

**APPROVED**

**TOWN OF PELHAM  
ZONING BOARD OF ADJUSTMENT MEETING  
October 17, 2019**

Vice Chairwoman Svetlana Paliy called the meeting to order at approximately 7:00 pm.

Secretary Diane Chubb called roll:

PRESENT: Svetlana Paliy, Diane Chubb, David Hennessey, Alternate Matthew  
Hopkinson, Alternate John Westwood, Planning/Zoning Administrator  
Jennifer Beauregard

ABSENT: Bill Kearney, Peter McNamara, Alternate Deb Ryan, Alternate Heather  
Patterson

Ms. Paliy appointed Mr. Hopkinson and Mr. Westwood to vote.

**PLEDGE OF ALLEGIANCE**

**HEARING(S)**

**Case #ZO2019-00024**

**Map 28 Lot 7-135-1**

**LEHANE, Kevin – 79 Marsh Road – Seeking a Special Exception to permit an attached Accessory Dwelling Unit within existing space.**

Ms. Chubb 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 applicant Mr. Lehané came forward and explained he would like to finish the space above his garage for his parents. The space is approximately 680SF with a common wall of approximately 28ft out of approximately 30ft. There will be a door in between the two units. The area will contain one kitchen and a bathroom.

Ms. Paliy questioned if the septic was appropriate. Ms. Beauregard believed the applicant's lot and septic was adequate to be a legal duplex; however, they would prefer to maintain a single-family with an accessory dwelling. She told the Board the applicant met all the criteria for the accessory dwelling unit. Ms. Paliy confirmed everything had been reviewed. Ms. Beauregard stated everything had been reviewed; the applicant met all the criteria.

Ms. Paliy opened discussion to public input. No one came forward.

Mr. Hennessey was curious why the applicant wanted the conversion. He said the only effect in doing so was that the owner would have to reside in one of the two units (per State Law). He pointed out as a duplex the owner would not have to live in the dwelling. Mr. Lehané asked if a duplex had additional rules. Mr. Hennessey replied an accessory dwelling unit was more restrictive than a duplex. He said a two-family would be more permissive. Ms. Beauregard described the differences between keeping the dwelling as a duplex versus converting to include an accessory dwelling unit. Mr. Hennessey noted State law had

changed to allow the dwelling unit to be rented to someone other than a family member. Mr. Lehane believed if he ever didn't reside at the home, he probably wouldn't own it. He asked if the entrances to the home would have to be different if it was a duplex. Ms. Beauregard replied she didn't know the specific rules within the building code for a duplex.

Ms. Paliy asked Mr. Lehane if he would like to postpone his case to the next meeting. Mr. Lehane replied he wanted to move forward with construction. Mr. Hennessey noted he could come back in the future. Ms. Beauregard pointed out converting from a legal accessory dwelling unit to a duplex wouldn't require a hearing with the Zoning Board; it could be done by applying through the Planning Department. Mr. Lehane noted he was granted a previous variance for lot size (1.6 acres). Ms. Paliy stopped the conversation as it (duplex) was a more complicated subject than the request for an accessory dwelling unit.

Mr. Hennessey stated the Board couldn't provide legal advice regarding the applicant's existing variance. He suggested the applicant speak with an attorney.

Mr. Lehane told the Board he wanted to proceed with the request for accessory dwelling.

Mr. Westwood questioned if the Board had the authority to grant the applicant a duplex. Ms. Paliy replied the applicant would need to submit the correct application to do so. The matter in front of the Board was for a Special Exception (for accessory dwelling unit). Mr. Lehane explained he previously came in front of the Board approximately five years ago because his parent's needs at that time was for a dwelling unit larger than the maximum of 750SF. At that time, he requested and was granted a variance for a duplex (on an undersized lot). He noted he didn't need the existing variance for duplex because the accessory dwelling unit would be less than 750SF.

Ms. Paliy wanted to know if there was a necessity for the current hearing given the applicant had previously been granted a variance for a duplex. Ms. Beauregard replied it was the applicant's decision to move forward with an accessory dwelling unit and not a duplex. She noted only the Zoning Board could allow an accessory dwelling unit through Special Exception. Ms. Paliy once again asked the applicant how he wanted to proceed. Mr. Lehane replied he didn't want to do a duplex. He said he only needed the size of an accessory dwelling unit. He also believed the property value would be greater with a single-family home (and accessory dwelling) versus a duplex. Mr. Hennessey stated under the State's Constitution, boards and departments have an obligation to help applicants go forward. He said if the applicant wanted surety he should speak with an attorney.

Mr. Lehane told the Board he wanted to proceed with his request for Special Exception.

Ms. Chubb explained the review process for Special Exception and how it differed from review of a Variance request.

**BALLOT VOTE**  
**#ZO2019-00024:**

Ms. Paliy – Yes  
Ms. Chubb – Yes  
Mr. Hennessey – Yes  
Mr. Hopkinson – Yes  
Mr. Westwood – Yes (*initial vote was in opposition; however, he clarified his vote after discussion below to be in favor of the request*)

(5-0-0) The motion carried.

Mr. Hennessey called for a point of order. He stated when a member votes in opposition to a Special Exception they have to point out where it differs from the criteria. He noted that if the request meets all the

criteria and there is testimony from the Zoning Administrator that it does, a member has to explain why they voted against it. Mr. Westwood voted in opposition because he believed because the Board didn't have a choice. Ms. Chubb replied because the Board didn't have a choice they vote to approve. Mr. Westwood misunderstood what 'yes' and 'no' meant on the voting slip. He amended his voting slip to reflect a 'YES' vote and initialed the change.

Ms. Chubb stated Mr. Westwood had clarified his vote to be in favor of the Special Exception.

### **SPECIAL EXCEPTION APPROVED**

Ms. Paliy noted there was a 30-day right of appeal. Ms. Beauregard informed the applicant the previous Variance remained in place and now they have a Special Exception. They can decide which one they want to pursue.

#### **Case #ZO2019-00021 & Case #ZO2019-00022**

##### **Map 14 Lot 3-88-7**

**BRUNELLE, Joseph – 51 Priscilla Way – Seeking a Variance concerning Article XII, Section 307-74.F of the Zoning Ordinance to permit the construction of an Accessory Dwelling Unit with less than 75% common wall between the Accessory Dwelling Unit and the existing structure. AND Seeking a Special Exception concerning Article XII, Section 307—74 of the Zoning Ordinance to permit the construction of an Accessory Dwelling Unit.**

Ms. Chubb 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 applicant Mr. Brunelle came forward to discuss his request for Variance and Special Exception.

Ms. Beauregard pointed out that the Board would need to first discuss the Variance request since it addressed one of the Special Exception criteria. Based on the applicant speaking with the Building Inspector, she believed there was a problem with the common wall at the location of the staircase. Mr. Brunelle stated the proposal didn't meet the common wall criteria. He understood he had 66% common wall and not the required 75%.

Mr. Brunelle told the Board he was requesting a variance to reduce the common wall requirement. He explained the septic was in the way of him being able to have a 75% common wall. The best he could do in the field, based from distances and setbacks, was approximately 66%. He then read aloud the responses to the variance criteria as submitted with his application.

Mr. Hopkinson questioned if the existing septic had to be upgraded for the variance. Mr. Brunelle replied he would need to do so for the Special Exception and noted it was currently in the approval process with the State. He received an update indicating the State should be approving this week. He hoped the Board would grant his requests pending State approval. He ended by saying there was room for the septic and a design pending approval. Ms. Paliy understood the Planning Department with the Building Inspector and/or Fire Inspector made sure there was a design on file before work was allowed to begin.

Mr. Hennessey pointed out if by chance the State required a change in the design it could affect the variance. He made the following motion:

**MOTION:** (Hennessey/Chubb) Any approval of variance and special exception is conditioned on the State's approval of the applicant's septic design.

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

Ms. Paliy opened the hearing to public input. No one came forward.

Mr. Hennessey stated he would vote in favor of the variance. He believed the applicant had satisfied the hardship criteria, given the lot presented an unusual confluence of problems for what the applicant was seeking to do.

Ms. Paliy believed the ruling could have been through an Administrative Decision by the Planning Department since the percentage is so small and the only reason for the request is the septic system. Ms. Beauregard stated the Planning Department didn't have the authority to waive any of the Special Exception criteria. She said it could only be done by the Zoning Board.

**BALLOT VOTE**  
**#ZO2019-00021:**

Ms. Paliy – Yes  
Ms. Chubb – Yes per stipulation regarding septic  
Mr. Hennessey – Yes subject to State approval of septic  
Mr. Hopkinson - Yes  
Mr. Westwood – Yes

(5-0-0) The motion carried.

**VARIANCE GRANTED**

The Board then reviewed the request for Special Exception Case #ZO2019-00022.

Ms. Paliy stated with the passage of the Variance, the issue regarding common wall didn't exist. She pointed out the list of abutters had already been read into the record. The applicant has explained the reason for seeking the Special Exception. She asked Mr. Brunelle if there was anything else, he wanted to add. Mr. Brunelle had nothing to add as he felt the request was straight forward.

Ms. Paliy opened the discussion to public input. No one came forward.

Mr. Hennessey reiterated his previous motion. Ms. Chubb seconded.

**MOTION:** (Hennessey/Chubb) To reiterate the previous motion – approval of Special Exception is subject to State's approval of the septic system.

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

**BALLOT VOTE**  
**#ZO2019-00022:**

Ms. Paliy – Yes  
Ms. Chubb – Yes  
Mr. Hennessey – Yes  
Mr. Hopkinson - Yes  
Mr. Westwood – Yes

(5-0-0) The motion carried.

**SPECIAL EXCEPTION APPROVED**

Ms. Paliy noted there was a 30-day right of appeal for both the Variance and Special Exception.

**Case #ZO2019-00023****Map 17 Lot 12-180**

**RG Land Holdings, LLC – 956 Bridge Street – Seeking a Variance concerning Article III, Sections 307-7, 307-12, Table 1, 307-13, and 307-14 of the Zoning Ordinance to permit the existing 10 +/- acre lot to be subdivided into four lots. The existing three family dwelling to be converted into a duplex on a 2-acre parcel with 175' of frontage on Bridge Street. The other two lots will each have 2 acres with approx. 25' of frontage. The remaining acreage will be combined with abutting property Map 17 Lot 12-184. AND Seeking a Variance concerning Article II, Section Definitions, #10 Frontage of the Zoning Ordinance to permit a new driveway to be constructed that will be shared by all 3 lots. The driveway will enter Bridge Street along the frontage of the middle lot.**

Ms. Paliy announced the applicant had requested to withdraw their case without prejudice. The case was withdrawn. She noted the applicant may decide to apply at a later date; if so, abutters will be notified.

**Case #ZO2019-00025****Map 41 Lot 6-133**

**HOWE, Kevin – 6 Pulpit Rock Road – Seeking a Variance to Article III, Section 307-12 of the Zoning Ordinance to permit the commercial use of a property that has 54,285sf where 60,000sf is required and 195' of frontage where 200' is required. AND Seeking a Variance concerning Article V, Section 307-19.D. of the Zoning Ordinance to permit the operation of a car dealership within 2,000 linear feet of other dealerships.**

Ms. Chubb 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 applicant Kevin Howe came forward with Carolyn Aducci to discuss the Variance request for a used car dealership at 6A Pulpit Rock Road.

Mr. Hennessey stated Ms. Aducci worked for him in the past. He added that the applicants weren't immediate abutters but lived nearby him. He didn't see a conflict by remaining seated and voting. He asked if anyone objected to him doing so. Ms. Paliy asked if he had any financial interest in the applicant's request. Mr. Hennessey answered no. No one objected to Mr. Hennessey remaining seated and voting.

Ms. Aducci read aloud the responses to the variance criteria as submitted with the application. Ms. Paliy asked if they had already filled out the State forms. Mr. Howe answered no; he was waiting on the outcome of the variance request. Ms. Beauregard stated there was nothing in the criteria requiring State forms to be filled out prior to coming in with a variance request.

Mr. Hennessey understood if the Board approved the variance the applicant would need a site plan review with the Planning Board. Ms. Beauregard answered yes. She noted there had been a car dealership on the property in the past; however, the variance had lapsed. She stated the lot was under 60,000SF. Mr. Howe believed the previous license lapsed in 2015. Ms. Beauregard believed there was another car dealership within 2,000 linear feet. She pointed out the applicant provided the Board with photographs of the property showing the property before and after they had cleaned it up. Mr. Howe told the Board the owner had been left with a large mess from the previous occupants. He cleaned up the area to make it better for the neighborhood.

Ms. Paliy questioned if the property had any wetlands. Mr. Howe replied the proposed property had no wetlands.

Ms. Chubb thanked the applicant for doing all the work to clean up the property. She recalled the Board having discussions in the past (with similar requests) regarding restrictions on use, number of vehicles, hours of operation etc. and questioned if they could make suggestions to the Planning Board regarding such. Ms. Paliy commented Pulpit Rock Road was zoned industrial and commercial. She said the Planning Board usually deals with restrictions. Ms. Beauregard stated the Zoning Board often sent the Planning Board suggestions and although the Planning Board made stipulations, the Zoning Board could make reasonable conditions.

Ms. Paliy wanted to stipulate the applicant had to obtain approval from the State. Ms. Beauregard pointed out the Planning Department would receive paperwork from the Department of Transportation for the State Dealer's License. Ms. Paliy asked the Board if they wanted to stipulate completion of the State paperwork. Mr. Hennessey stated the 'use' was included in the application paperwork; however, the request was for a commercial use on a property that wasn't a sufficient size. He understood when they went in front of the Planning Board with a site plan, they had to demonstrate meeting State and local requirements for a car dealership. Ms. Paliy felt car dealerships had issues that other commercial uses didn't have. She felt that was more important than the size of the property. Mr. Hennessey agreed and also felt an approval should be stipulated on receiving all State licenses.

**MOTION** (Paliy/Hennessey) All State licenses and paperwork (associated with business) have to be in good standing; Variances are subject to State approval.

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

Mr. Howe had no objection to the stipulation. He explained he operated a car dealership in Massachusetts since 2004 without any issues. He added he was an A+ member of the Better Business Bureau and had great reviews. He told the Board he was getting closer to retirement and was looking to get out of his existing business in Massachusetts and move closer to home. He wouldn't be working on vehicles or overcrowd the site.

Ms. Paliy understood much of the licensing was controlled by the State and they allowed certain activities under their licensing. Ms. Beauregard told the Board the Planning Department wouldn't approve a license that didn't meet Zoning requirements or follow the Board's stipulations.

Ms. Chubb pointed out there were two variances being requested. Mr. Hennessey believed they should be approved separately; however, he also believed the hardship criteria covered both. He noted the location was within an industrial zone and had been a car dealership for twenty years (license lapsed). The applicant demonstrated they had improved the property and the values of surrounding properties. Ms. Paliy felt unless there was a specific reason for separating the request, she believed they could be voted together.

In this case, Ms. Beauregard believed it made sense to vote the requests together because the applicant wasn't looking for a 'commercial use' the request was specifically for a 'car dealership'.

Ms. Paliy asked the applicant if there was any reason, they would want the Board to separate the requests into two different cases. Mr. Howe replied there was no reason for the requests to be separated. Ms. Paliy asked the Board if anyone had a problem handling the requests as one case. Ms. Chubb felt there were three variances: 1) size of lot, 2) frontage (which went together) and 3) having a car dealership within 2,000 linear feet of another dealership. She said she would feel better taking separate votes but will go with the decision of the Board. She added she wasn't planning on voting differently; the separation of the requests would allow the applicant to change their mind regarding a car dealership and at the same time continue to be allowed a commercial use.

Mr. Hennessey stated if the Board voted on the requests together and there was an appeal, the question would be 'what' was being appealed. He noted they had a stipulation attached to both of the requests for State approval. He believed by voting on the stipulation the Board had effectively put the requests together. Ms. Aducci questioned if the old variances were together. Ms. Paliy replied it wasn't relevant because the law had changed.

Ms. Paliy spoke about the manner in which the Board could proceed. The Board agreed that they had linked the variances together through the motion made earlier.

Mr. Hopkinson understood the applicant owned a dealership in Massachusetts and wanted to know if they currently had any citations or violations with the State of Massachusetts. Mr. Howe replied he was in good standing with the State of Massachusetts; he never had a complaint, stipulation or investigation against him for the entire time he was in business. He reiterated his A+ rating with the Better Business Bureau and good Google reviews. He said it was a family business that would be run in the same manner in New Hampshire. He added that he didn't want any problems; he prided himself on never been sued or going to court.

Ms. Chubb confirmed with Ms. Beauregard that the Planning Board would be responsible for restrictions, such as number of vehicles, hours of operation, etc. Ms. Beauregard answered yes; as part of the site plan review.

**MOTION** (Chubb/Hennessey) Request for the Planning Board to set restrictions on the hours of operation, number of vehicles and indicate what will be allowed on the property (in terms of car sales and not running a junk yard).

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

Ms. Paliy opened the discussion to public input. No one came forward (there was no one seated in the audience).

**BALLOT VOTE** Ms. Paliy – Yes to all criteria  
**#ZO2019-00025:** Ms. Chubb – Yes to all criteria  
Mr. Hennessey– Yes to all criteria  
Mr. Hopkinson - Yes to all criteria  
Mr. Westwood – Yes to all criteria

(5-0-0) The motion carried.

## **VARIANCES GRANTED**

Ms. Paliy noted there was a 30-day right of appeal.

## **MINUTES REVIEW**

**September 9, 2019**

**MOTION** (Chubb/Hennessey) To defer minutes review.

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

## **ADJOURNMENT**

**MOTION:** (Chubb/Hennessey) To adjourn the meeting.

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

The meeting was adjourned at approximately 8:17pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary