

APPROVED

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING**

August 14, 2017

APPROVED – October 12, 2017

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

The Vice Chairwoman Svetlana Paliy called roll:

PRESENT: David Hennessey, Svetlana Paliy, Bill Kearney, Peter McNamara, Diane Chubb, Alternate Deb Ryan, Planner/Zoning Administrator Jennifer Hovey

ABSENT: Alternate Lance Ouellette, Alternate Darlene Culbert, Alternate Heather Patterson, Alternate Thomas Kenney

PLEDGE OF ALLEGIANCE

HEARING(S)

Case #ZO2017-00021

Map 36 Lot 10-114

BRODY, Joshua & HERLIHY, Katelyn 99 Garland Drive - Seeking a Special Exception concerning Article XII, Section 307-74 to permit an accessory dwelling unit.

Ms. Paliy 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.

Representing the applicant was Mr. Joseph Maynard of Benchmark Engineering. He told the Board the applicant would like to add an accessory dwelling unit to their existing home. The home was constructed in the mid 1970s. An addition would be made to the side of the house to add a garage and dwelling unit above. He reviewed the requirements within the Town's Ordinance and discussed how the proposal met each one. The applicant's mother-in-law would be occupying the unit. Mr. Maynard noted the proposal met the Article K requirements.

Mr. McNamara questioned if the applicant had trouble meeting the 75% common wall requirement. Mr. Maynard replied his client met with the Building Inspector and decided to move the proposed garage forward to meet the common wall requirement. Mr. McNamara confirmed that the septic had been approved by the State. Mr. Maynard answered yes and added that the approved septic plan had been given to the Planning Department.

PUBLIC INPUT - Mr. Hennessey opened discussion to public input. No one came forward.

Mr. Hennessey asked Ms. Hovey if the submission met all the criteria. Ms. Hovey answered yes.

BALLOT VOTE Mr. Hennessey – Yes
#ZO2017-00021: Ms. Paliy – Yes
Mr. Kearney - Yes
Mr. McNamara – Yes

Ms. Chubb – Yes

(5-0-0) The Special Exception was Granted.

SPECIAL EXCEPTION GRANTED

Mr. Hennessey noted there was a 30-day right of appeal.

Case #ZO2017-00022

Map 17 Lot 12-232

CROTEAU REV. TRUST 9 Ledge Road -Seeking a Variance concerning Article III, Sections 307-7, 307-8.C & 307-12 Table 1 to permit the expansion of the existing repair/towing company (RGA-TIRE) with additional parking and an addition to the existing building. Also allow the proposed addition to be approx. 14 feet from the side setback line and to construct a covered area (Pole Barn) 3 feet from the side lot line.

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.

Representing the applicant was Mr. Joseph Maynard of Benchmark Engineering. He told the Board that the applicant's had a two acre lot that was mainly zoned residential. The property was currently developed with a multi-family home at the front of the property and a business known as RGA Tire and Auto Repair occupies the rear of the lot. Both buildings share an on-site septic system and well. This year RGA is celebrating fifty years of business at the location. The auto repair and towing is a pre-existing non-conforming business that uses approximately 1.5 acres of the site. Most of the lot is already built upon, or is an open gravel surface. Mr. Maynard stated the applicant was looking to expand upon the existing non-conforming use and construct an additional garage building to the rear of the current business building. He noted work was already being done to vehicles in that area and the addition would allow vehicles to be moved inside. They would also like to construct a pole barn to allow the applicant to park tow trucks, etc. out of the elements. Additional parking (approximately 6 spaces) would be constructed.

Mr. Maynard told the Board the garage addition would have a 14ft. side setback. He noted under the residential zoning there was a 15ft setback, and for commercial buildings, the setback is the height of the building multiplied by two or three. He said if it was the height times two, the setback for the building would have to be approximately 60ft. from the lot line. They were looking to center the proposed building with the existing building to allow for a traffic throughway between the building and parking area. The applicant would like to construct a pole barn with a setback of approximately 3ft-5ft. from the side lot line. There are existing poles in the ground, without a roof. The applicant was looking to turn the pole barn so the bays would be open to the back of the building.

Mr. Kearney asked for clarification as to whether there was currently pole barn. Mr. Maynard explained there were poles currently in place with no roof over them.

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

Mr. McNamara wanted to know the distance to the southerly abutter. Mr. Maynard believed there was an access road and the house was quite a distance. Mr. McNamara asked if they were within sight distance. Mr. Jason Croteau (one of the applicants) who was seated in the audience answered no. Mr. McNamara questioned if the applicant was seeking relief from the residential or business setback. Mr. Maynard replied he put them both in the application because he wasn't sure how it would be interpreted. Ms. Hovey said the setback would be the commercial use setback.

Mr. Kearney wanted to know the height of the existing garage. Mr. Maynard believed it was approximately 20ft. to the ridge; the new peak would be roughly 30ft. Mr. Kearney asked if there would be new gravel or more surface to accomplish the proposal. Mr. Maynard replied part of the request was to they would add approximately six parking spaces to the northerly side.

Ms. Paliy inquired if there would be a roof overlap on the pole barn. Mr. Maynard replied it would have a trussed roof with shingles. He added there was no overhang on the roof and only a few inches on the soffit.

Mr. Maynard explained to the Board that many of the buildings, especially the addition to the structure were being located in an area already being used for outside repair. He felt if they could move the uses inside the structure it would take down on the noise.

PUBLIC INPUT

Mr. Hennessey opened the discussion to public input.

Ms. Cheryl Renteira, 14 Ledge Road told the Board she lived across the street and was in favor of the property expansion. Her only concern was the width of the driveway entrance. She's noticed certain vehicles having difficulty accessing the business. Mr. Maynard replied he would increase the width of the entrance and incorporate the change as part of the site plan review with the Planning Board.

Mr. Jeff Melvin, 34 Old Gage Hill Road told the Board he was in favor of the variance.

Mr. McNamara pointed out although the proposal sounded dramatic, the use is pre-existing and already close to the lot line. With respect to the testimony and the fact that there wasn't a neighbor on the southerly side, he felt the proposal would improve the quality of what was going on at the property and not create a disadvantage to a neighboring property. Also, given the constraints of the lot itself, he felt the hardship criteria for the expansion had been met.

Mr. Hennessey felt the hardship criteria had been met and the criteria for surrounding property had also been met.

BALLOT VOTE #ZO2017-00022:

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. Chubb – Yes to all criteria

(5-0-0) The Variance was Granted.

VARIANCE GRANTED

Mr. Hennessey noted there was a 30-day right of appeal.

Case #ZO2017-00023 Map 39 Lot 1-103

FARRIS, Michael 13 Jones Road -Seeking a Variance concerning Article III, Sections 307-13.B, & 307-14 to permit a lot having frontage on a private way but no frontage on a public right of way.

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.

Representing the applicant was Mr. Karl Dubay of The Dubay Group. He came forward with the applicant Mr. Michael Farris. Mr. Dubay stated the lot being proposed contained approximately 2.4 acres and was located on the corner of Sherburne Road (Class V road) and Jones Road (private road). The lot had approximately 800ft. of frontage on both roads. He stated the variance was strictly for frontage on a non-public road. The configuration of the proposal met the Planning Board's criteria. Mr. Dubay noted there was an existing house, driveway, septic, well, etc. on the lot. They conducted a survey of the land, topography and soils. They've done test pits and flagged wetland ditches along both roads. The proposal was for a new lot on the corner of Sherburne and Jones Roads. There is an existing driveway stub on Sherburne Road for a potential home that won't be used. The driveway access will be from Jones Road. Mr. Dubay stated that the variance request was for the existing home, which would maintain its frontage on Jones Road. He explained that Jones Road was a private road that was maintained by the Town under contract. He noted having the access to the proposed road from Jones Road would be a safer situation than having access from Sherburne Road.

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

Mr. McNamara didn't argue that accessing the two lots was much better off from Jones Road. He wanted to know if the variance being requested was only for the existing lot. Mr. Dubay said they were requesting the one variance for two locations. Ms. Hovey noted a lot needs to have access from the frontage. Mr. Dubay added the frontage requirements were listed in two locations within the Ordinance, which was the reason for the two variances. Mr. McNamara wanted to be clear regarding the request. Ms. Hovey replied the variances would be for both accesses from Jones Road. Mr. Dubay agreed.

Mr. Kearney understood that the existing house was accessed off Jones Road and would continue to be if the variance was approved. Mr. Dubay answered yes. With that information, Mr. Kearney questioned if the variance should only be for the new lot. Mr. Hennessey noted that the frontage was via Sherburne Road; the access would be from Jones Road. He confirmed that the applicant would surrender the existing driveway stub off Sherburne Road. Mr. Dubay explained that the stub was put in as part of the Jones Road reconstruction and the contemplation of a driveway. He said they could have tried to seek use of a driveway in that location, but because of sight distance felt the better option was to have access from Jones Road. Mr. Hennessey understood Sherburne Road was a State road. Mr. Dubay told the Board they would abandon all rights and indicate such on any subdivision plan.

Ms. Chubb wanted to know how the existing house had a driveway on Jones Road and questioned if there was a prior variance. Mr. Dubay replied they couldn't find anything in the records. Ms. Hovey noted they may not have needed a variance at the time the development was built because they had frontage on Sherburne Road. She explained that the Town's Ordinance (possibly in 1995) added that a lot's access had to be where the frontage was located. In the past if a lot had frontage on a public road, the access could be from a different street. The current Ordinance states access has to be where frontage is located. Mr. Hennessey noted the applicant needed the two variances for the lots to have frontage on Jones Road. Ms. Chubb asked the status of the other houses on Jones Road. Mr. Dubay replied they were existing homes. Mr. Farris stated he had to get a variance on his lot. Ms. Chubb questioned if the other houses had variances. Mr. Farris believed they did. Ms. Chubb inquired if the Town would continue taking care of the road through private agreement. Mr. Farris explained that the families were virtually the same since he was born and they combine together to maintain the road. He said the only thing the Town did was plow the road. Ms. Chubb asked if the new lot would be part of the agreement. Mr. Farris replied there wasn't an agreement, it was implied. He said he took care of most of the maintenance. Mr. Hennessey felt at some point the residents would have to create some sort of agreement. Mr. Farris told the Board he had no

intention of selling the property. He planned to build and keep the home to be given to his children. He said he also wouldn't be selling the existing home.

Presuming the variance is approved, Mr. McNamara questioned if any waivers would be requested from the Planning Board. Mr. Dubay anticipated a Wetland Conservation District Special Permit for the area next to the roadside ditch. He reiterated they would remove and mitigate the existing driveway stub to Sherburne Road; there would be a note on the plan indicating such. The flag #C4A will be reviewed carefully as it slightly got into the 100ftx150ft box.

Mr. Hennessey asked if both lots had wells. Mr. Dubay answered yes. Mr. Hennessey understood the proposed home would have a new well and questioned if water tests had been done. Mr. Dubay replied it would be a drilled well and commented there was plenty of room to locate it.

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

Ms. Hovey suggested that the Board's motion clarify that the applicant was seeking to create a lot with no frontage and to access the new lot from Jones Road.

MOTION: (McNamara/Kearney) Variance approval is not only for the existing home having no frontage on a public, Class V or better road, but also for the new home having access not on a Class V road, but instead on a private road (Jones Road).

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

Mr. Hennessey asked for a motion that the driveway stub/curb cut on Sherburne Road be formally abandoned and eliminated with the State. Mr. Kearney made the motion. Mr. McNamara seconded. Ms. Paliy questioned how the Board had authority. Mr. Hennessey said they would make it as a stipulation in order to grant the variance. He said it had been offered, so they would make it part of the issuance of the variance (if approved). Mr. McNamara was in favor of the motion based on safety and the possible difficulty of obtaining a curb cut on that stretch of Sherburne Road. Ms. Paliy said the State would issue the driveway and questioned why it was up to the Board. She didn't understand why the Board would get in the middle of the process. Mr. Dubay told the Board that the Department of Transportation ('DOT') usually was in favor of reducing/eliminating previously contemplated driveway stubs. He felt it was the right thing to do.

MOTION: (Kearney/McNamara) The curb cut on Sherburne Road is to be eliminated.

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

BALLOT VOTE
#ZO2017-00023:

Mr. Hennessey – Yes to all criteria- with stipulations
Ms. Paliy – Yes to all criteria
Mr. Kearney - Yes to all criteria- with stipulations to remove curb cut and stipulation of second variance for lot
Mr. McNamara – Yes to all criteria – with stipulation in motions
Ms. Chubb – Yes to all criteria – with stipulation set in two motions

(5-0-0) The Variance was Granted.

VARIANCE GRANTED

Mr. Hennessey noted there was a 30-day right of appeal.

Case #ZO2017-00024**Map 39 Lot 1-89**

RAMALHO, Donna & Steven 38 McGrath Road -Seeking a Variance concerning Article III, Section 307-8 to permit the construction of a new house with “second floor expansion” within the same dimensions of the existing house.

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.

Representing the applicant was Mr. Alden Beauchemin of Keyland Enterprises, LLC. He told the Board that the applicant had an existing home on McGrath Road (off Sherburne Road) that abutted Long Pond. He reviewed the Shore Land plan that showed the existing condition/house location and the proposed condition/house location. Mr. Beauchemin noted that the plan had an error of the existing square footage calculation, which was noted as being 3,300SF; however, it was actually 3,800SF. The applicant would like to tear down the existing house, which has mold and a leaking roof, and replace it with a new house within the same overall footprint of 20ft.x38ft. He understood that a variance was needed because the proposed house was going up a floor. Mr. Hennessey noted the proposal was for an expansion of an existing non-conforming use.

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

Mr. Kearney wanted to know the roof height of the existing structure. Mr. Beauchemin replied the existing height is approximately 16ft. from the front grade where the driveway is located; there is a walk-out in the rear of the house that adds approximately 9ft. (totaling approximately 24ft. in height in the rear). The proposal shows a height of 24ft. in the front and approximately 34ft. in the rear because of the walk-out.

Mr. Hennessey read aloud a letter submitted by the Conservation Commission who recommended: 1) should the existing septic tank be metal, it should be removed and not filled, and 2) native plantings proposed for the lake front should also be planted around the plunge pool. Given the recommendations, the Commission voted 4-0 in favor to a motion to approve the current plan. He asked if the applicant had received a State Shore Land approval. Mr. Beauchemin replied it was still pending; the applicant was waiting for final feedback from the Town.

PUBLIC INPUT

Mr. Hennessey opened the discussion to public input.

Mr. Bill Dumont of 36 McGrath Road directly abutted the applicant's property. He saw that the drawing showed a section of ledge and questioned how runoff would be contained so it didn't run down the hill into his lot and potentially make its way into his well. Mr. Hennessey stated the Town's Health Department and their representative, and the State would have to approve the plan because it was within the Shore Land Protection area. He noted that a variance approval would be conditioned upon a State approved septic system design. Mr. Dumont said in the future he may want to do a similar expansion of his home. He described the location of his house as it was situated with the applicant's home. He wanted to know if there would be an issue with the view; which he pointed out didn't exist at present. Mr. Hennessey replied the Town had a height restriction, and when properties around the pond were brought forward, the Board was sensitive to views being blocked. He said it was common sense that if a resident once had a view of a pond, and they no longer did because a neighbor added a second floor, the value of the property would be affected. He noted that the Board often conducted site walks and would impose a height restriction if they felt there would be an issue. Mr. Dumont asked if the Board was also sensitive to future property values, and questioned if there was a remedy or agreement that could be put in place today for protection in the future.

Mr. Hennessey said he couldn't answer since variances were reviewed on a case-by-case basis. The Board tries to be sensitive on the effects to neighbors and also sensitive the fact that people had a right to use their property within the boundaries.

Brian and Erin Wilson of 40 McGrath Road came forward. Ms. Wilson told the Board they opposed the plans currently under review because the proposal was attempting to expand the use of a currently non-conforming lot without the setbacks or frontage to accommodate the proposed structure. Their main request is for a certified plot plan to be done that defines property lines that conflict with the deed of 38 McGrath Road and a 2012 State certified plot plan. Copies were provided to the Board for review. Mr. Wilson stated they were in dispute of where the points were set. He told the Board they had their land surveyed in 2012 and everything was pinned and certified.

Ms. Wilson stated that their concern with the outcropping that appeared to go into McGrath Road, which doesn't seem to align with the deed or with the survey they had done. Mr. Wilson added that on their plot plan it showed as part of McGrath Road and not part of the applicant's parcel. Ms. Wilson said the next concern they had revolved around the basement that the applicant wanted to create because of the blasting that would need to occur. They noticed that the site plan didn't take the impact to abutter's wells into account. Mr. Wilson pointed out between the two structures there was less than 16ft., and the applicant's existing foundation was approximately 2ft. from their lot line. They were concerned with the tear down and digging which may have an effect on their foundation. He provided the Board with photographs of the outcroppings.

Ms. Wilson noted that the proposed plans didn't define the overall elevation and through rough calculations believed the proposed structure would be approximately 40ft. Mr. Beauchemin commented that the height on the driveway side would be approximately 24ft and the height on the garage walk-out side would be approximately 34ft. Mr. Hennessey asked if their view of the pond would be blocked by the proposed home. Ms. Wilson answered no; however, they had some privacy concerns because the height of the structure would be drastically changed. She said the structure would affect their privacy and personal use. If a second floor is allowed, it would look directly into their daughter's bedroom and block her view of the lake. She noted they would still have their front view. With regard to the personal use of their property, the height of the structure would impact the use of their beach and garden areas because they would lose sunlight (3-4 hours). Mr. Wilson explained because of the ledge, the first floor of the applicant's home would sit approximately 6ft. higher than their first floor. Mr. Hennessey guessed that the Board would probably conduct a site walk.

Mr. Ron Wilson of 4 Falcon Drive came forward. He told the Board he had an objection to the variance and spoke about a number of concerns:

- 1) Requirement for a lot to be 43,500SF, where the applicant's lot is 8,607 (minus wetlands), which makes building portion 1/7 of an acre;
- 2) Side yard proximity to lot line (photograph displayed and submitted for review);
- 3) No attempt to move house into conformance. Mr. Hennessey noted they couldn't because it was a non-conforming lot and Shore Land Protection would allow such. Mr. Wilson was concerned with the applicant constructing an additional structure to the other side of the lot. To do so Mr. Hennessey noted the applicant would have to come in front of the Board because it would be an expansion of a non-conforming use.
- 4) Proposal would require removal of approximately 8ft. of ledge underneath house, which extends under his son's house (20ft away) and under his well (50ft away);
- 5) Pill and slab elevations don't make sense- slab lowered 3ft. from current grade, which would require the front of the building to be regraded, or retaining walls to be built. Mr. Hennessey noted the applicant would need a Shore Land Protection permit because the lot was within 50ft. of Long Pond. Mr. Wilson noted the plan didn't show that excavation would be needed.
- 6) Town rules require 200ft. of frontage and the proposal shows 36ft. of frontage;

- 7) Plan shows a single lot; however, the deed shows three separate lots;
- 8) Certified plot plan shows an unpaved portion of the driveway (photograph displayed and provided to the Board) that is possibly an unnamed street (as shown on the Assessor's map).

Mr. Wilson told the Board they were given notification of the meeting three days ago, which was not adequate time to have an attorney review the information and ownership of the property. Mr. Hennessey said if the Board continued the hearing to conduct a site walk they would have another hearing. He noted if the variance was granted there would be a thirty-day right of appeal time period. Mr. Wilson referenced Article III, Section 307-10 regarding parking. Mr. Hennessey reiterated that the lot was currently a non-conforming lot that didn't meet the specified requirements; the lot existed prior to Zoning. He noted 'today's' criteria couldn't be applied to the properties on the lake; any expansions or substantial changes had to come in front of the Board. Mr. Wilson displayed a photograph of McGrath Road (a one lane road) to show there was no way vehicles could park on it without obstructing traffic.

Based on the testimony, Mr. Hennessey stated the Board should conduct a site walk and asked for a motion to do so.

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

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

Mr. Hennessey explained the purpose of the site walk, which was a continuation of the public hearing. In this case he was having a difficult time visualizing what was being described and wanted to give abutters the opportunity to 'show' the Board their concerns.

Mr. Don Laureiro of 19 McGrath Road told the Board he resided at that location for 45-46 years. When he first moved in there were only three people who lived in the neighborhood year-round; slowly the surrounding camps have been converted from seasonal to year-round. He believed the applicant knew their home was seasonal when they purchased it and should have been aware there would be problems to make it year-round. Mr. Hennessey replied in Pelham an owner simply had to make a structure suitable to be year-round and it could be. Mr. Laureiro was unsure if McGrath Road was a 'road'. He believed it was a right-of-way that went between his home and his neighbor's home. For years it had been a dirt road. He briefly described his knowledge of the area and the history of the land.

Mr. Hennessey asked the applicant if they had a plot plan. Mr. Beauchemin replied his plan was based on a preliminary plan done by Michael Grainger (surveyor). He said he would follow up with a certified stamped plan. Mr. Hennessey heard testimony regarding ledge and questioned if there would be any blasting. Mr. Joe Foster of JNK Construction & Excavation came forward (for the applicant) and agreed there was a lot of ledge. He told the Board during the past fifteen years when he broke ledge he used Maine Drilling and Blasting. He explained how they conducted documentation of abutting homes. Ms. Hovey stated the Pelham Ordinance was under the Fire Department's jurisdiction. Mr. McNamara questioned how much blasting was anticipated on the site. Mr. Foster replied the Board would see when they visit the site that the entire area was a rock. He reiterated the pre-blast process, which would be well documented and publicized.

Mr. Hennessey asked that the Board set up a date and time to conduct their site walk.

The Board scheduled a site walk for Saturday, August 19, 2017 beginning at 8am.

MOTION: (McNamara/Kearney) To date specify the case to the September 11, 2017 meeting.

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

DISCUSSION

The Board was provided with a copy of the Superior Court's Order relative to the Robert C Orlep, et al v. Town of Pelham, et al (Case #226-2017 – CV00063). Mr. Hennessey discussed the Order, and his feeling that the Judge made an important point that the Board basically did not address the lack of argument on the part of the applicant regarding value. He questioned if the Board should create a procedure (when discussing / voting) to avoid cases being overturned (because of the Board). The Board discussed their manner of review of the case and how to proceed in the future. Mr. Hennessey felt it was important for Board members to go through each of the criteria and succinctly express their opinions regarding such.

SITE WALK – August 19, 2017 beginning at 8am

Case #ZO2017-00024 - Map 39 Lot 1-89 - RAMALHO, Donna & Steven 38 McGrath Road

DATE SPECIFIED PLAN(S) – September 11, 2017

Case #ZO2017-00024 - Map 39 Lot 1-89 - RAMALHO, Donna & Steven 38 McGrath Road

MINUTES REVIEW – June 12, 2017

July 10, 2017

MOTION: (Kearney/McNamara) To approve the July 10, 2017 meeting minutes as written.

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 9:14pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary