept in view, and all other business-related equipment garaged or screened from neighboring view. Motion for Rehearing requested by Attorney Bernard H. Campbell on behalf of Daniel Demers, 1199 Bridge Street, Map 10 Lot 13-167-7.

Mr. Wing explained that this is a request for rehearing for a special exception that was granted at the last meeting to operate a general home occupation. He stated that a reason to grant the request

would be if the Board felt they erred in their decision or if some new information has come to light that would change their decision.

DISCUSSION

Ms. Masse-Quinn stated that she looked over the request for rehearing paperwork and that everything the council discussed in it had been discussed and covered at the last meeting. She mentioned that noise from the vehicles was referenced and that she is aware that the neighboring abutter operates a wood splitting business as well. She likened the noise created by the trucks backing up to the backup alert created by Amazon delivery trucks and doesn't see that as a big issue. She stated that it is important to recognize that the Board did do a site walk on this property on June 23rd where they had observed that trees were taken off of the property and that the Council did not put those into this document. She explained that the Board made a recommendation to the Planning Board to address that issue. She stated that this was a request for a special exception and if the applicant met all 15 criteria, which they did meet all the criteria it should be granted. She stated that she would not be in favor to rehear the case.

Mr. Welch agreed and stated that he felt like the Board had gone through this case thoroughly at the first meeting, the site walk, and the second meeting. He explained that the applicant was looking for permission to park his business trucks at home and that he isn't conducting any business on the property. He stated that he's coming home at night and leaving in the morning. He explained that if he worked for another company and they provided him with a company vehicle, he'd be allowed to bring that home, so giving him the right to take his own company vehicles home seems fair. He stated that they've covered this case thoroughly and that he is opposed to rehearing it.

Mr. Stanvick stated that he is new to this process and asked if they give the requestor the opportunity to speak on the matter. Mr. Wing stated that requests for rehearing aren't open to public comment and is solely a discussion amongst the Board. Mr. Stanvick replied that he would be in favor of not rehearing the case.

Mr. Wing referenced the minutes and explained that Attorney Groff made it clear that if the applicant wanted to build a garage, then he could have done so. He stated that the applicant came before the Board willingly for his cause because he was going to have his trucks on his lot which was the criteria for his request for special exception. He explained that the special exception puts a lot more on the applicant in terms of sight lines, noise and other restrictions which will be covered and enforced by the Code Enforcement Officer.

Mr. Stanvick expressed his concern with the way the Code Enforcement Officer works as he relies upon complaints being brought to his attention and doesn't go out and look for violations. He stated that it would be up to the abutters to police the requirements and wishes that process would change and that the Code Enforcement Officer would be more aggressive in looking at what the requirements are rather than waiting for a complaint. Mr. Welch added that it would be safe to assume in this particular case that the abutters are going to police the activity. Mr. Wing added that he agreed with Mr. Stanvick's goal but doesn't know if the Planning Department has sufficient capacity to deal with what he's requesting.

Case #ZO2023-00012**ROLL CALL VOTE:**

Mr. Welch - "NO"
Mr. Stanvick - "NO"
Ms. Masse-Quinn – "NO"
Mr. Wing - "NO"

(0-4-0) The motion failed.

The request for rehearing was **DENIED**.

FINDING OF FACTS

1. The Board determined that the applicant met the criteria set forth under 307-73(B)(2) of the Zoning Ordinance to allow for a Special Exception to operate a General Home Occupation in the Residential District.
2. The Board determined that nothing has been put forth providing evidence that the property values will be diminished.
3. The Board determined that the number of parking spaces would be addressed and determined by the Planning Board during the Site Plan review.
4. The Board determined that any potential fumes would be addressed by the Fire Department's inspection as conditioned by the Zoning Board's decision dated July 10, 2023.
5. The Board determined that the number of onsite employees will be conditioned by the Planning Board and enforced by the Code Enforcement Officer.
6. The Board addressed screening of abutting neighbors by offering a recommendation to the Planning Board in the Zoning Board's decision dated July 10, 2023, that they consider stipulating that screening be installed and requiring the restoring of the trees that were removed along the right and left of the rear of the property.

HEARINGS**Case #ZO2023-00014****Map 22 Lot 8-38**

GLOOR, Scott & DEMMONS, Todd – 247 Main Street – Seeking a Variance concerning: Article III Section 307-12 Table 1 of the Zoning Ordinance to permit construction of a 998 sf. commercial building, replacing the 800 sf. original building. The front setback will be 5'6" from the property line replacing the original setback of 4'9" where 40' is required for a commercial building and a 12'4" side setback replacing an original setback of 3'3" where 30' is required for a commercial building. Septic plan approved for construction, approval #eCA2023060907 on 6/9/2023.

Mr. Scott Gloor and Mr. Todd Demmons of 247 Main Street approached the Board.

Ms. Masse-Quinn 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. Wing advised the applicants that there are only four Board Members here and that they need three in favor in order to have their request granted and that it is their right to request a delay until the next meeting. Mr. Gloor stated that they would like to proceed.

Mr. Gloor stated that they are seeking a variance to the setback requirements, 40' on the front and 30' on the side. He explained that on the paperwork they submitted the current portion of the building does not meet those setbacks. He stated that they would like to demolish the structure which formerly contained the pro shop and a basic kitchen area and rebuild it in an improved footprint that would square off the building and move it off the neighbor's property by 9'.

Mr. Gloor read the five criteria of a variance into the record.

Mr. Wing asked if their ultimate goal is to be able to provide food service and that they are unable to get the required permit because the septic unacceptable and if the new design falls within the boundaries of the new building and that they're moving the building in order to install the new septic. Mr. Demmons explained that it couldn't easily be done and that the demo of the structure is advantageous for the septic because of where the tank is going. He stated that the leach field is brand new in the back, but where the tank is currently the access to it is limited. He explained that after talking with the installer and Meisner Brem, that it would be highly advantageous to remove the building so that they would have front access to put the new system in.

Mr. Wing opened the floor to the public.

Mr. Thomas Mullin of 236 Main Street approached the Board in favor of this proposal. Mr. Mullin stated that he lives right next to the golf course and would like to see them do what they need to do which would better the value of his house and the neighboring houses. He explained that it would look so much better once it is rebuilt. He explained that it used to be his grandfathers house and would like to see it gone and rebuilt.

No one came forward that was in opposition to this proposal. Mr. Wing closed the floor to public comment.

DISCUSSION

Mr. Wing polled the Board and asked if anyone would vote no on at least one of the criteria. None of the Board members replied that they would.

1 & 2. The variance will not be contrary to the public interest because; and the spirit of the ordinance is observed because:

Ms. Masse-Quinn stated that it would help the character of the neighborhood as they are going to be adding a newer building which will better the items around it, so there is no threat the the public health or safety.

Mr. Wing agreed that it would fall in line with character of the neighborhood and there is no threat to the public health, safety or welfare. He stated that he believes it's actually a public health benefit because they are getting a new and improved septic system.

Mr. Welch added that they're also improving on all the existing setbacks. He explained that they're pretty close to the neighboring property and the road and that all the setbacks look like they'll be maintained or improved upon which would be the benefit of approving this variance.

Mr. Wing stated that the spirit of the ordinance is observed as the applicants have something that is non-conforming but are making less non-conforming.

3. Substantial justice is done because

Ms. Masse-Quinn stated that it is done because what's currently in use is an older building which is an eyesore and they're going to take it down and put a new building with a brand-new septic system which is absolutely an improvement on the current situation.

Mr. Welch added that it will greatly improve the look of the area and that the new septic system is definitely justice for the area. Mr. Wing agreed.

4. The values of surrounding properties are not diminished because

Mr. Wing stated that no one has come forward saying that they will be and if this is truly an eyesore then it is only going to improve it. Mr. Stanvick and Ms. Masse-Quinn agreed.

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 enforcement of the provision would result in an unnecessary hardship as they wouldn't be able to install the septic to the best of their ability.

Mr. Stanvick added that serving food is a key piece of the business.

Mr. Welch added that they purchased the business with a food service license that they aren't able to utilize without the new septic so the Board denying this would take that use away from them.

FINDING OF FACTS

1. The improvement will help the character of the neighborhood.
2. There is no threat to public health, and safety.
3. The new configuration of the building is improving the majority of setbacks.
4. Values of surrounding properties would not be diminished.
5. An older building is being improved and a new septic system is being installed. Without replacing the septic system, the business would not be able to continue serving food.

Case #ZO2023-00014**ROLL CALL VOTE:**

Mr. Welch– 5 yesses, final vote “YES”

Mr. Stanvick– 5 yesses, final vote “YES”

Ms. Masse-Quinn– 5 yesses, final vote “YES”

Mr. Wing– 5 yesses, final vote “YES”

(4-0-0) The motion passed.

Variance was **GRANTED**.

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

Case #ZO2023-00015**Map 31 Lot 11-20**

PAGE, Andrea & BILAPKA Bruce – 37 Woekel Circle – APPEAL OF AN ADMINISTRATIVE DECISION concerning: Article III, Section 307-8, Article VII, Section(s) 307-38, 307-41, & Article VIII-I, Section 307-48-1-1 of the Zoning Ordinance and the Administrative Decision made by the (Alternate) Health Officer regarding the approval of an individual sewage disposal system, NHDES Work #202000255. Approval for construction #eCA2023062223 on 6/22/2023.

Attorney Laura J. Gandia and Mr. Bruce Bilapka approached the Board.

Mr. Wing stated he would like to the poll the Board and decide whether or not they have jurisdiction to hear this the case.

Ms. Masse-Quinn read the list of abutters into the record.

Ms. Gandia informed Mr. Wing that they would like to request a continuance due to the four-person Board.

CASE CONTINUED TO SEPTEMBER 18, 2023

Case #ZO2023-00016**Map 31 Lot 11-20**

PAGE, Andrea & BILAPKA Bruce – 37 Woekel Circle – APPEAL OF AN ADMINISTRATIVE DECISION concerning: Article III, Section 307-8, Article VII, Section(s) 307-38, 307-41, & Article VIII-I, Section 307-48-1-1 of the Zoning Ordinance and the Administrative Decision made by the Selectmen, & the Town Attorney regarding the reversal of the decision made by the Superior Court Docket #226-2023-CV-00182 to deny the Well Radius Waiver, which led to the approval of an individual sewage disposal system, NHDES Work #202000255. Approval for construction #eCA2023062223 on 6/22/2023.

The list of abutters is the same from the previous case which was read into the record by Ms. Masse-Quinn.

Mr. Stanvick requested that the Conservation Commission weigh in and voice their opinion on this case. Ms. Gandia stated that she would like to wait until there has been a public hearing before they get into any specifics about the case. Mr. Stanvick stated that he was thinking ahead because it may slow the case down if they do make the recommendation that the Conservation Commission should weigh in on this at the next meeting. Ms. Gandia stated that she understood that it may drag it out but would like a five-member Board to be here and decide on that so she would like the case to be continued until the September meeting.

CASE CONTINUED TO SEPTEMBER 18, 2023**DATE SPECIFIED CASE(S) – September 18, 2023**

Case #ZO2023-00013 – Map 22 Lot 8-85-1 – BRIDGESIDE COMMONS, GENDRON, Patrick (Owner), & Cronin, Bisson, & Zalinsky, PC (Applicant) – 579 Bridge Street

Case #ZO2023-00015 – Map 31 Lot 11-20 – PAGE, Andrea & BILAPKA Bruce – 37 Woekel Circle

Case #ZO2023-00016 – Map 31 Lot 11-20 – PAGE, Andrea & BILAPKA Bruce – 37 Woekel Circle

ADJOURNMENT

MOTION: (Masse-Quinn/Stanvick) To adjourn the meeting.

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

The meeting was adjourned at approximately 7:47pm.

Respectfully submitted,
Cassidy Pollard
Recording Secretary