

**APPROVED**  
**TOWN OF PELHAM**  
**ZONING BOARD OF ADJUSTMENT MEETING**  
**October 24, 2016**

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

The Secretary Bill Kearney called roll:

**PRESENT:** David Hennessey, Bill Kearney, Peter McNamara, Chris LaFrance,  
Alternate Darlene Culbert, Alternate Thomas Kenney, Zoning  
Administrator Jennifer Hovey

**ABSENT:** Svetlana Paliy, Alternate Lance Ouellette, Alternate Pauline Guay,  
Alternate Kevin O'Sullivan

**PLEDGE OF ALLEGIANCE**

**HEARINGS**

**Case #Z02016-00024**

**Map 36 Lot 11-91**

**MAJOR REALTY TRUST 101 Dutton Road - Seeking a Variance concerning Article III, Sections 307-12, Table 1 & 307-14 to permit a lot to be subdivided into two lots which do not meet the frontage requirements of 200 feet. The owner's intent is to provide a safe handicap accessible living situation for their son, who due to pre-existing health concern requires him to be close to family. The proposal includes providing 200' of frontage for the existing home on lot 11-91 and creating a new lot on 11-91-1 with 15' of frontage on Dutton Road**

Mr. Kenney was appointed to vote.

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 and Mr. Peter Zohdi of Herbert Associates, representing the applicant, came forward to discuss the variance request. Mr. Gendron described the location of the parcel, which contained approximately three acres and 215ft. of frontage on Dutton Road. The proposal would subdivide Lot 11-91 into two lots. Lot 11-91 would retain 1.5 acres with the existing home and enjoy 200ft of frontage on Dutton Road. New Lot 11-91-1 will contain 2.029 acres and enjoy 15ft. of frontage onto Dutton Road. Mr. Gendron discussed the topography, which is mostly flat. Lot 11-91-1 is set up with a longer driveway since there is a buildable area to the rear where a home, septic and well could be located. They are proposing a big buffer so as to not intrude on anyone's privacy.

Mr. Gendron read aloud the responses to the Variance criteria as submitted with the application. He told the Board that the lot would be for the owner's son and the house would need to be handicap accessible. They hoped to have their son stay close to family.

Mr. Kearney asked if there was any wetland on the property. Mr. Gendron answered no. Mr. Kearney understood that the new lot (with 15ft of frontage) would utilize such for a driveway and they were proposing a single family dwelling. Mr. Zohdi answered yes.

Mr. Hennessey opened the discussion to public input. He began by reading aloud a letter submitted by the applicant's neighbor Paul Gagnon, who indicated support for the request and encouraged the Board to approve the variance.

Ms. Mary Orlep, 97 Dutton Road came forward to speak for herself and her husband. She read aloud a prepared statement in opposition to the variance request. Although they felt the reason for the variance was admirable, they believed it would negatively impact the enjoyment of their property and decrease their property value. They didn't feel it met the legal standards for a variance. After researching the status of the surrounding land, they purchased their house two years ago given the rural and rustic environment and reasonably expected the zoning ordinance would prevent new dwellings to be built behind their property. They believed if the land behind their property became a driveway and dwelling it would negatively impact their property because future owners would not value the rustic surroundings they currently enjoyed and have a neighbor with 15ft of frontage. They did not feel the variance request met the conditions for approval. Ms. Orlep believed a lot with 15ft. of frontage was contrary to the public interest because in essence the entire frontage would be devoted to the access for the lot. She said in the winter would be virtually impossible to clear snow without encroaching onto abutting properties and diminish access for emergency vehicles. She noted an additional dwelling would increase traffic next to her house. She stated the property line was visible from a number of windows in their home and from their back deck. If the variance is granted a driveway would run along the entire length of their property and not be possible for a vegetated buffer between her property and the applicant. Ms. Orlep said future owners may not value the rustic value of Pelham. She felt if the variance was approved she would need a fence along her property line for safety reasons and to mitigate the disruption to their property from increased traffic. She said from the application, the owners are seeking a 'use' variance and didn't feel their use was being interfered with or that there was anything unique about the property. While Ms. Orlep felt it was unfortunate that the circumstances of the applicant had changed so that their current residence no longer met their needs; however, it was not sufficient reason to grant the variance. They didn't feel it was necessary as a matter of substantial justice because the harms to the public were greater than the harm to the applicant. They disagreed that the proposed home would have a positive addition to the neighborhood as the frontage was 185ft. short of the requirement. She reiterated the belief that her property value would be diminished if the variance was granted. Ms. Orlep noted that the applicant claimed the proposal was for lot configuration, which she felt was not quite accurate given they currently owned one lot that was configured like any number of lots in Pelham's residential community. She said creating two lots from one lot was substantially different from a pre-existing land-locked lot. She stated having a new lot and dwelling where previously there was none would diminish their property value regardless of how valuable or attractively landscaped the new dwelling is. Given these reasons, Ms. Orlep felt the request for variance should not be granted.

Ms. Orlep questioned if there were any other properties in Pelham with 15ft. of frontage. Mr. Hennessey replied there were some variances the Board had granted on some occasions. He said in some case there were driveways and abandoned farm roads (legacy lots) with access left over from previous subdivisions. Ms. Orlep wanted to know how many other properties there were in Pelham with 2+ acres and 215ft-230ft of frontage. She understood there were a number of large lots in Town with 200ft +/- of frontage. Mr. Hennessey explained the decisions done by the Zoning Board do not necessarily set up a legal precedent. Each case is determined on its own merits. Ms. Orlep felt a variance also went to the uniqueness of a property and stated there were a number of properties that were the same. She voiced concern about snow clearance. She said if there was a driveway along the entire property line they would have to have a fence; they couldn't have a driveway a foot away from her back yard with her toddler

playing outside. She said if Lot 11-91 was sold at some point they would also likely want a fence, so with a 15ft road and fences she questioned how snow would be removed.

Mr. McNamara heard Ms. Orlep say her home was close to the back lot line and asked how far away from the line it was located. Using a plan set, Ms. Orlep showed the approximate location of her home, deck, well head. She noted from the driveway property line the house had a 15ft. clearance. Her back yard was approximately 100ft.

Mr. Zohdi told the Board he didn't have the plan from the previous subdivision, but didn't believe the existing house was 15ft. from the property line. He said if they had to, the Board could stipulate they install a fence along the property line. He noted there were mature trees in the area that they would like to leave. He discussed the applicant's desire to remain close to their son and take care of him. Mr. Zohdi noted he had previously come in front of the Board for frontage variances but understood those cases didn't set a precedent for the case being considered because each case goes on its own merit.

Mr. McNamara was in admiration of what the Majors were trying to do. He said it wasn't easy taking care of a disabled relative. He asked if consideration was given to building an in-law apartment or an addition to the home. Mr. Zohdi replied there was already an addition to the home. Mr. McNamara questioned if doing so would be an easier path to travel as there didn't seem to be any physical limitation to doing so. Mr. Zohdi replied if they were to do so they would need another variance for being in the setback. He said when the applicant came to him he realized it was a difficult variance but noted no matter what they did on the lot they would need a variance. He told the Board if the variance was approved they might be able to provide a driveway easement off their existing driveway so they wouldn't need to do anything off the 15ft. of frontage. Mr. McNamara agreed that the personal hardship was compelling, but the Board had to be clear that the hardship was to the land. He noted that the laws were changing in New Hampshire (within a couple months) to allow accessory dwelling units as a matter of right.

Mr. LaFrance saw hardship to the land because there was a large portion of the property that couldn't be used because of the way it was laid out like a 'dog leg'. He said the larger portion of the property was where the proposed house would be located. He liked to see houses separated and not stacked together because he felt it kept the rural character of Pelham. He noted there was a good sized buffer between the proposed house and the abutter's existing home on the shared lot line. In terms of frontage he told the Board he had a similar situation to gain access to back land and therefore could see the hardship in the lay of the land. He noted there was nothing in the regulations that didn't allow a driveway to be on the lot line. He believed if the property was owned by someone else, they would be requesting a variance because of the land regardless of their home situation.

Mr. Kenney said if he was the abutter and someone wanted to put a driveway next to his land he wouldn't want it; however, he could see the landowner's side. He noted people wanted to live in Pelham to have privacy.

Mr. Kearney agreed with Mr. LaFrance that it was a big piece of property (3.5 acres) and the owners were essentially using one acre. He found their thought process admirable. He hoped if the variance was approved there would be some considerations for the neighbor to have a buffer.

Mr. Hennessey stated the Zoning rules were in place and the Board didn't trade things back and forth as the Planning Board might be able to.

Ms. Culbert believed there would be enough of a buffer between the back of the neighbor and the proposed house. She felt the driveway being right on the line was cause for concern.

Mr. Hennessey felt there was a hardship that ran with the configuration of the land. He stated the Board had to put aside the handicap issue. He commented that his own lot contained thirteen acres and he had an eight foot wide driveway located on the edge of his property. He felt the safety issue was important and would urge the Planning Board (if the variance was granted) to review a possible easement and widen the frontage access. He stated the applicant was requesting a variance for 15ft of frontage and hoped the Board didn't see another variance on the frontage to make the existing lot into a duplex.

Mr. McNamara read aloud a portion of RSA 674-33 which allows a board to grant a variance without finding a hardship arising from a condition of premises when reasonable accommodations are necessary to allow a person or persons with a recognized disability to reside in or regality use the premises provided that any variance granted shall be in harmony with the general purpose and intent of the Ordinance and in granting any variance the zoning board of adjustment may provide a finding included in the variance that the variance shall survive only so long as the particular person has a continuing need to use the premises. He didn't see how that RSA could work in this situation. Mr. Hennessey said the Board had made appropriate accommodations in the past by allowing increased size and detached units. However, in this application he felt the applicant had an unusual case given the configuration of the land. He noted there were other antique properties in the area with considerably less than 200ft. of frontage.

There was a brief discussion about the configuration of the lot and what action the Planning Board might be able to take. Mr. LaFrance reiterated there was a big buffer between the proposed home and the back of the abutter's existing home. He noted it seemed that the applicant located the house as far back as possible and did the best they could, with respect to all parties, given the situation.

Mr. Hennessey summarized the Board's discussion and reviewed the five criteria. He felt the abutter did a really good job laying out their opposition. He said the abutter believed their property value would be harmed. Mr. Kearney said in his estimation the only potential argument would be the driveway. He didn't feel having a driveway on a lot line precluded anyone from building. He didn't see that there would be diminished value. Mr. McNamara felt there was a substantial buffer to the rear. He noted there was testimony that the Orlep's house was 15ft from the property line, which raised concern about the driveway. Mr. Kearney understood the request was to have the driveway run against the line. Mr. LaFrance agreed that the only thing that may hamper things was the driveway; however, it was the applicant's land and they were entitled to do what they want. Mr. Kenney stated if it was his house he'd be angry if someone wanted to have a driveway running along the property. Mr. Hennessey asked Mr. Kenney to review the plan taking away the subdivision. He asked him to review the configuration of the lot. He said land could be used how an owner wished it to. He pointed out there was nothing in the rules that prevented the owner from making a driveway to access the lot; they already had an existing driveway that could be extended to the rear of their lot. He said there was also nothing in the rules that prevented the owner from knocking down their existing house and moving it to the back portion of their lot in the same location as being proposed; neither of those things would change the concern about property values. Mr. Kenney questioned if Mr. Hennessey thought the property value would change. Mr. Hennessey believed it changed what the abutter thought they were buying. He said the fact was a land owner had a right to use their land for what they want and didn't see any substantial change from what they currently had versus what they were proposing. He reiterated they could install a driveway now and a house could be built in the back if they tore down the existing house.

Mr. Hennessey opened public discussion so Mr. McNamara could address the applicant.

Mr. McNamara asked if the applicant would be open to having a condition on approval that there be no duplex built on the property. Mr. Zohdi answered yes.

**MOTION:** (McNamara/LaFrance) An approval of variance is conditioned upon the applicant's acceptance of the fact that there will never be a duplex property built on the

proposed lot 11-91-1.

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

Mr. Hennessey wanted the Board to understand under the rule changes for accessory apartments by Statutory right (in June, 2017) an owner could put an accessory apartment in their home. Mr. McNamara understood and noted it could be done in any property and could also be a rental unit. The Board was aware of the State Statute change.

**BALLOT VOTE** Mr. Hennessey – Yes to all criteria  
**#ZO2016-00024:** Mr. McNamara – Yes to all criteria, with restrictions contained in motion  
 Mr. Kearney – Yes to all criteria  
 Mr. LaFrance - Yes to all criteria with motion  
 Mr. Kenney- 1) No, 2) No, 3) No, 4) Yes, 5) No  
 (4-1-0) The motion carried.

## **VARIANCE GRANTED**

### **Case #ZO-2016-00025**

#### **Map 23 Lot 8-17-5**

**FERNANDES, Emanuel 32 Webster Avenue - Seeking a Variance concerning Article III, Section 307-128, Table 1 to permit an existing garage within the 15' side setback.**

Ms. Culbert was appointed to vote.

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.

The Board understood that the garage was an existing garage that was too close to the sidelines.

Mr. Fernandez explained that he originally had a tarp in the area that was converted to a carport and later converted to a garage. Mr. Christopher Ortiz, speaking for Mr. Fernandez, read aloud the variance criteria as submitted with the application.

Mr. McNamara understood there was only a piece of the garage that extended into the 15ft side setback. Mr. Ortiz answered yes; approximately 4ft. on the corner.

Mr. Kearney wanted to know the distance from the garage to the closest neighbor. Mr. Ortiz replied there was approximately 60ft and added the neighbor couldn't see the structure because of the wooded buffer. Mr. Kearney asked how the garage was accessed. Mr. Ortiz explained there was a hard packed access drive that extended off the corner existing driveway (away from the neighbor).

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

Mr. Hennessey felt the public good would be served by having the structure inspected. If it passes inspection a building permit could be issued, even though its after-the-fact. He believed the action of applicant was inadvertent and wanted the Building Inspector to review the structure.

**BALLOT VOTE** Mr. Hennessey – Yes to all criteria

**#ZO2016-00025:** Mr. McNamara – Yes to all criteria  
Mr. Kearney – Yes to all criteria  
Mr. LaFrance - Yes to all criteria  
Ms. Culbert- Yes to all criteria

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

**VARIANCE GRANTED**

**Case #ZO2016-00026**

**Map 29 Lot 7-27-26**

**CAGGIANELLI, Bonnie & ARSENEAULT, Matthew 92 Briarwood Road - Seeking a Special Exception concerning Article XII, Section 307-74 to permit an in-law apartment to be built above an existing garage.**

Mr. Kenney was appointed to vote.

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. Hennessey understood that the Briarwood Road was previously Old Lawrence Road. Being a real estate agent, he checked to see if he had to recuse himself as he was dealing with a property in the neighborhood. He stated the applicant was not an immediate abutter.

Ms. Caggianelli told the Board they were looking to add an in-law apartment onto their existing garage. Mr. Hennessey stated the Board received notes indicating that the applicant had met the criteria for Special Exception. He explained the difference between Special Exception and Variance. Ms. Hovey confirmed that the applicant met the criteria and the Building Inspector had signed off on the plan. Mr. Hennessey saw that an appropriately sized septic design had been submitted.

**BALLOT VOTE** Mr. Hennessey – Yes  
**#ZO2016-00026:** Mr. McNamara – Yes  
Mr. Kearney – Yes  
Mr. LaFrance - Yes  
Mr. Kenney- Yes

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

**SPECIAL EXCEPTION GRANTED**

**Case #ZO2016-00027**

**Map 12 Lot 4-152**

**ROGERS, Sabrenna & Kevin 174 Bush Hill Road Street - Seeking a Special Exception concerning Article XII, Section 307-74 to permit an in-law apartment to the lower level of the house**

Ms. Culbert was appointed to vote.

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.

An approved representative for the applicant explained to the Board that the Rogers were seeking a Special Exception to allow Ms. Rogers' mother to reside in an in-law apartment within their home because she had Multiple Sclerosis. The applicant learned they needed a permit and had come forward with the request. Mr. Hennessey stated an in-law was granted by right and as long as the criteria was met the Special Exception would be granted.

Ms. Hovey told the Board that the application was in compliance. Mr. McNamara understood that the septic was approved in 2011.

**BALLOT VOTE**  
**#ZO2016-00022:**  
Mr. Hennessey – Yes  
Mr. McNamara – Yes  
Mr. Kearney – Yes  
Mr. LaFrance - Yes  
Ms. Culbert - Yes

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

**SPECIAL EXCEPTION GRANTED**

**MINUTES REVIEW**

**September 12, 2016:**

**MOTION:** (LaFrance/Kearney) To approve the September 12, 2016 meeting minutes as written.

**VOTE:** (3-0-1) The motion carried. Mr. McNamara abstained.

**ADJOURNMENT**

**MOTION:** (LaFrance/Kearney) To adjourn the meeting.

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

The meeting was adjourned at approximately 8:15pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary