

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
January 11, 2021

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

PLEDGE OF ALLEGIANCE

Acting Secretary Dave Hennessey called roll:

PRESENT ROLL CALL: Bill Kearney – Present
 David Hennessey – Present
 Matthew Hopkinson – Arrived at approximated 7:10
 Peter McNamara – Present
 Jim Bergeron – Present
 Alternate John Westwood – Present
 Alternate David Wing – Present
 Alternate Jeff Caira – 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 procedure.

Mr. Hennessey was Acting Secretary until Secretary Matthew Hopkinson arrived at approximately 7:10 pm.

HEARING(S)

Case #ZO2021-00003

HAYES, Steven – 40 Countryside Drive – Map 2 Lot 5-76-5 – Seeking a Special Exception to Article XII, Section 307-74 of the Zoning Ordinance to permit an attached Accessory Dwelling Unit.

Mr. Steven Hayes came forward via telecommunication. He informed the Board that he would like to add a 756 SF addition to his house, utilizing 121 SF of the existing home to make it a total of 877 SF. He stated that they would like to use this addition to create an Accessory Dwelling Unit. The unit will be used by their daughter and later for them as they age into it.

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.

Mr. Kearney asked Ms. Beauregard if the Applicant had met all the existing criteria for a special exception. She replied they had.

Case# ZO2020-00030

ROLL CALL VOTE: Mr. Kearney – Yes
Mr. Bergeron – Yes
Mr. McNamara – Yes
Mr. Hennessey – Yes
Mr. Hopkinson – Yes

(5-0-0) The motion carried.

SPECIAL EXCEPTION GRANTED

CONTINUED HEARING(S)

Case #ZO2020-00035

GENDRON, Patrick & Kim – 579 Bridge Street – Map 22 Lot 8-85 – Seeking a Variance to Article III, Section 307-7, Article IV, Section 307-16B and Article V, Section 307-18 of the Zoning Ordinance to permit a Workforce Housing Development in the B-5 Zone. (Note: New Application has been submitted. See Case #ZO2021-00001)

Mr. Kearney informed the Board that the Applicant had withdrawn this case. He stated that the Applicant submitted a new application. The new case number is ZO2021-00001.

HEARING(S)

Case #ZO2021-00001

GENDRON, Patrick & Kim – 579 Bridge Street – Map 22 Lot 8-85 – Seeking a Variance to Article III, Section 307-7, Article IV, Section 307-16B and Article V, Section 307-18 of the Zoning Ordinance to permit a Workforce Housing Development in the B-5 Zone.

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.

Mr. David Groff came forward to represent the Applicants via telecommunication. He stated that the Applicants submitted a proposal to the Planning Board for a general discussion regarding a 90+ unit workforce housing development with one piece of the project in the B-5 Zone. Mr. Groff informed that the only property that is in the B-5 Zone at this time is the Gendron Property. The property is about 44 acres in size. He reported that the proposal is to subdivide the property into two lots. One lot would be 14 acres in size, and the other would be about 30 acres in size. The Applicant would like to develop workforce housing on the 30-acre lot. Mr. Groff stated that the applicants were asking for a variance because there is no mention of workforce housing in any of the ordinances. He asserted there were some provisions for workforce housing in the 2018 Zoning Ordinance and the 2018 Land Use Regulations. He stated that as of now, there is no place in Town where workforce housing would be permitted. Mr. Groff noted that while the B-5 Zone does allow for multi-family housing, it does not allow for workforce housing. He informed that without a variance, the Planning Board would be unable to accept the project for consideration as workforce housing is not something that property is zoned for.

Mr. Groff read aloud the responses to the criteria as submitted with the application.

Mr. Bergeron reclused himself from the case. Mr. Kearney appointed Mr. Wing to vote on this case.

Mr. Hennessey stated that he believed the Board should hear from a real-estate broker on the potential impact on surrounding property values. Ms. Jill O'Shaughnessy of Jill & Co. Realty Group came forward to speak via telecommunications. She stated that there is a shortage of affordable housing in the region in general. She informed that on the market in Pelham, 27 homes are currently active or under agreement. Of those 27 homes, only five are under the \$395,000 affordable housing rate. She informed that the neighborhood that the Applicant is looking to do would consist of 90 homes where 22 of those homes would be workforce housing. Mr. Groff mentioned that there was a price chart for the proposed houses in the memo he sent to the Board. Mr. Kearney asked for clarification that only 20% of the houses on the market in Pelham meet workforce housing. In the proposed project, only about 24% of those homes would meet workforce housing. Ms. O'Shaughnessy replied that was correct.

Mr. Groff said that he did not believe this development would negatively affect the property values of the neighboring properties. He stated that the development would come off of Route 38, not through an existing neighborhood. There will be buffering between this property and neighboring properties. He noted that these houses would not be cheaply made houses. Mr. Hennessey had mentioned *Suncoast v. The Town of Windham* from 2012 in his initial question. Mr. Groff stated that the petitioner, in that case, took the position that they did not need to apply for a variance because Windham had no workforce housing provisions in their ordinance. The developer took that to mean that any area that allowed for residential housing should allow for workforce housing, which may or may not be the correct statement of New Hampshire law. Mr. Groff stated that they were looking to obtain a variance to propose this project to the Planning Board. He stated that it is up to the towns of the State to demonstrate that they have sufficient stock of affordable housing. He believed that since Pelham eliminated the two provisions on zoning ordinances that allowed for workforce housing – the accessory dwelling unit and conservation subdivision – it would be difficult for Pelham to demonstrate adequate stock of affordable housing.

- Mr. Hennessey did not think Mr. Groff said accessory dwelling unit - thinks he said age restricted housing
- About 00:29:30 is where Mr. Groff started to talk about it, 00:29:48 is where he specifically says accessory dwelling unit

Mr. Hennessey asked Mr. Groff if he was seeking a variance because he believed that he needed one, or to strengthen his case to the Planning Board. Mr. Groff replied that it was his understanding that since the Town did not have an ordinance that permitted workforce housing, that the Applicant would need a variance.

Mr. Hennessey wanted to talk specifically about the hardship and valuation on surrounding properties. He was satisfied that it was put into the record that there should be no impact on the surrounding properties' valuation. Mr. Hennessey stated that this land has come before the Board before to be rezoned to B-5, so the Applicant would still be allowed to develop on this property. Mr. Groff stated that it was rezoned to B-5 and was the only B-5 zoned area in the Town, to his knowledge. He noted that the Applicant rezoned the land and tried to sell it, which has not worked, so he is changing his plans. The Applicant believed the property was not selling due to the large section of wetlands that goes down the middle of the property. Mr. Hennessey stated that the Applicant rezoned the land to commercial use to sell, and since it is not working, he wants to rezone it back to residential. He believed that the hardship was not with the land. Mr. Groff replied that residential multi-family units are allowed to be built in the B-5 Zone.

PUBLIC INPUT

Mr. David Boragine of 1 Balcom Road came forward. He stated that he was concerned that abutting properties would get developed if this project passes. He was worried that a road could connect these properties to Balcom Road at some point in time, which might increase traffic on the road. Mr. Kearney

stated that the Board could only consider the application in front of them, not hypotheticals for the future. Mr. Boragine asked the maximum number of units in a development to have only one entrance and exit. Mr. Kearney stated that those questions would be at the Planning Board level, not at the Zoning Board level.

Mr. Tim Doherty of 29 Wood Road came forward next. He informed that he is the current Chair of the Planning Board. He stated that he would like for this Board to request a joint hearing with the Planning Board regarding this case, so the Applicant does not circumvent the planning process. Mr. Kearney asked what Mr. Doherty meant by this. Mr. Doherty replied that the Applicant could go right to the courts to get a Builders Remedy and not send their plans to the Planning Board. This would allow for the Applicant to build their plans as is without Planning Board approval. He stated that the courts could send the project to the Planning Board for consideration, but he did not trust the courts to make that decision. Mr. Kearney noted that the Applicant was seeking a variance in order to bring their plans to the Planning Board. He stated that if the Zoning Board denied a variance, then they could go to the courts. By getting a variance, it enables the Planning Board to negotiate with the Applicant.

Mr. Doherty stated that he was not suggesting that the Applicant was trying to circumvent the Planning Board. He noted that the plan could go to court, where the court could then have the applicant build as planned without the Planning Board's input. He stated that the only way this would happen was if the Applicant was denied a variance. He asserted he wanted a joint meeting with the Zoning Board and Planning Board so that the Planning Board could give input to the Zoning Board. Mr. Hennessey agreed that he would like to have a joint meeting. He stated that the two boards are very intertwined and that there are a few things with this case that he would like the Planning Board's input on. Mr. Cairra agreed as well.

MOTION: (Hennessey/Wing) To date specify this case to a joint Zoning Board and Planning Board meeting.

VOTE: Mr. Kearney – Yes
Mr. Hennessey – Yes
Mr. Hopkinson – Yes
Mr. McNamara – Yes
Mr. Wing – Yes

(5-0-0) The motion carried.

Mr. Kearney stated that now a request would go to the Planning Board, which they would need to accept. Mr. Doherty stated that he would talk with Mr. Gowan and Ms. Beauregard about getting this put on the next available agenda that it can go on.

Mr. Groff asked that if the Board is considering a site walk to have that done before the joint meeting. Ms. Beauregard stated that they could not have a combined site walk until the Planning Board has taken over some jurisdiction of the plan. Mr. Groff noted that the Zoning Board could still have a site walk and would like that to happen before the meeting.

Mr. Kearney stated that they would schedule a joint meeting between Zoning and Planning. He explained the process of how a joint meeting works.

MOTION: (McNamara/Hennessey) To conduct a site walk of the property.

VOTE: Mr. Kearney – Yes

Mr. Hennessey – Yes
Mr. Hopkinson – Yes
Mr. McNamara – Yes
Mr. Wing – Yes

(5-0-0) The motion carried.

Mr. Kearney stated that the site walk would happen on January 23, 2021, at 8:00 am across from the golf course at 579 Bridge Street. There appears to be a cut out to enter the property at that area, which is where they will enter the property. Mr. Groff stated that if there were any changes, then he would inform Ms. Beauregard.

Ms. Lisa Corbin of 665 Bridge Street came forward with two questions. She asked who the builder of the project was and if the abutters were able to go on the site walk. Mr. Groff stated that there was no builder associated with the project at this time. Mr. Kearney replied that abutters could go on the site walk. The site walk is a public meeting.

Mr. Kearney closed the discussion from the public.

Mr. Kearney asked when they would have notice from the Planning Board that they would like to do the joint meeting. Ms. Beauregard stated that the Chair does not need to ask the rest of the Board. Since he has stated that he wants a joint meeting and sets the agendas, they can do the joint meeting. Ms. Beauregard indicated that it would be up to the Applicant and how fast they can get an application ready for the Planning Board when the joint hearing could be. She suggested that they date specify the case just in case.

The case was date specified to February 18, 2021, for the continuation of the discussion.

Case #ZO2021-00002

BILAPKA, Bruce & PAGE, Andrea – 49 Woekel Circle – Map 31 Lot 11-22 – Seeking a Variance to Article III, Sections 307-8, 307-12, Table 1, and 307-13 of the Zoning Ordinance to permit an upgrade to an expansion of an existing 2-bedroom home on an undersized lot with no frontage on a public way and inadequate front and side yard setbacks.

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.

Mr. Bruce Bilapka and Ms. Andrea Page came forward. Mr. Groff also came forward via telecommunication to represent the applicants. He stated that the lot is a little camp lot by Little Island Pond that is slightly larger than the other lots in the area as it was created by two smaller lots. He informed that the applicants were looking to upgrade the property and bring it up to code with a slight blueprint increase. The increase comes from about a 2-foot bump out in the front of the house for vertical improvement. He stated that the applicants needed a variance as they did not have any public road frontage because they were off a private road. Mr. Groff affirmed that similar houses in the area had received similar variances recently.

Mr. McNamara asked if the 2-foot bump out was the only increase to the blueprint. Mr. Bilapka responded that it was.

Mr. Bergeron asked for clarification on the documents that were passed out at the meeting. Mr. Bilapka explained that he took 13 homes in the area, including his own, to take the approximate impervious percent on each lot. This includes driveways, sheds, and houses.

Mr. Hennessey stated that this Board does not get into property disputes. He noted that the applicants would have two years to complete the work if the variance were to be granted. He stated he was concerned that the work might not get completed if the Applicants are backed up in court over the property. Mr. Groff stated he understood that the applicants had two years to complete the work. He informed that the court case that Mr. Hennessey was talked about is for another property and not this one.

PUBLIC INPUT

Mr. Tim Doherty of 29 Wood Road came forward. He stated that he lives across the pond from this lot. He asserted that he felt that what the applicants were trying to do is realistic for this property. He noted that the applicants were extending the blueprint forward towards the road and not towards the sides or backs of the property, so they would not be encroaching on neighboring lots. He then stated that this property has a unique hardship of having their storm drain run through the middle of their lot. Mr. Bilapka noted that they would also be removing the decks on either side of the house, which would increase their setbacks on either side of the house.

Mr. Henry Russo of 50 Woekel Circle came forward. He stated that he lives directly across the street from this house and would like to see the variance granted. He informed that the house has been falling apart for the last four years and that the applicants have taken the initiative to buy the lot and renovate it. He believes that it will improve the overall neighborhood.

Ms. Karen Martin of 39 Woekel Circle came forward. She informed that she lives at her home at 39 Woekel year-round and has lived there for 16 years. She gave some context on where the house sits and how close the lots are in this area of Town. She stated that there is a lot of drama on Woekel Circle and wanted to present some facts to the Board. First, she has been in the home with the previous owner. She stated that the house is in need of repairs. Second, she stated that if this house becomes a two-story house, there would be no issue of reduced view. The house as it is cannot see over her property, and if it were two-stories, it still would not be able to see over her property. She then gave some background on the mentioned lawsuit, which is also against herself. She stated that everything in the lawsuit is allegations that were not filed until the applicants purchased the property. She is in full support of a variance.

Mr. John Viscon, who represents Mr. Charles Smith and Mr. Robert Habeeb of 37 Woekel Circle, came forward to speak in opposition of the variance. He stated that the litigations discussed by Ms. Martin did have an impact on 37 Woekel Circle. He stated there is a fence that appears to benefit 49 Woekel Circle but encroaches on 37 Woekel Circle. He also stated that some fill on 49 Woekel Circle created a drainage problem on 37 Woekel Circle. Mr. Viscon stated that he did not believe that just because the structure suffered from negligence does not mean that it warrants a variance. He stated that the Applicant wants to make the house larger and more nonconforming on the lot and does not satisfy the required elements for a variance. He informed that he believed that the Applicant's additions to the house could create additional runoff problems. He believed that the house should be rebuilt as is and that granting the variance would have a negative impact on the neighbors.

Mr. Lee Kavanaugh of 54 Woekel Circle came forward to speak in favor of the variance. He informed that he was having technical difficulties that prevented him from speaking earlier. He stated that he has lived at that location for 30 years and thinks it would significantly improve the neighborhood. He informed that he designed and installed the sewage system at the lot. When he dug the tank, he found that the foundation was solid and had a standard footing under it. His understanding was that the Applicant

was not going to increase the house's footprint as the last speaker stated but use the existing foundation, negating the increase of the footprint on the lot. He informed that the current ceilings in the house are very shallow.

Mr. Charles Smith of 37 Woekel Circle then came forward. He stated that the distance from the deck that is being taken down to their lot line is actually only ".2 inches" away. He noted that the setbacks outlined on the application are incorrect according to the plot plan that they had done. He informed that he gave a copy of this plot plan to the Board showing that the fence mentioned above is currently on his property. Mr. Smith stated that Mr. Bilapka was incorrect and that this property was involved in a lawsuit. He asked the Board to hold off on the variance until the owners of 49 Woekel Circle get a certified survey done of their property to find out where the property lines are.

Mr. Ken Cooley of 51 Woekel Circle came forward. He stated that he is in favor of Mr. Bilapka rebuilding the house but thinks that a certified survey of the property should be done first to ensure that the lot lines are correct.

Mr. Doherty came forward again to ask for clarification on the deck. He stated that if the deck came down, it would make the lot more conforming. He asked what the distance from the abutting properties is now that the deck has come down. Mr. Kearney stated that there are lot line disputes, so that answer is not completely clear. He reiterated that the Zoning Board does not handle lot line disputes. He stated that if the variance is granted, then anything that the Applicant builds would be their liability. If the lawsuit proves that what is built is on an abutting property, it would be the Applicant's job to take it down. He then closed the discussion to the public.

Mr. Bilapka stated that he had two previous drawings certified by the Deed's Office that show his lot lines and that his property is not encroaching on the abutting properties. Mr. Kearney reiterated again that the Zoning Board does not handle issues of lot lines.

Mr. Kearney asked for clarification on the foundation of the lot. He asked if the existing foundation would be increasing in size. Mr. Bilapka answered that it would not be changing at all. He stated that the only addition was a small sunroom in the back, but the existing foundation would not be moving at all.

Mr. Hennessey asked what the total height of the building would be. Mr. Bilapka replied that it would be 31 feet high. He asked if anyone behind the property would have obstructed view. He stated that it would not.

Case# ZO2021-00002

ROLL CALL VOTE:

Mr. Kearney – Yes to all criteria; final vote YES
Mr. Bergeron – Yes to all criteria; final vote YES
Mr. McNamara – Yes to all criteria; final vote YES
Mr. Hennessey – Yes to all criteria; final vote YES
Mr. Hopkinson – Yes to all criteria; final vote YES

(5-0-0) The motion carried.

VARIANCE GRANTED

Mr. Kearney explained that there was a 30 day right to appeal.

MEETING MINUTES

December 14, 2020

MOTION: (Hennessey/Bergeron) To approve the December 14, 2020 meeting minutes as written.

VOTE: (5-1-0) The motion carried. Mr. McNamara abstained.

OLD BUSINESS

Mr. Kearney read aloud a memo into the record regarding a conversation he had with Mr. Lance and Ms. Laurie Ouellette regarding the Ouellette case site walk from October 17, 2020. He stated that after the site walk was adjourned, he had a brief conversation with the Ouellette's. Mr. Ouellette asked him to go into 13 Gaston Street, which he declined. Mr. Ouellette then asked him what his opinion of the cases was. He stated that he told Mr. Ouellette that there was a lot of public input, and he was not certain how the Board would vote. Mr. Kearney said to him that he should consider public input and think about any concessions he would be willing to make to address the public concern at the next meeting.

SITE WALK - January 23, 2021 beginning at 8:00 am.

Case #ZO2021-00001 – Map 22 Lot 8-85 – GENDRON, Patrick & Kim – 579 Bridge Street

DATE SPECIFIED CASE(S) - February 18, 2021

Case #ZO2021-00001 – Map 22 Lot 8-85 – GENDRON, Patrick & Kim – 579 Bridge Street

ADJOURNMENT

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

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

The meeting was adjourned at approximately 9:00 pm.

Respectfully submitted,
Jordyn M. Isabelle
Recording Secretary