

APPROVED

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
June 9, 2014**

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

The Secretary Bill Kearney called roll:

PRESENT: David Hennessey, Svetlana Paliy, Bill Kearney, Peter McNamara,
Alternate Pauline Guay, Planning Director/Zoning Administrator Jeff
Gowan

ABSENT: Chris LaFrance (excused), Alternate Darlene Culbert (excused),
Alternate Lance Ouellette, Alternate Kevin O'Sullivan

Mr. Hennessey appointed Ms. Guay to vote.

CONTINUED

Case #ZO2014-00010

HARRIS PELHAM INN - Bridge Street - Map 17 Lot 13-73 - Seeking a Variance concerning Article III, Section 307-12 & Table I to permit construction of a single family dwelling on a lot with less than one (1) acre.

Mr. Hennessey said the Board conducted a site walk to review the lot and its location. There were no wetlands. The applicant has a grandfathered right to access Route 38. He said there were good sight lines in both directions.

Mr. McNamara noted they learned the soils were well drained and there were no concerns about runoff. Prior to the site walk he was concerned with the angle of decline going back from the street into the lot, but he found during the site walk, at the point it was very mild; unlike the adjoining parcel they had seen in the past.

Ms. Paliy thought the lot was better than described. She noted that the speed limit of the area was 50mph. She made a point that Pelham was getting more congested and felt it would be a good idea to have a turn-around within the lot so vehicles don't back up onto Route 38 to exit the lot. Ms. Paliy noted her point wouldn't affect her vote, but wanted the Board to discuss that type of situation.

Ms. Guay voiced her concerns. She felt the variance should be conditioned upon the receipt of the State driveway permit. She also felt there should be sufficient space in the driveway area within the property so vehicles can turn around and face out when exiting.

Mr. Joseph Maynard of Benchmark Engineering, representing the applicant, came forward to discuss the requested variance. In the morning he was on the phone with the Department of Transportation ('DOT'). He told the Board that the permit had been written and awaiting signature. The person who signs permits is away on vacation. He said the State had no problem

with the permit for the curb cut. He stated the applicant shared the concern of Route 38 being a busy road. The design represents a very large driveway with a big turnaround off a two-car garage. He was confident that a car could back out of the garage into the turnaround and pull straight out onto Route 38. Ms. Guay recalled testimony at the site walk that there could be as many as six cars on the property. Mr. Maynard the driveway was set up so there could be two cars in the garage, two cars parked in the turnaround and also two cars parked in the driveway at the same time. Ms. Guay asked if there would be sufficient room to turn around and drive out if there were six cars in the driveway. Mr. Maynard said if there were five cars, a vehicle would have the ability to turn around; with six vehicles it would be a tight fit.

Ms. Paliy questioned where people would park if the owner had a party. Mr. Maynard discussed projects he had done on lake lots with limited parking. One in particular (in Windham) shuttles people back and forth when they have a party. He felt if someone wanted to have that much company at their house, they would find a way. He noted the proposed home would have just as much driveway space as other houses in Town, except other homes may be located on a public street that allows for parking in front of the home. Ms. Paliy reiterated that the situation wouldn't influence her vote.

Mr. Kearney agreed that the sight line was good. The topography was good; there were no wetlands. The difficulty he had was the lot size being half an acre in an area where there were one acre (plus) lots. He said he stumbled with making an exception just because of the size. Mr. Maynard replied he reviewed lot size mostly from a loading criteria to determine how many bedrooms it could support. He said lake lots were typically two-bedroom homes. In the case of the applicant's lot, it was sized at roughly 20,000SF. The lot has very well drained soils and was ultimately capable of supporting a three-bedroom home.

Mr. Hennessey opened the hearing to public input. No one came forward. He asked Mr. Maynard to review the hardship criteria. Mr. Maynard reviewed the hardship criteria. *The proposed building would meet all local setbacks and lot has plenty of building area, and can support a state approvable septic system design. Although there is a lot that surrounds this, that lot needs the available area on it to support their use. Therefore, there is no additional land available to help make this building project conform to current zoning requirement of one acre. The new home will meet all applicable setbacks, site can support a state approved septic system. Is no abutting land available to bring this lot into conformance with the one acre town requirement. Lot has existed for many years undeveloped and is similar in size to other lots in the area.* He pointed out that the lot had well over 200ft of frontage. The separation of houses will be more than what's required by the Town. There are other homes in the area with a similar setback to the street that have smaller driveways than what the applicant was proposing. In general, Mr. Maynard felt it was a reasonable request for the property at the location.

Mr. Kearney said he question was answered, but he was unsure if it was sufficient for him to vote yes on a sub-half acre lot. Mr. Hennessey said he also wrestled with the case. One reason was the property was surrounded by property of the same owner. Mr. Maynard clarified that the surrounding property was not the same owner. The owner of the abutting five-acre parcel is out of Haverhill; an owner Mr. Maynard had never met. He stated that the owner of the property being discussed was the Harris family. Mr. McNamara understood that the five acre parcel was undeveloped and had no use on it presently. Mr. Maynard said he was in the process of permitting a different use on it for a different entity. It was in the submittal stage to the Department of Environmental Services and met their guidelines for the use being proposed.

Being a State road, Ms. Paliy asked how far onto the property snow would be plowed. Mr. Maynard said the snow wouldn't hit the property; the right-of-way width was approximately 16ft-18ft to the property line. He said when they were done filing they would be a couple feet below the road where the septic system grade was. Ms. Paliy wanted to know if because of the slope, the snow would end up in the driveway or septic system. Mr. Maynard noted that the septic was an additional 10ft. from the right-of-way line and didn't feel there would be a problem. Typically when the State plows they also plow the shoulders so there wouldn't be any line of sight block. The site meets the all season sight distance. Mr. Hennessey commented he was surprised with how good the sight lines were for the property.

Mr. Hennessey still struggled with what made the lot so different from all the others that they should give a pass on zoning for almost half the required size. Ms. Paliy understood that originally the lot not purchased because they wanted to build, but rather it was needed to install a sign. Mr. Maynard stated that was incorrect; the Harris family owned another parcel that contained the sign. However, both lots were purchased at approximately the same time. Ms. Paliy asked if the two lots were connected. Mr. Maynard answered no; the land that contains the sign was only approximately 4,000SF in size.

Mr. McNamara discussed the immediate area, which was composed of single-family homes. The applicant's property met all the other criteria (road frontage, separation from neighbors, space for recreation, etc.) . He said the size was under half an acre, but that was the reason for seeking a variance. He felt it met the criteria. Mr. Hennessey said it was an unusual lot and was bothered in terms of its size. He said the Board reviewed smaller lots routinely around the lakes because they were established lots. He understood most of the surrounding lots were one acre lots. Mr. Maynard said most were. Some were created in odd times when the highway came through. As a point of argument, even if the lot didn't meet the hardship criteria, Mr. McNamara questioned what use the lot could be. Mr. Hennessey said he was considering what the highest and best use was for the lot. He said presuming something had to be done with lot, the best use would be residential given the zoning, sight lines. He wouldn't want to see a commercial venture on the lot.

MOTION: (Guay/McNamara) Approval condition that the State issue a permit for the driveway cut.

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

Ms. Guay also wanted a condition of approval that stipulated there was to be sufficient turnaround room to permit drivers to drive out and not back out of the driveway. Mr. Hennessey asked how many curb cuts the lot contained. Mr. Maynard replied the lot could technically have three because the lot was created prior to 1971, but they were proposing one curb cut with the State. He reiterated that they were leaving a substantial turnaround to the right of the garage that was two cars in size. Ms. Guay wanted to add a stipulation that the turnaround be used so that drivers had to drive out of the driveway and would not back out onto Route 38. Mr. McNamara seconded the motion for discussion. He said the problem was trying to attach a condition as to the use, versus to the land itself. Ms. Paliy questioned if the motion could be phrased to have the applicant request two curb cuts. Mr. McNamara suggested having a stipulation that the lot be

built as described in the plan. Ms. Guay amended her motion to attach the plan to the variance to show sufficient turnaround space on the property. Mr. McNamara seconded the motion.

MOTION: (Guay/McNamara) Approval condition to attach the plan to the variance which shows sufficient turnaround space on the property.

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

BALLOT VOTE Mr. Hennessey – Yes to all criteria (2nd prong -5b used)
#ZO2014-00010: Ms. Paliy – Yes to all criteria (2nd prong – 5b used)
 Mr. Kearney – 1) No, 2) Yes, 3) Yes, 4) Yes, 5) Yes
 Mr. McNamara – Yes to all criteria (2nd prong – 5b used)
 Ms. Guay – Yes to all criteria (2nd prong – 5b used)

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

VARIANCE GRANTED

Case #ZO2014-00002

HARRIS, George III & John - Off Shelly Drive - Map 3 Lot 5-174 - Seeking a Variance concerning Article III, Sections 307-7, 307-12 & 307-14 to permit construction of a single family or duplex home on a lot containing approximately 7.5 acres but having less than 200 feet of frontage of a Town Road.

Mr. Hennessey believed the abutter's list was read, but just to be sure asked that it be read.

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 David Groff, representing the applicants, came forward to discuss the variance for frontage. The lot contains approximately 7.9 acres. He noted there was a right-of-way created in 1987 when the subdivision was put in. A copy of the plan was displayed for review. The access to the applicant's lot is from a driveway right-of-way (servicing two lots) at the end of Shelly Drive. All other criteria is met. Attorney Groff said the Planning Director raised the question as to the ability of emergency response vehicles accessing the lot. The engineer, Joe Maynard of Benchmark Engineering spoke with the Fire Chief. Mr. Hennessey read aloud the letter dated June 5, 2014 that was submitted by the Fire Chief. The letter indicated that two homes were serviced by an existing driveway easement (off the Shelly Drive circle) and the pavement was in deplorable condition needing repair. The second proposed easement driveway would be at a slope grade of approximately 14%-15% down from the first grade. The engineer was informed by the Fire Chief that the proposed driveway did not conform to the Town's driveway specifications. The letter further indicated that a second plan was submitted that appeared to be within the Town's 10% grade. If the Board was to approve a variance, the Fire Chief recommended if the following: 1) repair/repave the existing driveway and initial easement off Shelly Drive to accommodate maintenance and increased traffic; 2) proposed driveway is to conform with Town's driveway specifications and install guardrails in any areas significantly raised; and 3) connection of two driveway easements would need to accommodate a 40ft. vehicle

without the vehicle having to leave paved area and be connected in a level/flat area. Mr. Groff noted that the Board received a plan showing the grade required by the Fire Chief.

Mr. Groff reviewed the variance criteria as submitted with the application.

When Ms. Guay visited the site she was unable to find the driveway easement that would go to the proposed home. Attorney Groff said there was a driveway at the end of Shelly Drive from which the proposed access would come off, but at this time it hasn't been constructed. He said there was a 50ft. right-of-way by virtue of the plan recorded in 1987. The owner has a right to construct a 50ft. wide driveway.

Joe Maynard of Benchmark Engineering (for the applicant) came forward. He said he was instructed to establish if a driveway would work. He said the lot has been staked along the easement line. The grades have been re-shot from Shelly Drive down into the property to show that a driveway could be constructed meeting Town rules and to allow for emergency response vehicle access. These things were achieved and shown on the plan submitted to the Fire Chief and to the Board.

Mr. McNamara wanted to know the length of the first driveway easement from Shelly Drive. Mr. Maynard said it was approximately 300ft.; in total it was approximately 600ft. to the face of the structure. Mr. McNamara saw on the plan there was roughly 400ft. at a 10% grade. Mr. Maynard said the existing driveway ranged from approximately 14%-15% grade and at the top of the hill flattened to a 2% grade. The rounding into the applicant's site achieved a 5% grade for approximately 32ft-33ft before starting to go down at the 10% grade. Half way down the driveway (at station 3) there will be a turn-off and at the end of the driveway near the structure there will be a hammer head. Mr. McNamara saw there would be a 25ft-30ft wetland crossing. Mr. Maynard said the information was from 2006 and would need to be updated for any permitting. He said from viewing the area, the wet area appeared to be approximately 25ft. wide. Mr. McNamara felt the applicant made a strong case for the driveway, in terms of the lack of any other access, the area was entirely residential and there was no other available land. He asked for Mr. Gowan's opinion of the driveway given the length and steep angle. Mr. Gowan said he had similar concerns, which was the reason he wanted to see that the driveway could be built and achieved per the Driveway Regulations. Beyond those stipulations, he would like the proposed duplex to be the only use of the property, with no further subdivision without the entire distance from Shelly Drive being brought up to full Town road standards. Mr. McNamara asked for confirmation that the driveway easements would be privately maintained. Mr. Gowan said the Town would not be plowing anything beyond Shelly Drive.

Ms. Paliy asked that the Board conduct a site walk. Mr. Hennessey asked if a site walk was needed in regard to the wetland crossing. Mr. McNamara didn't feel it was needed. He would like to hear from the abutters and then have the Board decide if they would walk the site.

PUBLIC INPUT

Mr. Sal Perruccio, 34A Tallant Road, told the Board that the houses in the area were all single-family homes, not duplexes. He felt if a variance was granted it should be for a single-family home similar to the rest of the houses in the neighborhood. Mr. Hennessey noted Pelham Zoning allows duplexes to be built throughout the Town as long as the lot was a sufficient size. He said the zoning request was for frontage. He said if that was the only variance that needed to

be approved, the applicant would have the right to build a duplex. Mr. Perruccio asked if a variance could have a stipulation to only allow a single-family home. He said when the development was done in 1985, access could have been provided a different way, such as by purchasing one of the lots, or subdivided differently to gain the needed frontage. He said in looking at the Town's map there was no right-of-way shown. Mr. Gowan noted the reference was to a tax map. Mr. Perruccio asked who owned the right-of-way. Mr. Hennessey said it was a deeded right-of-way; the document would specify its use. Mr. Perruccio reiterated if a variance was passed he would like it to only be for a single-family to keep with the nature of the neighborhood. He was concerned that an approval would provide access to the lot in Windham.

Mr. James Gendreau, 8 Shelly Drive agreed with Mr. Perruccio's concerns. He also felt if the variance was granted it should only be for a single-family home and there shouldn't be further development. He said there were wetlands on the lot and concerned that over time they would end up being filled. Mr. Gendreau said the other issue with the driveway was that the utilities were all on the right side and would need to be dug up to make the road presentable. He told the Board three years after purchasing his home he spoke to Mr. Harris about purchasing the lot and was told it was land locked. He said when he purchase his home he was told by the real estate broker that the parcel was land locked. A few years later, Herbert Associates came in to do the boundaries and claimed they had no way into the lot and gained access by going through his lot.

Mr. Robert Peterson, abutter who is the last resident on the right-of-way driveway from Shelly Drive, understood the driveway needed maintenance. He may purchase the lot if it was approved. He told the Board that the right-of-way driveway may be widened to make it easier for vehicles to pass one another. He also noted the possible difficulties with the electric running on the right side of the road. Mr. Peterson said he built the Shelly Drive development in the 1980's and believed the accesses were all recorded in the deeds. He said whoever purchased the property would need to determine how maintenance would be done. He questioned how to protect the owners in the area once the property is purchased and developed. Mr. Hennessey said cross-easements could be put in place and would run with the deed. Mr. Gowan believed in the same way the easements were originally granted, any maintenance agreement would be between the private parties. Mr. Peterson said he was interested in purchasing the property.

Mr. Hennessey said it might be appropriate for the Board to attach a stipulation that the applicant conform, at a minimum, to the items in the Fire Chief's letter. Mr. Gowan felt the Fire Chief had made his recommended conditions clear.

Ms. Paliy stated again she would like the Board to conduct a site walk. Especially given the Fire Chief's comments and because of the uncertainty about the driveway maintenance. She didn't want the variance approval to set up a situation that the existing owners couldn't come to agreement about the maintenance. Mr. Hennessey agreed that the Board should conduct a site walk.

MOTION: (Paliy/McNamara) To conduct a site walk.

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

A site walk was scheduled for June 21, 2014 beginning at 8am. The Conservation Commission will be invited to attend. Mr. Hennessey informed the public that the site walk was considered a public hearing; any questions/comments would go through the Chairman.

The case was date specified for July 14, 2014.

Ms. Guay questioned if there were deeds for the driveway easements. Mr. Maynard said the easements were included on the recorded plan. A copy was provided with the application for variance to the Board. The individual deeds referred back to the plan.

HEARINGS

Case #ZO2014-00011

GLADU, Raymond & Sandra - 9 Campbell Road - Map 30 Lot 11-166 - Seeking a Variance concerning Article III, Sections 307-7 & 307-8 to permit construction of a 12ft.x24ft. shed on a lot with less than one (1) acre.

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. Raymond Gladu came forward to discuss his request for variance. He told the Board he would like to build a 12ftx24ft storage shed on his lot that was less than one acre. The shed will house yard maintenance equipment. The Town's setback and sideline requirements will be met.

Mr. Gowan said over the years, the Town had taken a conservative approach to lot expansion. He said the only issue needing relief was the lot size.

Mr. Gladu read aloud the variance criteria as submitted with the application packet.

Mr. McNamara asked if the proposed shed would be approximately 40ft. from the property line. Mr. Gladu answered yes. Mr. McNamara wanted to know how close the shed would be to the house on the adjoining lot. Mr. Gladu told the Board there was no house on the adjoining lot; it was a small wooded parcel of land that separated him from his neighbor. It was his understanding that there was a small structure on that lot years ago, but there was nothing there now.

Ms. Guay wanted to know where the shed would be located. Mr. Gladu said the shed would be located on the right side of his home (as you face it).

Mr. Kearney asked if the shed would be one story. Mr. Gladu answered yes.

Ms. Guay pointed out that the plot plan indicated the property was located in Hudson. Apparently there was a typographical error on the site plan; Mr. Gowan verified for the record that the property being discussed and Campbell Road were both located within the Town of Pelham.

BALLOT VOTE #ZO2014-00010:

Mr. Hennessey – Yes to all criteria
Ms. Paliy – Yes to all criteria
Mr. Kearney – Yes to all criteria
Mr. McNamara – Yes to all criteria
Ms. Guay – Yes to all criteria

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

VARIANCE GRANTED

Case #ZO2014-00012

ROY, Richard & Stephanie - 3 Daniel Drive - Map 34 Lot 6-11 - Seeking a Variance concerning Article III, Section 307-12 to permit the construction of an above ground pool 15ft. from the front property line.

Mr. Gowan told the Board written notification was received that the applicant withdrew the case.

Discussion of Zoning Board of Adjustment By-Laws

The Board was given a copy of the By-Laws. Mr. Hennessey asked the Board to review the document and provide any comments to Mr. Gowan. The Board will review the By-Laws for possible vote at their next meeting.

SITE WALK –June 21, 2014 – 8am.

Case #ZO2014-00002 - HARRIS, George III & John - Off Shelly Drive - Map 3 Lot 5-174

DATE SPECIFIED PLANS - July 14, 2014

Case #ZO2014-00002 - HARRIS, George III & John - Off Shelly Drive - Map 3 Lot 5-174

MINUTES REVIEW

April 19, 2014:

MOTION: (McNamara/Kearney) To approve the April 19, 2014 site walk minutes as written.

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

May 12, 2014:

MOTION: (McNamara/Kearney) To approve the May 12, 2014 meeting minutes as amended.

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

ADJOURNMENT

MOTION: (Kearney/McNamara) To adjourn the meeting.

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

The meeting was adjourned at approximately 8:45pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary