

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
May 10, 2021

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

PLEDGE OF ALLEGIANCE

Mr. Hennessey noted that the Governor and Board of Selectmen lifted the mask mandate in the State and in Town buildings. He stated that those in attendance were no longer required to wear masks but could do so if they wished.

Secretary Matthew Hopkinson called roll:

PRESENT ROLL CALL:	David Hennessey – Present
	Matthew Hopkinson – Present
	Peter McNamara – Present
	Jim Bergeron – Present
	Joseph Passamonte – Present
	Alternate David Wing – Present
	Alternate Jeff Caira – Present
	Planning/Zoning Administrator Jennifer Beauregard – Present

ABSENT/NOT PARTICIPATING:	Alternate John Westwood
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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. Hennessey explained the Board's role and hearing procedure.

MINUTES

April 12, 2021

MOTION: (McNamara/Passamonte) To approve the April 12, 2021 meeting minutes as amended.

ROLL CALL VOTE: Mr. Hopkinson – yes
Mr. Hennessey – yes
Mr. McNamara – yes
Mr. Bergeron – yes
Mr. Passamonte – yes

(5-0-0) The motion carried.

HEARINGS**CASE #ZO2021-00011****Map 16 Lot 13-95**

O'NEIL, Frederick P. – 9 St. Margaret's Drive – Seeking a Special Exception to Article XII, Sections 307-74 of the Zoning Ordinance to permit addition of attached Accessory Dwelling Unit to a Single Family Home.

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. Frederick O'Neil came forward to address the Board. He informed that he wanted to add an accessory dwelling unit to his home. Mr. Hennessey asked Ms. Beauregard if the applicant met all the criteria. Ms. Beauregard replied that the Building Inspector reviewed the plans, the unit would not exceed 1,000 square feet, and that everything was in order.

Mr. Hennessey explained that if an applicant meets the criteria for a special exception, then the Board needs to approve it. He added that the State changed the laws to now allow nonrelatives to live in the accessory dwelling unit.

Mr. Hennessey opened the discussion to the Public. As no one from the Public came forward, Mr. Hennessey brought the discussion back to the Board.

Case #ZO2021-00011

ROLL CALL VOTE: Mr. Hopkinson – yes
Mr. Hennessey – yes
Mr. McNamara – yes
Mr. Bergeron – yes
Mr. Passamonte – yes

(5-0-0) The motion carried

SPECIAL EXCEPTION GRANTED.

Mr. Hennessey explained that there is a 30 day right to appeal.

CASE #ZO2021-00012**Map 7 Lot 4-188**

LEBEL LAND HOLDINGS, LLC – 1013 Mammoth Road – Seeking a Variance to Article XII, Section(s) 307-74 (N, J & L) AND Article III Section 307-12, Table 1 of the Zoning Ordinance to permit an Accessory Dwelling Unit to be allowed on a lot that is only 0.46 acres in size & has approximately 198' of frontage, and allow the property to be rented without the requirement for the owner to occupy one of the units.

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. Joe Maynard came forward on behalf of the applicant. He explained that they wanted a variance for the use of the lot. He informed that it was a residential lot that is 0.46 acres in size with 198 feet of frontage. He noted that all of the surrounding properties were multifamily in nature. He stated that the Lebel family owned a number of other rental properties both in and out of Town. The applicants wanted to create an accessory apartment on the second story of the structure.

Mr. Maynard explained that they were asking for a variance on a few different parts. The first part was on the table of dimensional requirements. He explained that the property did not have 200 feet of frontage, but they did receive a state-approval for the septic system. He informed that the second part of the variance request was for the owner occupying one of the units and also the portion of the zoning that talks about a maximum of three non-related tenants in the buildings. He explained that the applicant's child would be occupying the accessory dwelling unit with the rest of the house rented out as it is now. He stated that when looking at the ordinance, it was there to expand the mix of affordable housing opportunities throughout the Town by permitting the creation of secondary dwelling residences as an accessory used to the existing single family while maintaining visual and functional character of single-family residential neighborhoods. Mr. Maynard stated that there would be no changes that could be seen from the street and that access to the accessory apartment would be off the rear of the house from a staircase that goes up the side of the structure. He stated this would not change the character of the location.

Mr. Maynard then read the criteria for the variance request into the record. He added that he takes everything that the Board says into account and understands that there is a need for housing like ADUs. He stated that he informed the applicant that this is not a request that is normally what the Board sees, but thought that the request made sense in the context of the area. He added that if they did not grant the variance on the portion of the ownership, he would put his son on the deed so that portion of the ordinance would be covered.

Mr. McNamara explained that the difference between a variance request and special exception were that a variance is granted for something that is an allowed use of the land but is prohibited by the zoning ordinances if the five criteria are met and that a special exception is for something that is specifically allowed in the ordinance so long as certain criteria are met. He added that if those criteria are met, then the Board must grant the special exception. He stated that he had trouble with this particular situation, partly because the multiple requests felt like a legal slight of hand. He asserted that he would consider the variance alone and as it was laid out. He stated that he did not have issues with the dimensions request regarding the frontage, but was concerned about the less than an acre of land.

Mr. Maynard stated that in order to obtain the State approval for the septic system, they had to have a certain land area associated with the system to meet the rules. He explained that from a health safety standpoint, they were covered.

Mr. McNamara stated that the second item they were requesting relief from for the variance was that no more than three non-related people could live in the property. Mr. Maynard replied that he felt that section of the zoning had not caught up with the times. Mr. McNamara disagreed with this. He stated that the reason that, and some other enforcement mechanisms, were put in was to ensure there was not a surplus of rental units. He added that there is a large incentive for a property owner to maintain the property if they are living on it. He explained that the three-person limit was imposed to limit rooming houses.

Mr. McNamara asked when the present owner purchased the property. Mr. Maynard replied that he was not certain, but that it was a number of years. Mr. McNamara asked how long the property had been rented out. Mr. Maynard responded that it was rented out since the owners purchased the property. Mr. McNamara stated that a self-imposed hardship could be considered in terms of the reasonableness of the request for the

variance. He informed that property owners are presumed to know the law and that the applicant's ignorance of the law here was no excuse.

Mr. Bergeron stated that when looking at the State statute that mandates that towns ADUs, it is stated that one ADU shall be allowed without additional requirements for lot size, frontage, etc. He added that it is asked in Pelham's ordinances for ADUs to be allowed only on conforming lots. Mr. Bergeron added that it is also stated in the statute that municipalities may require occupancy of one of the dwelling units to be by the owner. He informed that they opted to include that to help protect surrounding property values.

Mr. Hopkinson asked if the applicant were to include his son on the deed, would all of the owners need to live at the residence, or only one of them. Mr. Maynard replied that houses are typically put into a trust and that only one of the owners needed to be an occupant in that case.

Mr. Hennessey stated that Mr. McNamara and Mr. Bergeron addressed the most pressing issues he had with the request. He stated that if they were to grant the variance, they would erase any distinction between a duplex and a single-family residence with an ADU. He informed that the Town recently committed to one acre lots and that he was reluctant to go against the will of the people on something that was so recently adopted.

Mr. Passamonte asked if the surrounding duplexes were on conforming or nonconforming lots. Mr. Maynard replied that he was not certain, but that many of them were on nonconforming lots with some of them on conforming lots.

Mr. Hennessey stated that the State instructs to look at the reality of the property, no matter what the zoning is. He explained that that particular section of Mammoth Road has a lot of multifamily homes and that that would weigh heavily on the eyes of a court to grant a variance on what is there. He added that this was a different case, where he was hesitant to go against the one acre zoning requirement.

Mr. Maynard asked the Board to split his request for a variance into two separate votes. He asked for one vote to be on the dimensional requirements and the other on the requirement for the homeowner to occupy the property.

Mr. Hennessey opened the discussion to the Public. As no one from the Public came forward, Mr. Hennessey brought the discussion back to the Board.

Criteria 1 – The variance will not be contrary to public interest.

Mr. Wing stated that he did not think that the request regarding frontage or dimensions was contrary to the public interest, as the safety and welfare aspect of it had already been satisfied with the septic design approval from the State.

Mr. Hopkinson stated that the small acreage is what concerned him. He agreed with Mr. Wind on the frontage. Mr. Hopkinson stated that he did not think the request was necessarily contrary to public interest.

Mr. McNamara stated that he did not think it was contrary to the public interest, given the distinction of what is presently in the surrounding area.

Mr. Bergeron asserted that the dimensions regarding the frontage would not be contrary to the public if that was the only request. He stated that he had a problem with the acreage on the lot and that he did not want to create a precedent of allowing ADUs on such small lots. He noted that only allowing ADUs on

conforming lots is a reasonable condition. He stated that he believed this would be contrary to the public interest. Mr. Passamonte agreed with Mr. Bergeron.

Mr. Ciara stated that he believed that the frontage was okay, but believed that the size of the lot would not be in the interest of the public.

Mr. Hennessey stated that the argument was that there are duplexes on similar sized lots in the immediate area. He noted that was a strong argument for the applicant's case, but felt that it would be contrary to the public interest given the recent vote on one-acre zoning.

Criteria 2 – The spirit of the ordinance is observed.

Mr. Ciara stated that he would vote no on this criteria. Mr. Passamonte stated that there were many reasons he would vote no including that the ADU was put in illegally, the lot size, and that the owner would not occupy the lot.

Mr. Bergeron stated that it was a very realistic request to have the lot be dimensionally conforming to allow an ADU. He noted that the average lot size in the State is over 2-acres, so the Town was relatively small compared to that. He believed that the spirit of the ordinance would be violated by this, so he would vote no.

Mr. McNamara stated that he would vote no for all of the reasons stated.

Mr. Hopkinson thought that the spirit of the ordinance could be observed, but was torn as the owner of the property did not occupy it.

Mr. Wing stated that he thought the spirit of the ordinance as indeed observed, as this was a preexisting lot. He stated that there were similar properties in the area on similarly sized lots.

Mr. Hennessey stated that this was linked to the previous criteria for him. He stated that he did not necessarily agree with the vote on one-acre zoning, but the Town has shown to be adamant about it. He believed that granting this variance would not be in the spirit of the ordinance.

Criteria 3 – Substantial justice is done.

Mr. Wing asserted that for the reasons stated in criteria two, he believed that substantial justice would be done.

Mr. Hopkinson stated that he was still pondering this one.

Mr. McNamara stated that he would vote no on this criteria.

Mr. Bergeron informed that by looking at a tax map in front of him, this lot appeared to be the smallest in the area. He did not believe the lot was suffering from any injustice, as it already had a single-family home on the lot. He did not think that substantial justice would apply in this case.

Mr. Passamonte, Mr. Ciara, and Mr. Hennessey voted no, agreeing with previously stated comments.

Criteria 4 – The values of surrounding properties are not diminished.

Mr. Ciara and Mr. Passamonte both stated they would vote yes on this criteria.

Mr. Bergeron stated that he would vote no, as this would set a precedent which would diminish property values in the area.

Mr. McNamara stated that he would vote yes, due to the current state of the area.

Mr. Hopkinson stated he would vote yes on this one, as he did not think that the value of surrounding properties would be diminished.

Mr. Wing stated he would also vote yes.

Mr. Hennessey stated that he would also vote yes on this. He noted that the word precedent was being used differently here than it would in a legal court case. He informed that the Board looks at each case separately from others. He stated that he understood Mr. Bergeron's point. He explained that regarding the surrounding property values, they would not be impacted by the ADU as the properties are already diminished because of the traffic on Mammoth Road.

Criteria 5 – Owing special conditions of the property that distinguishes it from other properties in the area, denial of the variance would result in unnecessary hardship because:

A. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

A. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.

B. If the criteria in subparagraph A above are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is, therefore, necessary to enable a reasonable use of it.

Mr. Ciara, Mr. Passamonte, and Mr. McNamara stated that they believed the hardship was self-created. They stated they would vote no on this criteria.

Mr. Bergeron stated that the property was being used as a single-family use and that there was no denial of reasonable use in this case. He stated he would vote no. Mr. Hopkinson agreed with this.

Mr. Wing agreed, adding that he felt like the hardship was self-inflicted.

Mr. Hennessey agreed that the hardship was self-created.

Case #ZO2021-00012A

ROLL CALL VOTE:

Mr. Hennessey – 1 Yes, 4 Nos; final vote NO
Mr. Passamonte – 2 Yesses, 3 Nos; final vote NO
Mr. Bergeron – 5 Nos; final vote NO
Mr. McNamara – 2 Yesses, 3 Nos; final vote NO
Mr. Hopkinson – 2 Yesses, 3 Nos; final vote NO

(0-5-0) The motion failed.

VARIANCE DENIED.

Mr. Maynard stated that he could withdraw the remainder of his requests. He asked if there was a way for him to reapply for certain aspects of his requests since only the request for a variance on the dimensional requirements. Ms. Beauregard replied that if the application were changed enough, it would be considered a new application. Mr. Hennessey allowed Mr. Maynard to withdraw the remainder of his requests without prejudice.

Mr. Hennessey explained that the applicant had been denied on the dimension requirements and that the requests for the variance to allow the property to be rented without the owners there and the request for special exception were withdrawn.

CASE #ZO2021-00013

Map 7 Lot 4-188

LEBEL LAND HOLDINGS, LLC – 1013 Mammoth Road – Seeking a Special Exception to Article XII, Section 307-74 of the Zoning Ordinance to permit an Accessory Dwelling Unit in the second story of the existing structure.

The applicant withdrew the case.

ANNOUNCEMENT

Mr. Hennessey asked who had signed up for the OSI class and asked if there was still time to sign up. Ms. Beauregard stated that registration closed on the 7th but she would distribute the link to the Board for any who wanted to watch the class after.

ADJOURNMENT

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

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

The meeting was adjourned at approximately 8:06 pm.

Respectfully submitted,
Jordyn M. Isabelle
Recording Secretary