

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
July 13, 2020

Chairman Bill Kearney called the meeting to order at approximately 7:00 pm.

PLEDGE OF ALLEGIANCE

Secretary Mathew Hopkinson called roll:

PRESENT ROLL CALL: Bill Kearney - Present
 David Hennessey – Present
 Matthew Hopkinson - Present
 Peter McNamara - Present
 Jim Bergeron – Present
 Alternate John Westwood – Present
 Alternate Jeff Caira - Present
 Alternate David Wing – Present
 Planning/Zoning Administrator Jennifer Beauregard - Present

ABSENT/NOT PARTICIPATING: Alternate Karen Plumley

The following notice was read aloud “A Checklist To Ensure Meetings Are Compliant With The Right-to-Know Law During The State Of Emergency” (*regarding access to the meeting*)

Mr. Kearney explained the Board’s role and hearing process.

REQUEST FOR REHEARING

CASE #ZO2020-00008

Map 30 Lot 11-142

SCOTT, Kimberly – 120 West Shore Drive - Seeking a Variance concerning Article III Section 307-8-C & 307-12, Table 1 of the Zoning Ordinance to permit the applicant / owner to move and make improvements to a pre-existing non-conforming lot by moving and replacing the house, septic system and well into conforming setbacks. RSA 677:2 Motion for Rehearing by Constance Pazniak.

Mr. Hennessey stepped down. Mr. Westwood was appointed to vote.

Mr. Kearney explained the motion for rehearing was for the Board to determine whether there was an error they made from the findings of the May and June meeting. During the June meeting the Board voted unanimously in favor of the Variance. Subsequently an abutter submitted a request for rehearing. He addressed the Board members and assumed everyone saw the rehearing request along with the rationale for the abutter’s request.

Mr. Kearney asked Board members if there was any information, they would like to bring to the table regarding an obvious error that they made during deliberations and/or fact finding of the May and/or June meetings. None of the Board members brought information forward. Mr. Kearney explained the vote was a ‘yes’ or ‘no’ vote. He said if a member believed an error was made, they would vote (in the

affirmative) 'yes' for a rehearing. If a member did not believe an error was made, they would vote (in opposition) 'no' for a rehearing.

Mr. Westwood was appointed to vote.

Having read the materials filed by the abutter for rehearing, Mr. McNamara thought most, if not all, reasons for rehearing were regarding title to the property, boundary dispute, right-of-way that were all issues previously discussed that the Board could not decide. He felt voting for a rehearing would just be an exercise in futility because the Board would be bound by the same things that guided them to their first decision. He didn't see anything new in the argument that wasn't presented.

Mr. Kearney concurred there were things in the Board's control and things not in their control. He said border lines and rights-of-way were not in their purview.

Mr. Bergeron spoke about how the State had granted the applicant a Shore Land Permit; within the permit, under general conditions it speaks to how it doesn't convey any rights to others. He understood there may be underlying vested land rights, as alleged; but he felt those issues should be settled in another place. He said the Board was only doing what the legislature intended them to do; the Board was not 'taking sides' in any case. His vote was to uphold the Board's decision.

MOTION: To rehear Case #ZO2020-00008

ROLL CALL VOTE: Mr. Kearney – voted NOT to rehear
Mr. Bergeron – voted NOT to rehear
Mr. Hopkinson – voted NOT to rehear
Mr. McNamara – voted NOT to rehear
Mr. Westwood – voted NOT to rehear
(0-5-0) The motion failed.

Mr. Westwood left the meeting.

Mr. Hennessey returned to the Board.

CONTINUED HEARING(S):

CASE #ZO2020-00014

Map 31 Lot 11-86-1

LAMOUREUX, Robert & Sharon – 28 Blueberry Circle – Seeking a Variance to Article III Sections 307-12, Table 1 and 307-14 of the Zoning Ordinance to permit the existing lot to be subdivided into two lot, both containing less than 200' of frontage.

The applicant Robert Lamoureux came forward in person. He stated during the last meeting there was a question regarding the lot and if it would meet Town requirements. To answer this, a letter from Benchmark Engineering (Joseph Maynard) had been submitted to the Board. He read the letter aloud. He also had information from Mark West who delineated the wetlands. He told the Board he would like to use the existing driveway rather than move it to another area of the parcel.

Mr. Kearney invited the public to comment either in person or via telecommunication. No one came forward or voiced via telecommunication a desire to speak with the Board.

Ms. Beauregard noted Mr. Lamoureux was not requesting a variance to the definition section of the Ordinance; therefore, he would have to show the new driveway even if it abuts against the existing driveway to access the new lot. She stated the variance request in front of the Board was for frontage.

Mr. Hennessey asked if the whole lot was under a variance or pre-existing condition (of no frontage). Ms. Beauregard replied Mr. Maynard believed there was a previous variance to access the lot off Blueberry Circle. She said if access were off Blueberry Circle it would be via an existing variance for accessing a lot with less than 200ft. of frontage. Mr. Hennessey said the main problem for the Board was to take a non-conforming lot and create two non-conforming lots. He said it was a very unusual situation and the parcel contained a lot of land. He would prefer to see it subdivided into two lots rather than having a road brought in and a full subdivision done. He wanted to know what was contained in the previous variance and if it contained any conditions. Ms. Beauregard stated she hadn't seen the variance but could get the Board information if needed. Mr. Lamoureux explained approximately thirty years ago he was in front of the Board for a frontage variance and didn't believe any conditions or restrictions were attached to it. Mr. Hennessey inquired if the Planning Board had included any conditions with their site plan approval. Ms. Beauregard did not recall any conditions. Mr. Lamoureux also didn't recall any conditions being attached to the approval.

Mr. McNamara stated one of the reasons he was considering approving the variance was not only because of the special conditions but also because of the access to the right-of-way and existing trail on the rear of the property. Mr. Lamoureux replied the trail was located in the rear of the lot and would remain on his property, not the new lot. He said someday he would like to give it (or an easement) to the Town. He added the new lot wouldn't affect the trail. He described the area and the trail connectivity. Mr. McNamara confirmed there was no formal protection of the trail. Mr. Lamoureux answered yes, although the new lot wouldn't change anything.

Mr. Hennessey stated it was an unusual application; over the years the Board had always fought against creating two non-conforming lots. Mr. Kearney agreed but felt the difference was the condition the applicant has with the size of the property that make it unique. He said the hardship was having 67ft. to use approximately 13 acres. He saw the request as the exception to the rule. Mr. Hennessey agreed. He said it was unusual given the size of the lot, the ownership of the trail and the small frontage for the existing house. He felt it called for a variance given the definition of paragraph 5; in his opinion literal enforcement would be an unnecessary hardship.

Case #ZO2020-00014

ROLL CALL VOTE: Mr. Kearney – Yes to all criteria
Mr. Hennessey – Yes to all criteria
Mr. Hopkinson – Yes to all criteria
Mr. McNamara – Yes to all criteria
Mr. Bergeron – Yes to all criteria
(5-0-0) The motion carried.

VARIANCE GRANTED

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

HEARING(S):**CASE #ZO2020-00016****Map 42 Lot 10-120**

MAILLE, Janet – 47 Garland Drive – Seeking a Special Exception concerning Article XII, Section 307-74 of the Zoning Ordinance to permit a 2-bedroom attached 960sf Accessory Dwelling Unit in a Single-Family residence

Mr. Hopkinson 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 Rodney Mills R & J Contractors. He told the Board the applicant would like to have an accessory dwelling unit (24ftx40ft) addition (like a 'T') at the end of their ranch style home. A family member will be moving into the unit.

Mr. McNamara understood from the record the existing home was currently a three-bedroom dwelling one of the bedrooms would be removed. Mr. Mills believed the applicant was currently using one of the existing bedrooms as a home office space. They were aware one of the existing bedrooms would have to be converted.

Mr. Bergeron confirmed the functionality of the existing septic system was good and understood the State approved system would be on file with the Town. Mr. Mills replied the State approved plan was on file with the State and the Town in the event a new septic system had to be put in.

Mr. Hennessey pointed out the lot was not an acre lot, but it was within a conservation subdivision and allowed to have an accessory dwelling unit. He asked if the proposal was approved by the homeowner's association. Ms. Beauregard replied the applicant would need to answer the question because the Town doesn't get involved with the associations. Mr. Hennessey asked if the accessory dwelling unit had to be approved by the association. Mr. Mills didn't know the answer to the question. Mr. Hennessey noted the applicant was operating at their own risk if in fact it was a violation of the association.

PUBLIC INPUT

Mr. Kearney invited the public to comment either in person or via telecommunication.

Ms. Beauregard informed the Board the plans had been reviewed and approved by the Building Inspector and the applicant submitted a State approved septic design.

The applicant Ms. Janet Maille stated to her knowledge everything submitted met the requirements. She confirmed they already had approved plans for the addition, other than the kitchen portion.

Case #ZO2020-00016

ROLL CALL VOTE: Mr. Kearney – Yes
Mr. Hennessey – Yes
Mr. Hopkinson – Yes
Mr. McNamara – Yes
Mr. Bergeron – Yes
(5-0-0) The motion carried.

SPECIAL EXCEPTION GRANTED

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

CASE #ZO2020-00017

Map 23 Lot 11-314

GREEN, Brian – 35 Wood Road – Seeking a Variance concerning Articles VII & III, Sections 307-39 & 307-8,C of the Zoning Ordinance to permit the raising and replacement of fieldstone foundation in order to create livable basement space. Increase footprint to allow for proposed addition of three season porch as well as larger basement space

Mr. Hopkinson 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 Brian Green came forward in person. He explained he wanted to raze the house and replace the foundation to be able to finish the basement. He would also like to have a screened-in porch (with basement under). His lot is located on Little Island Pond and is a prior non-conforming lot. He then read aloud the responses to the variance criteria as submitted with the application.

Mr. Bergeron asked about the status of the Shore Land application. Mr. Green stated he had been working with them and would mail the application tomorrow. Mr. Bergeron questioned if he owned other property in the area. Mr. Green replied he owned the property next door (37 Wood Road).

Mr. Hennessey inquired about the increase to the height of the structure. Mr. Green replied the height would be increased approximately three feet. The existing height from the lake side (peak of the roof) was approximately 20ft. and the proposal would be for the height (peak of the roof) to be approximately 23ft.

Mr. Kearney invited the public to comment either in person or via telecommunication. No one came forward or voiced via telecommunication a desire to speak with the Board.

Mr. Bergeron was familiar with the area and knew of recent improvements to similar houses with similar properties. He felt that fact lent to the credence of the request and adding value to the neighborhoods. He felt the request blended well with the spirit and intent of the Ordinance and where the Town wanted to go with non-conforming lots. Mr. Kearney concurred.

Case #ZO2020-00017

ROLL CALL VOTE: Mr. Kearney – Yes to all criteria; with stipulation Shore Land approval
Mr. Hennessey – Yes to all criteria
Mr. Hopkinson – Yes to all criteria
Mr. McNamara – Yes to all criteria
Mr. Bergeron – Yes to all criteria
(5-0-0) The motion carried.

VARIANCE GRANTED

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

CASE #ZO2020-00018

Map 13 Lot 4-139-26

BILLINGS, Donovan T. – 9 Collins Way – Seeking a Variance concerning Article XII, Sections 307-74, G, 1 & 3 of the Zoning Ordinance to permit an Accessory Dwelling Unit within an existing detached garage for a single-family home on an undersized lot (1.3 acres where 1.5 acres is required for a detached ADU) with slops in excess of 20%.

Mr. Bergeron stepped down. Mr. Wing was appointed to vote.

Mr. Hopkinson 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 Attorney David Groff who came forward in person. He displayed an aerial photograph of the property showing the location of the existing home. At the time the applicant purchased the property (2017) the area above the garage was improved with a single-bedroom in-law apartment, which

at the time was not permitted under the Zoning Ordinance. The reason for that was because it was a detached dwelling unit. He explained there was an amendment to one of the State Statutes and as a result the Town amended its Zoning Ordinance. He said the requested use is now permitted in Pelham; however, it has a restriction on the lot size being required to have 1.5 acres and not have steep slopes. Attorney Groff read aloud the responses to the variance criteria as submitted with the application.

Attorney Groff informed the Board he went to the site with the Building Inspector to make sure there were no issues. One issue was the ceiling in the garage needed to be taped. Other than that, there were no other building permit issues, except for a private elevator. He said his client had an elevator put in so his in-laws could access the dwelling unit. At the time it was installed his applicant was told by the elevator company that no permits were required for private elevators. Subsequently, they learned permits may be needed and would obtain them, so the structure was properly permitted. He added the existing septic was reviewed and they received approval for a replacement system if needed.

Mr. Hennessey stated the clause in the Zoning was 'weird'. He said the Board was considering a variance for an accessory dwelling unit without getting into whether it met the criteria; that would be passed off to the Planning Board. He said the applicant was being put through a great deal of duress and felt the process was cumbersome, inefficient, and unfortunate.

PUBLIC INPUT

Mr. Kearney invited the public to comment either in person or via telecommunication. No one came forward or voiced via telecommunication a desire to speak with the Board.

Ms. Cassandra Colon, 8 Collins Way questioned (via Zoom) whether or not the property would be separated and/or subdivided into a rental property. Mr. Hennessey replied the property couldn't be subdivided; however, an approved accessory dwelling unit could be rented in the open market. Ms. Colon asked if that rule was already in affect or if the variance would create the ability to do so. Mr. Kearney replied it was in the current Ordinance. It was noted the State Law allowed for the unit to be a rental. Ms. Beauregard clarified one of the units (either the house or the dwelling unit) would have to be 'owner occupied'.

Ms. Colon wanted to know if the intention was for the sale of the house and the new owner would use the space as an in-law apartment. Mr. Kearney stated the applicant indicated the unit would be for an in-law. Attorney Groff replied the intent was for a new owner to occupy the house and put their elderly relatives in the in-law unit. He was unsure if the person would still go through with the sale as it would take until possibly the end of summer before making it though the land use boards.

With the change in State law, Mr. Hennessey was unsure if the Board should be asking about the intent and who would be moving into the unit. On the variance side the Board had to review the request and determine if there was a hardship going forward. Anything further than that would be up to the Planning Board.

Robert and Tracey LeBlanc 31 Longview Circle joined the discussion via Zoom. Ms. LeBlanc when the original structure was built by the original owner it was obviously a multi-structure garage. Since then, the applicant purchased the property and built an in-law suite. She told the Board a surveyor came onto their property a couple weeks ago and indicated the applicant's current septic structure did not support the additional unit that was built above the garage. She wanted to know if the applicant needed a larger septic system if it would encroach on their back yard.

Attorney Groff didn't know who Ms. LeBlanc was referring to as the application was submitted to the Town in the last two weeks. Ms. LeBlanc stated they had pictures. Attorney Groff noted the application was submitted June 20th. The dates of the inspections were submitted. He didn't know who was in the abutter's back yard or who they spoke with. He commented inspections of the septic system were done and the

Board was provided with signed documentation. He said they also were provided with a copy of the State approved septic system. He pointed out a septic system without an easement could not encroach on someone's property.

Ms. LeBlanc only knew that the surveyor informed her and her husband that the septic system does not meet the requirements. Mr. LeBlanc added he was together with his wife when the surveyor made the statement. From the evidence presented, Mr. Kearney stated that would be in contrary to what an individual told the LeBlancs. He said the Board could only move forward with the evidence presented to them.

Mr. Hennessey said the Board was just voting on a variance. He said ordinarily the standard question was if the proposal met all the criteria for an accessory dwelling. He said that was not in front of them. The problem he was seeing with the approval for construction of an individual sewage system is it did not meet all the criteria. He pointed out the approval was for a four-bedroom residence and a one-bedroom dwelling unit above the garage. Ms. Beauregard said the State words it differently; they often say a one-bedroom apartment, which is equivalent to 1.5 bedrooms. She said the existing septic system didn't necessarily have to meet the criteria of the extra apartment; however, the replacement system would need to.

Mr. LeBlanc stated when the new ownership came in, work was done on the septic system within the neighborhood and in their back yard.

Mr. Chris Womersley, 39 Longview Circle told the Board his backyard abutted the applicant's lot and the effluent disposal system. He understood questions regarding this would be addressed by the Planning Board. Mr. Kearney stated that was correct.

Mr. Kearney read aloud correspondence submitted by Stephen Kelly of 24 Collins Way. He was against any variance being granted. He felt the variance would turn the property into a two-family not keeping with the spirit of the neighborhood.

Mr. McNamara believed it would be a different situation if the garage were not currently in existence; however, it was already there and allowed in the 'uses'. He felt it met the criteria for a variance. He agreed with Mr. Hennessey about the complication of the conditional use permit because it put any applicant through both boards and complicated the Zoning Board's job. He believed it more properly belonged with the Zoning Board for special exception rather than going in for a conditional use permit.

Mr. Hennessey felt the request met the five criteria for variance particularly on the point of hardship. He said he knows the neighborhood and stated financial concerns was not part of the Board's purview. He didn't believe the request would affect values and added the State encouraged the use of accessory dwelling units (either attached or detached). He felt that point took care of diminution of value.

MOTION: (McNamara/Hennessey) Any approval is conditioned on all necessary permits regarding the elevator be approved.

ROLL CALL VOTE: Mr. Kearney – Yes
Mr. Hennessey – Yes
Mr. Hopkinson - Yes
Mr. McNamara – Yes
Mr. Wing - Yes
(5-0-0) The motion carried.

Mr. Kearney had a hard time finding the 'hardship' because the current situation with the garage could still be used. He said the garage was built as a garage with an accessory dwelling unit that wasn't allowed. He had not heard the applicant's hardship and felt they created their own hardship. He pointed out the garage

could still be used as a garage and the space above could also be used, just not as living space. Mr. McNamara mentioned the accessory dwelling unit was already in existence within an existing building (garage). He said the Town had made the decision that detached accessory dwelling units were permissible; both the State and the Town had made a decision they were valuable to the Town because they added to the base of affordable housing. Mr. McNamara said he would agree with Mr. Kearney if there was no existing garage and the applicant was coming forward to build one on 1.23 acres with the 20% slope. In this case the garage and accessory dwelling unit existed and would not affect the appearance of the home or abutting property values.

Mr. Hennessey stated everyone in Town with a conforming lot had the right to have an accessory dwelling unit. Mr. Hopkinson felt in these cases the Board was rewarding people who didn't follow the proper protocol. However, the accessory dwelling unit currently existed.

Case #ZO2020-00018

ROLL CALL VOTE: Mr. Kearney – one yes; four no – final vote no
Mr. Hennessey – Yes to all criteria; with stipulations
Mr. Hopkinson – Yes to all criteria
Mr. McNamara – Yes to all criteria; with conditions contained in motion
Mr. Wing – Yes to all criteria
(4-1-0) The motion carried.

VARIANCE GRANTED

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

Mr. Bergeron returned to the Board.

MEETING MINUTES – **June 8, 2020** deferred to next meeting

ADJOURNMENT

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

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

The meeting was adjourned at approximately 8:28pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary