

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
September 12, 2016

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

The Vice Chair Svetlana Paliy called roll:

PRESENT: David Hennessey, Svetlana Paliy, Bill Kearney, Chris LaFrance

ABSENT: Peter McNamara, Alternate Lance Ouellette, Alternate Darlene Culbert,
Alternate Pauline Guay, Alternate Kevin O’Sullivan, Alternate Thomas
Kenney

Mr. Hennessey explained to the public that there were four sitting Board members. For an affirmative vote, an applicant would need to have three members voting in favor. He said it had been the practice of the Board to allow applicants to postpone their hearing until the next month to allow for the opportunity for their case to be heard by full Board. He will allow each of the hearing to inform the Board if they would like to have their case heard, or if they would prefer to wait until next month’s meeting.

PLEDGE OF ALLEGIANCE

HEARINGS

Case #Z02016-00020

Map 35 Lot 10-352-11

GUALTHIERI, Charles - 12 Susan Drive – Seeking a Special Exception concerning Article V & XII, Sections 307-18, Table 2 & 307-74 to permit an accessory dwelling unit.

The applicant indicated they would like to proceed with their case at the present meeting.

Mr. Kearney read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Mr. Shayne Gendron of Herbert Associates, representing the applicant and third party designer (Integrity Building), came forward to discuss the request for Special Exception. The lot is an existing lot of record plotted in the timeframe of 2000. He explained they did a site assessment to determine the lot loading; there is no wetland or hydric soil on the property. Mr. Gendron told the Board that there was an existing four bedroom house on the lot and the lot loading determined they were only able to achieve 4.5 bedrooms on the property. He advised the owner, and they agreed to take one of the existing bedrooms out of the structure and proceed with a three bedroom home with an in-law apartment. Mr. Gendron informed that the proposed plan had been reviewed and approved by the Town’s Health Inspector and approved by the Department of Environmental Services. The State approved septic design (with loading calculation) was submitted to the Town. A full packet of building plans was also submitted. Mr. Gendron reviewed the floor plan and discussed how the project met the criteria for an accessory dwelling unit.

Mr. Hennessey opened the discussion to public input. No one came forward.

Mr. Hennessey explained the review process to the public. He also discussed the differences between a Special Exception and Variance.

Mr. Kearney felt Mr. Gendron provided a good presentation that answered his questions. Mr. LaFrance asked if the Building Inspector reviewed the plan. Mr. Gendron believed they had reviewed the plan and floor plans with the design company.

BALLOT VOTE Mr. Hennessey – Yes
#ZO2016-00020: Ms. Paliy – Yes
 Mr. Kearney – Yes
 Mr. LaFrance - Yes

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

SPECIAL EXCEPTION GRANTED

Case #Z02016-00021a and Case #Z02016-00021b

Map 22 Lot 8-21

NEW ENGLAND POWER COMPANY d/b/a National Grid - 196 Main Street - Seeking a Variance concerning Articles III & VII, Sections 207-8 (C) & 307-41 to permit the construction of a retaining wall in the Wetland Conservation District

Mr. Kearney read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Attorney Tom Hildreth of McLane Middleton, representing National Grid came forward to discuss the variance request to facilitate the upgrade and expansion of the Pelham substation #14 at 61 Main Street (also known as Gage Hill Road). Attorney Hildreth stated the property contained 2.15 acres and located adjacent to a 350ft wide high voltage cross country transmission line. Half of the substation is located underneath the utility right-of-way. He discussed the history of the property and explained the proposal to upgrade the site by reviewing the pages contained within the plan set. Once completed the site will operate similar to how it currently does. Attorney Hildreth told the Board they were seeking two variances: 1) extension of non-conforming use, and 2) encroachment in Wetland Conservation District ('WCD') overlay; positive letter of recommendation submitted by the Conservation Commission (dated August 16th).

Mr. Hennessey had not previously received the letter from the Conservation Commission. He read the letter aloud and retained a copy for the Board's file. He noted that the proposal was part of the Merrimack Valley Reliability Project ('MVRP') and stated part of that expansion went across a portion of his land (on the other end of the project off Dutton Road). He asked the applicant, the Board and members of the public if they saw a conflict of interest with him being seated on the Board. Ms. Paliy asked if he was a direct abutter. Mr. Hennessey replied he was not an abutter of the parcel being discussed; however, the letter from the Conservation Commission connected the parcel in front of the Board to the (overall) project, which his land was part of.

Attorney Hildreth saw no conflict with Mr. Hennessey remaining seated. He explained that the MVRP was a multi-jurisdiction infrastructure upgrade beyond the jurisdiction of the individual towns through which it passes. He said National Grid was treating the substation independent from the MVRP.

There was no objection raised or brought forward regarding Mr. Hennessey remaining seated and voting regarding the case.

Attorney Hildreth spoke to the expansion of the non-conforming use. In his analysis, the current Zoning Ordinance does not expressly provide public utility infrastructure as permitted in any zoning district. He noted there was no record of National Grid applying for any kind of relief when it first established the substation in the location in 1971. He found no paperwork for when the location became non-conforming. He felt there was a good argument that no zoning relief was required on the theory that the residential district included complimentary non-residential uses and community facilities and other related uses, and the proposed infrastructure could fall into one of those categories. He suggested there may be a deficiency in the ordinance. Attorney Hildreth read aloud the responses to the variance criteria as submitted with the application.

Mr. Hennessey noted that the Board would consider the variances at the same time, but vote separately.

Attorney Hildreth discussed the variance regarding the WCD encroachment. He said there was an argument that they didn't need the variance on the theory that the ordinance says fences aren't structures and only structures needed relief from the ordinance. He said a retaining wall was like a fence. He had a conversation with the Planning Director regarding the fact that a special permit could be obtained by the Planning Board to put a road in the WCD for utility purposes; however, the Planning Director didn't move his position. Therefore, Attorney Hildreth told the Board they filed for the variance and met with the Conservation Commission. He read aloud the responses to the first two variance criteria.

Mr. Kearney questioned if the new substation would cause an increase to anything that would be detrimental to the neighbors. Attorney Hildreth replied there would be waste taken off the site during the demolition phase of construction, but no waste produced from ongoing operations. They anticipated that any noise from the site would not have any appreciative change from what was presently heard. Mr. Kearney asked how much of the land would be covered with the new layout. Mr. Hennessey noted that the Planning Board would review the impervious surface. Attorney Hildreth pointed to the cover page of the plan set that noted the existing impervious surface was 0.7acres (3,100SF) the proposed is .23acres (2,000SF).

Ms. Paliy commented that the Board could review the plans, but felt unless there was a specific ordinance that gave the Town control, most of the control was with the State and at the federal level. She didn't see why the matter was in front of the Board. Mr. Hennessey replied there was a case to be made that neither of the variances were necessary and would only need administrative review. He noted the applicant had chosen to abide by the zoning as interpreted by the Zoning Administrator and come in front of the Board with a variance. Ms. Paliy indicated that the State was extremely lenient and realistically the Board could review the information and conduct a site walk. She didn't feel the applicant should be in front of the Board.

Mr. Hennessey appreciated the fact that the applicant respected the Town's zoning laws and came in front of the Board for local approval.

PUBLIC INPUT

Mr. Jose Luna, Heather Lee Lane asked how far the retaining wall would be from his property. Attorney Hildreth referred the plan and gave an approximate scale of 110ft +/-.

Mr. Hennessey stated case would be renumbered to reflect the two variance requests:

Case #ZO2016-00021a – Non-conforming use expansion

Case #ZO2016-00021b – Wetland Conservation District overlay encroachment.

BALLOT VOTE Mr. Hennessey – Yes to all criteria
#ZO2016-00021a: Ms. Paliy – Yes to all criteria
(Expansion of non- Mr. Kearney – Yes to all criteria
conforming use) Mr. LaFrance - Yes to all criteria

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

VARIANCE GRANTED

BALLOT VOTE Mr. Hennessey – Yes to all criteria
#ZO2016-00021b: Ms. Paliy – Yes to all criteria
(WCD encroach) Mr. Kearney – Yes to all criteria
 Mr. LaFrance - Yes to all criteria

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

VARIANCE GRANTED

Case #ZO2016-00022

Map 30 Lot 11-216

WITHROW, Leanne - 23 South Shore Drive - Seeking a Variance concerning Articles III & VII, Sections 307-7, 307-8, 307-79 & 307-41 (B) - to permit an existing seasonal dwelling to be razed and a new year-round home to be constructed and expanded to within 35-feet of Little Island Pond on a lot having approximately 124-feet of frontage and lot area of approximately 0.5acres +/- on a private road with 1 acre of area 200-feet of frontage and a setback of 50 feet is required.

The applicant indicated they would like to proceed with their case at the present meeting.

Mr. Kearney read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Mr. Joseph Maynard of Benchmark Engineering, representing the applicant, came forward to discuss the variance request. He stated that the lot was just over a half of an acre in size with an existing home constructed in the 1920's-1930's with some form of septic. The home shared a well with the house across the street (which had come in front of the Board in April, 2016). He noted part of the application was to drill a new well, and have a new State approved (Clean Solutions) septic system. Mr. Maynard pointed out that the existing house was located approximately 35ft. from the pond; the new floor plan pulled the house almost outside the 50ft. setback. The house itself would be approximately 47ft. (at its closest corner) to the pond, and the deck will be approximately 37ft. from the pond. He noted they would need to shorten the existing driveway with currently sat approximately 60ft from the pond; after the project the driveway will be located approximately 90ft. from the pond. Mr. Maynard told the Board there was a two-story dwelling on the property (approximately 23ft from 1st floor elevation to the ridge) and the new structure would also be a two-story dwelling (approximately 26ft from 1st floor elevation to the ridge). Because the house is somewhat centered on the lot they would meet side and street setbacks. He noted the lot behind the applicant's was positioned somewhat to the left side of the proposed house and currently contained no home.

Ms. Paliy questioned if she might have a conflict of interest. She asked Mr. Maynard if he had been involved in the project from the beginning. Mr. Maynard was unsure what Ms. Paliy was asking. Ms.

Paliy said the project sounded familiar and questioned if there may be a conflict with the Happy Trees company (her husband's company) Mr. Hennessey asked the applicant, Ms. Withrow if she had signed a contract with Happy Trees tree removal. Ms. Withrow answered no. Mr. Maynard stated there were virtually no trees on the lot as it presently existed; it was a big open yard. He said there were no trees to come down for construction of the new house.

Mr. Maynard told the Board they applied for and were granted a Shore Land Permit. The new septic design was permitted and approved through the State. He described the proposed dwelling and deck noting there would be no further encroachment from the 50ft. setback than what currently existed.

Mr. Hennessey asked for an explanation of the proposed height. Mr. Maynard replied they typically measured from the 1st floor (using the average grade around the house) to the ridge height. In this case the existing dwelling is roughly 23ft. in height and the proposed home will be roughly 26ft in height. He said the foundation on the high side will sit at about 2ft. out of the ground. Mr. Hennessey replied the Board was protective of the lakes and the practice of the Board to become concerned with dwellings proposed at over 30ft. He confirmed the proposed home would be below 30ft. Mr. Maynard answered yes.

Mr. Maynard read aloud the variance criteria as submitted with the application.

Mr. Hennessey opened the hearing to public input. No one came forward.

Mr. Kearney asked for clarification if anyone's view would be impacted by raising the height of the dwelling. Mr. Maynard explained the applicant previously owned the property behind her lot, permitted it for a house and sold it within the last six months. He stated they reviewed that lot and staggered the proposed home so the view could look past the proposed dwelling being discussed. He noted there was currently nothing on the lot behind the lot being discussed. Mr. Kearney understood the height was proposed to increase from 23ft. to 26ft. and the dwelling would be moved further away from the pond. He questioned if the grade of the land would affect the height. Mr. Maynard didn't believe it would. He spoke about Shore Land requirements and the improvements that would be associated with the proposal and new structure.

Mr. Hennessey questioned if the Board would like to conduct a site walk. Mr. LaFrance felt the proposal would be a massive improvement to the area. There was no request brought forward to conduct a site walk; the Board was comfortable proceeding to vote.

BALLOT VOTE
#ZO2016-00022: Mr. Hennessey – Yes to all criteria
Ms. Paliy – Yes to all criteria
Mr. Kearney – Yes to all criteria
Mr. LaFrance - Yes to all criteria

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

VARIANCE GRANTED

Case #ZO2016-00023

Map 40 Lot 6-160-1

PAQUETTE, Steven - Hildreth Street - Seeking a Variance concerning Articles V, VI & III, Sections 307-16, 307-18, 307-14, Table I & 307-39 to permit construction of a two-family residential structure in the Industrial Zone.

The applicant indicated they would like to proceed with their case at the present meeting.

Mr. Kearney read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Mr. Steven Paquette came forward to discuss the variance request. He explained the parcel was an existing lot of record containing approximately 3.76 acres, a portion of which has frontage on portion of Hildreth Street; the paved portion ends at the Dracut, MA. State line, the Hildreth Street right-of-way continues into the parcel. Street access from Pelham is not possible due to significant wetlands (Beaver Brook and flood zones). Mr. Paquette referenced a map of the surrounding area and of the parcel that showed the approximate location of the structure and proposed wetland crossing. He read aloud the responses to the Variance criteria as submitted with the application. He understood if the Variance was approved, the Board of Selectmen would require a restrictive use agreement that limited the Town's liability. He had a copy of the agreement available for the Board. He noted the Highway Safety Committee had issued a letter of conditions regarding the property. He also met with the Conservation Commission who issued an approval. Mr. Hennessey replied the Board had a copy of the Highway Safety and Conservation Commission letter. Mr. Paquette told the Board that the proposed home would be constructed and become his personal residence.

Mr. LaFrance reviewed the picture of the existing structure and questioned if the proposed home would come in on the same driveway or if there would be an additional crossing. Mr. Paquette answered no; the homes would be accessed by separate driveways. He believed creating the driveway would force him to go closer to the buffer than the proposed crossing.

Mr. Hennessey asked if there were any other proposed structures for the parcel. Mr. Paquette answered no. He stated there were two existing lots of record, both of which had frontage along Hildreth Street. He told the Board they wouldn't see him again. He understood it was a unique situation. It was also unique to him as his father grew up on the street. He said his family had always been, and still is, in that area. Mr. Hennessey said he was concerned about a cascading development having access through a neighboring town.

Planning Director Jeff Gowan told the Board that they didn't have any actual status of Hildreth Street; however, by virtue of the fact that it hadn't been maintained he believed it to be a Class VI road. He found no evidence of it ever being closed to gates and bars. Even with a Variance, Mr. Gowan stated he couldn't sign off on a building permit without the Selectmen and owner signing a limited responsibility agreement. He will work with E-911 to ensure emergency responders know how to find the property. He will require a street sign and sign indicating the line for Pelham, NH.

Mr. Hennessey opened the discussion to public input. No one came forward.

Ms. Paliy recalled similar topics arising in training for situations of a public road and rights-of way. She understood the responsibility to make a lot safe was not placed on the owner, but rather the responsibility was placed on the town and State. She said the request begged the question if the owner had the right to ask for the road to be maintained. Mr. Hennessey believed anyone had the right to ask anything, which was the purpose of having a zoning board. Ms. Paliy believed the State viewed the situation differently than the Town typically did. Mr. Hennessey replied the proposal was a unique piece of property given the Town portion of the roadway ended in a swamp that couldn't be crossed without violating numerous wetland situations. He understood there was no record of the street being closed and presumably no record of it ever being opened other than a line on a map. He felt the applicant had done a remarkable job with his presentation and his proposal. He felt the applicant had made his case and it was a textbook case for a variance approval. Ms. Paliy agreed.

BALLOT VOTE
#ZO2016-00023: Mr. Hennessey – Yes to all criteria
Ms. Paliy – Yes to all criteria
Mr. Kearney – Yes to all criteria
Mr. LaFrance - Yes to all criteria

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

VARIANCE GRANTED

MINUTES REVIEW

August 8, 2016:

MOTION: (LaFrance/Paliy) To approve the August 8, 2016 meeting minutes as written.

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

ADJOURNMENT

MOTION: (LaFrance/Paliy) To adjourn the meeting.

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

The meeting was adjourned at approximately 8:44pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary