

APPROVED

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
June 14, 2021**

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

PLEDGE OF ALLEGIANCE

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

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 #ZO2021-00014
Map 30 Lot 11-134

RICHARDSON, GILBERT & JANET, TRUSTEES, WEST SHORE DRIVE NOMINEE TRUST – 170 West Shore Drive –Seeking a Variance to Article (s): III & VII Section(s) 307-7, 307-12, 307-14 & 307-41-B of the Zoning Ordinance to permit construction of a 2 bedroom single family home on a preexisting non-conforming lot of record that contains 11,845 s.f. where 43,560 s.f. is required and maintains 0 of frontage on a town approved road where 200' is required. The proposed home will maintain a 30' setback to the pond where 50' is required.

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. Shane Gendron of Herbert Associates came forward to represent the West Shore Drive Nominee Trust. He informed that Mr. and Mrs. Gilbert and Janet Richardson had owned the property since 1962 primarily used as a “weekend getaway” for the family. He noted that the existing structure was built in the 1930s and is starting to fail. He stated that the Richardson’s would like to update the house and make it more accessible and livable as they are aging. Mr. Gendron informed that the Richardson’s tried to see what they could do to rehab the structure, but it made the most sense to take the structure down and propose a new one. He noted that it is a relatively small two-story home, with a new septic design and a proposed well.

Mr. Gendron stated that they tried to pull the structure back from where the existing structure currently is. He informed that one of the variances that they were looking for would be to be 30 feet from the reference line with the screened in porch. He noted that it is a better situation that is currently there, but it does not meet current zoning. He stated that while they are trying to pull the house back, they are still trying to preserve the view of the pond and create reasonable parking on the property. He explained that when the resident’s use the property, they have about four or five cars that need parking. He stated that by adding in the parking, they can keep West Shore Drive open and make the property more usable. Mr. Gendron informed that property has no frontage, but there is an easement to get out onto West Shore Drive.

Mr. Gendron read the five criteria of the variance into the record.

Mr. McNamara asked what the height of the proposed building would be. Mr. Gendron replied that it would be about 30 feet at its highest point. He added that from the driveway side it would be about 24 feet tall, noting that it is a standard two-story house.

Mr. McNamara asked if the house would interfere with any abutter’s view of the lake. Mr. Gendron replied that the house should not interfere with anyone’s view. He explained that there is nothing behind the property besides a garage that is a part of the neighbor’s property, but that there were no residential properties behind this one.

Mr. McNamara asked Mr. Gendron to clarify about his statement that they would be improving the nonconformity regarding the setback. Mr. Gendron replied that they were going to pull the structure back 12 feet from where it sits now. Mr. McNamara asked if that included the porch. Mr. Gendron replied it did.

Mr. Hennessey noted that the application was relatively clear, but that even if this Board approved the variance, it would still be subject to state septic system design and Shore Land Protection.

Mr. Wing asked how big the parking lot would be. Mr. Gendron replied that it would be about 1,300 square feet of impervious area. He added that it would be enough room to park about four cars on the lot.

Mr. Passamonte asked if there was an existing driveway up West Shore Drive. Mr. Gendron replied yes.

Mr. Hennessey opened the discussion up to the Public.

Mr. Steven Meyers of 156 West Shore Drive came forward to speak in opposition of the proposal. He informed that he was fortunate that his family owned the property on Little Island Pond and that the property he owns is 4 acres in size with 12 direct abutters. He stated that his property basically surrounds the applicant's property and their houses are approximately 40-60 feet apart from each other. Mr. Meyers stated he would describe the West Shore Drive neighborhood as a 1950s Norman Rockwell painting on a gorgeous lake with friendly neighbors that look out for one another. He noted that he was friends with the applicant's and let them use his boat ramp multiple times a year to launch their boat. He stated that in the structure's poor current condition, it adds little value to the surrounding properties. He added that he did not believe that the owner's stay the night due to the condition of the house and did not believe that there was any functioning bathrooms or water in the house. He stated that he was in complete agreement of the applicant's statement on the condition of the house.

Mr. Meyers stated that he was asking the Board to reject the applicant's proposal. He stated he was surprised to receive certified mail notification of this only a few business days prior to the meeting, as opposed to a few weeks or months in advance. He stated that he wanted to see the plans first and be asked if he had any concerns. Mr. Meyers noted in the application it said that it would allow the owners to make reasonable use of their property. He explained that this concerned him, and that reasonable continued use of his property may or may not be infringed and their request may or may not affect the enjoyment of his property.

Mr. Meyers informed that he had five main concerns including:

- 1) That the current house is only 770 square feet, and the new structure looks substantially bigger with a bigger footprint. He noted he was concerned with the new size of the home and the location relative to his house, as he stated that his house was only 40-50 feet away from their house.
- 2) He was concerned that the new septic system and well would interfere with his water quality on his property.
- 3) He was concerned about where the created parking spaces would be, as the access road to their property and their driveway are both on his property. He was concerned that these parking spaces would be on his property as well.
- 4) He was concerned where the construction vehicles would park during construction, as he had not given any permission for people to use his property to park construction vehicles.
- 5) He was concerned with when construction would happen, as he did not want it to happen in July or August, and would prefer if construction took place in September as July and August are busy times at the lake.

Mr. Meyers added that he spoke with the applicants at the end of summer 2020 about them redoing their house, which he thought meant rehabbing it or keeping the same footprint. He stated that he saw them cleaning the property starting in Spring 2021. He thought that once the applicants had their plans together, they would discuss what they were thinking before going before the Town. He noted that another neighbor, Mr. Craig Fields, came in front of the Board for a similar request in the past. He stated that Mr. Fields went to him several weeks before the Board meeting to discuss the plans with him, so Mr. Meyers gave his support.

Mr. Meyers stated that he believed that the applicants were good people and that they accidentally forgot to be a good neighbor and give him sufficient time to discuss their plan with them. He did not believe that they wanted to do him or his property any harm, but did not want the Board to accept their application.

Mr. Passamonte asked Mr. Meyers to clarify if he stated that the applicant's driveway was on his property. He replied that it is. He explained that he owns the access road to West Shore Drive.

Mr. Bergeron stated that the lot line of Mr. Meyer's property looked like a parallelogram. Mr. Bergeron asked Mr. Meyers if he knew what the distance was of his house to his property line. Mr. Meyers replied that it might be 8-10 feet from his property line. Mr. Bergeron asked if Mr. Meyers' garage was over the property line. Mr. Meyers replied that he believed it was right on the line. Mr. Bergeron asked if the driveway on his property was a deeded easement. Mr. Meyers replied that it was.

Mr. Meyers reiterated that the lack of notice and lack of discussion with him were his main problems.

Mr. Hopkinson asked what septic and well problems Mr. Meyers was having. Mr. Meyers stated that his septic system is near his barn and that the system routes around the garage up to the barn. He explained that he was having problems with an old septic that was near the house and that he tried to fix it, but they are still testing it. He noted that water is coming out all different colors, when it had never done that previously. He added that he is having people come to test it and that one or two other neighbors are having water problems as well. He reiterated that he was not able to research these claims prior to the meeting, due to such short notice of the meeting, so he was unsure if his concerns were issues or not.

Mr. Bergeron asked if Mr. Meyers septic system would be a force feed system.

Mr. Gendron stated that he does not control the noticing of the Board, so there is nothing he could do about when the abutter was noticed. Mr. Gendron stated that the applicants did not mean to cause harm to anyone and that they had conversations with neighbors in the past about redoing their house and were not trying to infringe on anybody. He informed that he put a leech field in for the Richardson's in 2009 in the same proposed spot. Mr. Gendron stated that the water is a concern to everybody, but they do have a right to drill a well on their property to access the water under their property.

Mr. Hennessey asked Mr. Gendron to address the setbacks on the well and septic. Mr. Gendron stated they were looking at drilling a well down by the water, with is consistent with the other properties. He noted that the 75-foot radius would go off the lot a little bit, so they would have to file a release which basically means that they cannot prevent somebody from putting a septic system in the well radius. He noted that everyone's well is down by the lake, so that it should not be an issue. Mr. Gendron informed that the septic system is more than 100 feet from the lake. He added that they did a test pit in April and got good results from it. Mr. Gendron stated he felt very confident about the application. He added that they were not asking for any waivers from the State for septic. He stated that the lot size limits the house to only having two-bedrooms.

Mr. Hennessey stated that the State has to approve the septic system, well location, and the structure of the building because it is all within the Shoreline Protection Act. Mr. Gendron agreed that was correct.

Mr. Gendron stated that he talked to the applicants, and they would be more than willing to push this out to the next available agenda so that they can meet with Mr. Meyers to discuss the plans to make him happy.

Mr. Hennessey stated that they could do a site walk of the location. He stated that this could give people the opportunity to see where the new structure would be and see if there would be a potential parking issue. Mr. Hennessey set the site walk to this Saturday at 8:30 am. Mr. Hennessey then explained the purpose of a site walk.

The case was date specified to July 12, 2021.

CASE #ZO2021-00015

Map 30 Lots 11-157, 158, 162, & 163

CROOKER & CHAREST – 2 & 4 Andover Street and 5 Methuen Road – Appeal from an Administrative Decision of the Planning Board’s interpretation of Zoning where they determined a Variance was required to act upon their Lot Line Adjustment application

Mr. Bergeron recused himself from the discussion, as he is also a Planning Board member who was a part of the decision in question. Mr. Hennessey stated he appreciated that

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. Hennessey explained that one of the abutters was a cousin of his wife, though they have no financial interest in her property. He noted that he has recused himself before because she was an immediate adjoining property, but he was unaware that this property was close to hers. Mr. Hennessey asked the Board if they would like him to continue this case or recuse himself from the discussion. The Board agreed that he could stay on the case. Mr. Hennessey appointed Mr. Ciara to vote in place of Mr. Bergeron.

Mr. Tim Peloquin, a land surveyor of Promised Land Survey, came forward to represent the applicants. He stated that the applicants were simply trying to do a lot line adjustment between three parties. He noted that he has been doing this for years and that this should have been a relatively simple thing to run through the Planning Board. He noted that there was predominant support from the neighbors during the meeting and that this lot line adjustment was a betterment in terms of some encroachments. Mr. Peloquin noted that the plan went through the Zoning Administrator prior to going to the Planning Board. He stated that the Planning Board ruled that the plan did not meet the qualifications to go to the Planning Board. He noted that the Board also sought legal council that did not believe it needed to come before the Zoning Board. He informed that he had been doing this work for decades and never had something like this happen.

Mr. Peloquin stated that there were currently four lots and at the end of the lot line adjustments, there would still be four lots. He noted that the Board was getting hung up on certain things on lots being created that were nonconforming, but they were not more nonconforming, they were just already nonconforming lots. Mr. Peloquin stated that the applicants made a decision at the meeting to eliminate one of the lots and merge it into another lot. This would mean that the four lots would then become three lots. He stated that no new buildings were being created. Mr. Peloquin reiterated that he did not believe that this had to come before the Zoning Board. He did not believe it was right and did not believe it to be legal truth.

Mr. Hennessey stated that it was their right to appeal to this Board. Mr. Peloquin agreed with this. He added that they were not even sure what they would be asking for from this Board. Mr. Hennessey clarified that they were asking for an overturning of a decision made by the Planning Board. Mr. Peloquin stated that if they had to come to this Board for a variance, he was unsure what that variance would be for. He reiterated that they were creating a betterment of a situation where four lots are now becoming three. Mr. Peloquin stated that they meant no disrespect to the Planning Board, but they were appealing the decision, in all due respect.

Mr. Hennessey read a letter to Ms. Beauregard from Ms. Donna Bibeau, of 6 Andover Street. In the letter she notes that she has a dispute with lot 11-163, believing that there is a shed on her property. She continues that he bought the lot in 1985 and have been paying taxes on the shed for 36 years, with the shed being on her property when she bought the house. Mr. Hennessey stated that the long-standing policy of the Zoning Board is to not get involved with property disputes and that those should be taken to civil court.

Mr. McNamara asked for clarification that lot 11-163 was the lot that did not have a residence on it. Mr. Peloquin responded that was correct. He added that it does have a leech field utilized by lot 11-158, which is Ms. Angela Terry's property and where her house is located. He continued that her parents live on the larger lots, lots 11-157 and 11-162.

Mr. McNamara asked if they were merging lots 11-158 and 11-163. Mr. Peloquin replied that was correct. Mr. McNamara asked if three of the lots would become less nonconforming. Mr. Peloquin replied that was correct, adding that 11-163 would be slightly more nonconforming. Mr. McNamara stated there was no house on that lot and if the owner's wanted to build on that lot they would need to go before the Zoning Board first. Mr. Peloquin replied that was correct.

Mr. Passamonte asked for clarification that lots 11-158 and 11-163 were going to be merged, as what he had did not show that. Mr. McNamara stated that towards the middle to end of the Planning Board decision, the applicants, responding to some issues raised by the Planning Board, agreed that if it would make it easier, to merge the two lots.

Mr. Wing asked if there was going to be a transfer of land was going from lots 11-163 to 11-162. Mr. Peloquin replied that it would and then explained how some of the land would be divided between the parcels.

Ms. Beauregard stated that she wanted to clarify that her opinion on the lack of needing a variance is strictly on the lot line adjustments and whether they merge or do not merge. She stated that the other lot would still need to come before the Board for a variance for the added buildings. Mr. Hennessey stated that the only thing before the Board right now was whether the lot line adjustment would need a variance. Mr. Peloquin agreed to this.

Mr. Hennessey opened the discussion up to the Public. He clarified that the applicants were not applying for a variance, and they were not going through the five criteria for a variance. He stated that all they were doing is answering the question of if the Planning Board made an error or if this case needed a variance to do the proposed lot line adjustment.

Mr. Jay Bibeau of 6 Andover Street came forward to speak in opposition of the appeal. He asked if this Board could make a decision about where they will end up in court over the dispute of the shed. Mr. Hennessey replied that they could not, as that was a civil dispute.

Mr. Hennessey called Mr. Jim Bergeron, or 27 Powell Road, to speak. Mr. Hennessey explained that Mr. Bergeron is also a Planning Board member as well as a Zoning Board member. He noted he was glad that Mr. Bergeron was willing to speak on this case and go over the rationale of the Planning Board's decision. Mr. Hennessey stated he was not interested in getting into a fight with Planning.

Mr. Bergeron informed that one of his duties as a Planning Board member is to bring information back and forth between the two boards, which is all he wanted to do at this meeting. He asserted that he did not want to go any deeper than just passing along information. He stated he is only able to speak for himself and not other members of the Planning Board but believed the vote to deny the case was unanimous. He stated that the moving of the lot lines would render lot 11-162 less conforming by reducing the net square footage of the lot. He believed that the Planning Board did not have legal authority whatsoever to make the lot a nonconforming lot. Mr. Bergeron stated that the applicant did mention merging the two lots, but that would be a different thing altogether and they had not been presented that. He stated that what was presented to the Board was that lot 11-163 would become less conforming and he did not believe the Planning Board had the jurisdiction to do that and if the applicant's wanted to keep all four lots, then they would need to go before Zoning to get a variance. He stated that he is now hearing that the applicants are willing to merge lots 11-158 and 11-163, which seemed to him to be the easiest, simplest, and correct decision. He believed there was a big miscommunication and that the Planning Board is not able to act on something that is not officially in front of them. He noted that they had hinted to the applicant that they could come back and merge the lots and that it would be a good thing. He asserted that he did not believe the Planning Board made a mistake, there was just a miscommunication.

Mr. Hennessey stated that Zoning is only able to deal with what is presented to them, but Planning is able to negotiate and talk about different ways around a planning issue. He noted that is why Planning is considered a policymaking body and that Zoning is a semi-judicial board. Mr. Hennessey stated the fact that Planning is able to, and often does, make gray area decisions while the Zoning Board cannot absolutely pertain to what is in front of them.

Mr. Bergeron stated that the idea to merge the two lots was never formally proposed, but if that is the case now, he believed that the Planning Board would have an entirely different point of view on the lot line adjustment. He stated that the applicant never said for sure that night if they were going to merge the two lots.

Mr. Hennessey stated that they were not there to assign any blame or point fingers. He stated they were only there to either remand back into Planning or to accept the decision the Planning Board made to require the applicant to come before the Board for a variance.

Mr. Bergeron asked if the applicant was proposing to merge the two lots and create just three lots and not four lots. Mr. Hennessey replied that was what he was hearing. Mr. Bergeron stated that was the right way to go about it.

Mr. Peloquin stated that in the minutes, on page 50, it does show a full discussion on the matter that they were willing to make the four lots into three lots upon a condition of approval. He stated that the Planning Board still insisted that they needed to go before the Zoning Board even

if the two lots were merged. Mr. Peloquin stated he is looking to go back before the Planning Board with three lots instead of the four.

Mr. Randy Bibeau, of 72 Dutton Road, came forward to address the Board. He stated that he was just wondering how they can combine the lots when there is an ongoing problem with one of the lots. Mr. Hennessey replied that his take on it was that there is a dispute, which they do not get involved in, and if this continues in court, then the applicants are on the hook and will need to rectify it and go forward. Mr. Hennessey stated that they must operate on the basis that the applicant's description is accurate and correct. Mr. Hennessey stated that they cannot take sides in any civil disputes. Mr. Bibeau asked if that was still correct if they had a plot plan from the 80's showing otherwise. Mr. Hennessey stated that they would need to bring that before court or a land use board, but this Board could not make a decision on that.

Mr. Bergeron stated that he disagreed with Mr. Hennessey on the fact that if someone does not present something to the Planning Board, they cannot talk about it. He stated he was sorry if there was any miscommunication.

Mr. Hennessey closed the discussion to the Public and brought it back to the Board.

Mr. Hennessey then asked each member to state if they believed the case should go back before the Planning Board or if the applicants would require a variance. Mr. Ciara and Mr. Passamonte both believed it should go back to the Planning Board.

Mr. McNamara stated that there is a website called NH Plan Link Request that allows people to post on the website about different types of planning situations. He stated that people don't always know what is in front of them and they want some advice on it. He informed that the Alton Town Planner asked the question "without getting into detail, does a lot line adjustment need a variance" and the common response was that it would not need one if no lots were being made nonconforming without further information. He stated that while lot 11-163 was becoming more nonconforming, since there was no dwelling structure on it and it was inhabitable, it would not need a variance. He asserted that it should go back to the Planning Board, and it did not require a variance.

Mr. Hopkinson stated that he had no further comments and that Mr. McNamara had an excellent explanation of it. He believed that it should go back to the Planning Board.

We remand and give this back to the planning board and hope we never get this again

Case #ZO2021-00015

ROLL CALL VOTE: Mr. Ciara – remand back to the Planning Board
Mr. Passamonte – remand back to the Planning Board
Mr. McNamara – remand back to the Planning Board
Mr. Hennessey – remand back to the Planning Board
Mr. Hopkinson – remand back to the Planning Board

(5-0-0) The motion carried

THE CASE WAS REMANDED BACK TO THE PLANNING BOARD.

SITE WALK – June 19, 2021 beginning at 8:30 am

Case#ZO2020-00014 – Map 30 Lot 11-134 – RICHARDSON, Gilbert & Janet, Trustees – 170 West Shore Drive

ADJOURNMENT

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

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

The meeting was adjourned at approximately 8:22 pm.

Respectfully submitted,
Jordyn M. Isabelle
Recording Secretary