

APPROVED

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
November 10, 2014**

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

The Secretary Bill Kearney called roll:

PRESENT: David Hennessey, Svetlana Paliy, Bill Kearney, Peter McNamara, Chris LaFrance, Alternate Lance Ouellette, Alternate Pauline Guay, Alternate Darlene Culbert, Planning Director/Zoning Administrator Jeff Gowan

ABSENT: Alternate Kevin O'Sullivan

CONTINUED HEARINGS

Case #ZO2014-00022

Map 14 Lot 9-132-2

OUELLETTE, Lance & SUPPA, Jamie- 54 Simpson Road - Seeking a Variance concerning Articles V & VI, Sections 307-16 & 307-18 to permit a landscaping business to operate in a residential area.

Mr. Ouellette (applicant in the case) and Ms. D. Culbert (abutter) stepped down.

Mr. Kearney 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 opened the case by apologizing to the applicant and members of the public. He stated he should have started the previous meeting with the present case knowing there was an issue with abutter notice. He thought they might have been able to get into the hearing and presumably conduct a site walk; however it was point out during that meeting by Mr. McNamara that if the Board proceeded it would have been an invalid hearing because insufficient abutter notice was given.

Mr. Jamie Suppa and Mr. Lance Ouellette came forward to discuss the variance application. Mr. Suppa explained to the Board that he purchased property on Simpson Road in 2010 that has a large back lot area that A1 Handy Company was interested in using to store equipment. Prior to Mr. Suppa purchasing the property a business had used the back area; a siding company used the area for equipment and vehicles. Mr. Hennessey confirmed that there was a similar business use and equipment storage on the property prior to the case now in front of the Board. Mr. Suppa answered yes.

Mr. Ouellette, owner of A1 Handy Company told the Board he previously conducted his business on the hillside at the Chunky's location as a month-to-month tenant. He was given notice June 15, 2014 that Tractor Supply Co. would be taking over the space in August, 2014. Several people approached him to offer space within the Town. However, when reviewing Mr. Suppa's property he felt it would be a good 'fit' since there was previously a landscaping company renting the space and the area was screened to abutters and off -road. It was believed there was already a variance on the property. Mr. Ouellette recalled moving to Mr. Suppa's lot in mid-August. After he finished setting up he was told that Code Enforcement informed the business couldn't be conducted and a variance was needed. After speaking

with the Planning Department and reviewing the property file, no variance was found; therefore, they began the variance application process.

Mr. Ouellette read aloud the variance criteria as submitted with the application. He also provided the Board with aerial photographs of the property that dated back to 2003. The photographs showed the location of the existing house, access road, location of equipment and out buildings. Mr. Ouellette highlighted the lot location, cleared area and extent of vegetation. He also shared an additional set of photographs that showed the current use with building and equipment locations. There were also photographs showing the access road and vegetation that creates privacy. He noted it was evident a previous business had been at the location. He stated his business didn't process mulch or conduct business (of A Handy Company or Advanced Landscape Design) on the site other than maintaining the owner's home. Equipment is maintained off site. The companies follow the same stipulations as agreed with Rubicon Co., when occupying space at Pelham Plaza.

Mr. McNamara asked for a description of the proposed business. Mr. Ouellette replied he owned two businesses; A Handy Company, which provides a variety of 'handyman' services, which has four full-time and three part-time employees. Mr. McNamara questioned how much equipment would be stored on site. Mr. Ouellette stated they had the same equipment as listed in the file for Pelham Realty when they were located at Pelham Plaza. The employees with travel back and forth to the site; most take the trucks home and some carpool. Mr. McNamara commented that the previous business was not done legally. Although the proposed business appeared to be well suited for the property; the area was zoned residential.

Mr. Kearney wanted to know the hours of operation. Mr. Ouellette listed the hours as beginning 7am until late afternoon excluding Sunday. During the winter season the hours fluctuate. He pointed out work wasn't being done on site; equipment is usually stored on the sites being maintained. Mr. Kearney understood there would be a mulch pile on site and questioned if more would be brought to the site. Mr. Ouellette kept approximately 20 yards on site uses solely for their business purpose, not sold to the general public. Mr. Kearney asked if there would be any large equipment travelling back and forth from the site. Mr. Ouellette replied the largest piece of equipment he owned was a back hoe that was transported by trailer.

Mr. Hennessey verified that no variance, special exception or home occupation had been filed with the Town. Mr. Gowan found no evidence of variance relief. He noted the described uses were never on their radar and not viewable from Simpson Road. Mr. Hennessey questioned if a building permit was issued for the barn structure. Mr. Gowan didn't have an answer, however, he believed given that the lot contained five acres that a building permit would have been issued without question. Mr. Hennessey confirmed once the variance application was submitted enforcement was placed on hiatus. Mr. Gowan stated that was correct.

PUBLIC INPUT

Mr. Hennessey read aloud a letter dated October 8, 2014, submitted by Eugene and Dorothy Carter of 15 Katie Lane, which indicated their understanding (after visiting the Planning Office) was that a complaint had been submitted to the compliance officer regarding activity on the site resulted in a stop-work. The Carter's lot (8-9-98) directly abuts the northeasterly side of the applicant's lot. The letter indicated that the Carters didn't know the applicants, but were aware activities had occurred on site during the spring and summer of 2014. Following notice of the hearing the Carters checked the area of their property which abuts the applicant and found that a roof bunker-line enclosure had been constructed along and within 10-feet of the property line. Additionally the stone wall property line in the area of the bunker had

been destroyed for a length of approximately 100ft. The Carters included photographs of the construction area as viewed from their property. They urged the Board to conduct a site walk.

Mr. Eugene Carter, 15 Katie Lane came forward to address the Board in person. He commented that the bunkers did not appear in any of the photographs shown the Board. He was aware that the shed and barn were previously constructed. The photographs showing the bunker structures were displayed for the public. Mr. Ouellette explained the bunker was constructed of concrete blocks (2ftx2ftx6ft) keyed on the bottom for stacking. The bunkers were made to hold products such as mulch, sand, salt etc. He placed the bunkers on the site. Mr. Hennessey stated if the variance is granted it would be with the stipulation that the bunkers be moved back off the line. Mr. Ouellette replied it would be a lot of work, but would do as the Board stipulated. He spoke of an abutter that had previously worked on the Suppa's property who in the past (2009-2010) stored tree equipment in the 'business' that could support the claim that the stone wall had been in its condition for a long time.

Mr. Carter was already aware that Mr. Wagner parked his vehicle at the location in the past. He wanted the Board to know the activity during the summer were orders of magnitude beyond Mr. Wagner's truck driving into the property. He recalled there had been a contractor that did vinyl siding who wanted to store the materials within the building. He was unsure if there was a variance request, or if the contractor only spoke to the neighbors. Mr. Gowan noted the Planning Department had no record of a previous variance application.

Mr. Kearney asked for an explanation of how the work on the lot had increased in magnitude. Mr. Carter told the Board Mr. Wagner drove his vehicle down into the lot and parked it, and at times had a few logs that were sawed up. The activity during the past summer was heavy trucking with sounds of heavy logs dropping, tractors running with back up signals. He said it may possibly be someone close by, but there had been an increase of activity during the summer.

Attorney Joseph Clermont, representing Joseph & Angeline Vivier of 12 Katie Lane, direct abutters to the subject property who were opposed to a variance being granted. Their opposition was due to the area being primarily residential. They were concerned about the noise generated from the trucks and equipment. They understood there was an attempt to run the business for a period of time from the property, which had since been shut down by Code Enforcement. There had been no prior permitting for the business. Attorney Clermont's client's home was in close proximity to where the business would be conducted and the access road located. He pointed out that both the Vivier's property and the applicant's property were located in the residential zone and contained single-family residences. The proposal was for a noisy landscaping business to be located within a residential zone, which his clients believed to be inappropriate and opposed. Attorney Clermont submitted photographs to the Board showing the Suppa property and access road from his client's property. He spoke of the requirement for certain criteria to be met for a variance to be approved. In reviewing the application, he saw that the applicant indicated a variance wouldn't be contrary to public interest because similar businesses had been granted variances in similar areas. He didn't see how that was applicable to the applicant's property being that it was contrary to the rights of the neighbors and felt to also be contrary to the public interest. Attorney Clermont saw that the applicant also indicated that the spirit of the ordinance was observed because they weren't changing the site location's original use or size. He didn't understand that statement because there had been no legitimate, permitted business operating from the property. With regard to substantial justice, the applicant wrote there had always been some sort of small business operating from the location without proper variance/permits. Attorney Clermont felt whether there had been a business or not wasn't relevant because there had never been a permitted business at the location. The applicant wrote that the value of surrounding properties wouldn't be diminished; however, Attorney Clermont didn't see how the residential properties wouldn't be diminished, just from the noise alone.

Most importantly, Attorney Clermont stated in order to receive a variance, the applicant needed to show that there were special conditions of the property that distinguished it from other properties in the area. He noted the applicant wrote that a business would be allowed to operate under the legal guidelines of the Town with a variance if granted. He didn't feel that was a response to the question and didn't see where the unnecessary hardship was referred to. Under criteria 5b – reasonable use; Attorney Clermont pointed out to the Board that the property contained a residence the applicant wasn't the home owner. He didn't feel the variance criteria had been met in any regard. He stated there was no unnecessary hardship; it was already a residential use. The property was not in a unique setting. The business would injure the residential rights of others. Attorney Clermont told the Board that the requested variance was not consistent with the spirit of the ordinance and importantly, the applicant wasn't the home owner, which raised the question of who the hardship was on. He believed the property could be used in strict conformance with the ordinance and with that being the case, a variance should not be granted.

Mr. Paddy Culbert, 44 Simpson Road stated he lived at his address for thirty plus years and had several concerns about allowing the business to operate directly behind his property. He questioned if there would be storage of pesticides, herbicides and other chemicals on the premise, as the business was not advertised as organic. He noted there was a natural spring of unknown origin located on his property that came down a ridge behind his house surfacing in April through July. He would hate to see his well or the spring become contaminated due to chemical leaching. He planned to have a well test conducted and recommended all abutters do the same. Mr. Culbert stated his neighbor at 44 Simpson Road was currently in Florida and agreed with the specified concerns. He told the Board he observed (on several occasions) one of the A Handy Company trucks (plate Handy 1) travelling at a 40+mph speed (on his road). There was another instance of the truck travelling at that speed with the operator using a cell phone. He explained he lived dead center on a dangerous curve with a 90-foot sight distance both directions. The situation was a life safety issue. He believed a fully loaded truck travelling at that speed would not be able to stop in time to avoid an accident. Mr. Culbert questioned how long the landscaping business had been operating from the location; he heard it operated since 2001. He asked if all the technicians land licensed in New Hampshire as advertised. He wanted to know if materials would be stored at the site, such as concrete pavers, bricks etc. He asked if there would be an overflow of materials from other operations performed by A Handy Company. Mr. Culbert suggested the Board limit the hours of operation to be from 8am-6pm, with no diesel starting earlier than 8am due to noise and fumes. With operations running no later than 12noon on Saturday and no operations on Sunday to allow neighbors to enjoy their own properties. He told the Board that his upstairs bathrooms and bedrooms of his condex weren't screened from the operation, which was an infringement of privacy. He questioned where snow storage would be located. Mr. Culbert didn't feel the proposed was a suitable business for the residential district based on all the concerns. He asked the Board to conduct a site walk.

Mr. Richard Moore, 56 Simpson Road told the Board he was a direct abutter to the driveway and told the Board that Simpson Road was accessed by a lot of industrial and commercial trucking. He walked the road (1-2 miles every day, and would hate to see anymore trucking added. Given the area was zoned residential; he was concerned granting a variance would set a precedent. With regard to noise and truck traffic, he noticed some large trucks accessing the property and assumed they were delivering materials. Mr. Moore was concerned with chemical storage given the sensitive aquifer located in the area.

Mr. Robert Boucher, 10 Katie Lane, spoke for himself and other neighbors. They had concerns about the unintended consequences and long-term impact on the value of the abutting properties being in a residential area. He wanted to avoid a similar situation as that occurring on Fletcher Drive, where a landscaping business operated without proper variance upsetting the neighbors. Mr. Boucher didn't see the hardship of the property given that Mr. Ouellette wasn't the property owner. He questioned why Mr. Suppa would sublet his property to Mr. Ouellette; they weren't in business together. He didn't

understand the concept of the variance or why it was being heard. Mr. Boucher stated his personal opposition to the variance for the purpose of preserving the investments neighboring properties.

Mr. Fred Newey, 4 Ellsworth Lane resided at his property for approximately 15 years, which was located at the end of Mr. Suppa's driveway. He noticed an increase of traffic, specifically exiting Mr. Suppa's driveway and an increase in noise. Mr. Newey's major concern was regarding the potential impact on property values. He believed with increased noise and traffic there would be an impact on his property value. He felt there were other alternatives for A Handy Company's vehicle storage and didn't feel the neighbors should have to endure the potential impact on property values when there were other options available.

The Board discussed whether or not to conduct a site walk.

MOTION: (LaFrance/McNamara) To conduct a site walk.

VOTE: (3-2-0) The motion carried. Mr. Kearney and Ms. Paliy voted no.

The Board scheduled a site walk for November 15, 2014 beginning at 8:30am.

Mr. Kearney will be unable to attend the site walk and asked permission to review the site November 22, 2014. Mr. Suppa welcomed Mr. Kearney to review the site whether he was home or not.

Mr. Ouellette clarified that Mr. Suppa was the landowner/applicant and had asked him to do present the variance request. Mr. Hennessey understood Mr. Suppa to be the landowner and variance applicant. He felt it was entirely appropriate for the end user to address the variance request with the Board.

Mr. Suppa called attention to the photographs submitted and told the Board there was no way they could have been taken from the abutter's property because there was wooded area in between the two properties. With that statement, Mr. Hennessey believed the site walk would be important. He asked that the photographs be included with the Board's information during that walk. He told the public the Board based their decision on the five criteria and felt the impact on abutters and property values was the crux of the case. The Board will want to view how the area was screened.

Mr. Gowan informed if the variance was granted the Planning Board would conduct a minor site plan review. It was during that review that some of the issues raised by abutters would be addressed, unless the Board decided to provide a lengthy conditional variance.

In response to abutter concerns, Mr. Ouellette told the Board that they moved to the site August 7th, any noise prior to that date was not generated by his operation. Mr. Hennessey asked if the prior occupant was in operation prior to August 7th and asked for confirmation that any noise prior to that, as described by the abutters, had nothing to do with Mr. Ouellette's operation. Mr. Suppa answered yes; and explained one of the reasons the previous business was evicted was due to the noise.

Mr. Ouellette also spoke about the submitted photographs and told the Board from the front of Mr. Suppa's home to the location was approximately 175ft. away with approximately 65ft. of tree buffer.

Mr. Hennessey was interested in viewing the sight lines at the exit of the property.

Mr. Ouellette reiterated that Mr. Suppa was the applicant and he was simply asked to speak on his behalf. Mr. Hennessey understood the Board was looking at the operation from Mr. Suppa's aspect. He said a variance would run with the land and could apply to another company. He said it was useful to use Mr.

Ouellette's company as a benchmark with regard to what impact a landscaping company would have on the neighborhood. It was understood that a variance would run with the land and if granted would apply to Mr. Ouellette's company or subsequent tenants. Mr. Ouellette stated neither he nor Mr. Suppa were opposed to any stipulation of variance approval, such as becoming null and void in the event A Handy Company vacates the property. He recalled the Board making that type of stipulation on at least two recent variances.

Mr. Ouellette spoke about the concrete blocks and noted they hadn't encroached any further. They would be viewed during the site walk. With regard to Mr. Culbert's concerns, he stated they didn't keep any pesticides or fertilization on site. He wasn't aware what occurred on site in the past. Mr. Ouellette reviewed the Nashua Regional Planning Commission map and saw that the land was high and dry. He understood based on a past business where snow storage was located, which will be pointed out during the site walk. Mr. Ouellette discussed the hours of operation. He remained mindful of the Suppa residence and was good friends with Mr. & Mrs. Newey located at the end of the driveway. During the move in period he contacted Ms. Newey to find out if the operation was noisy to which she responded she couldn't hear anything. When inspecting the property (within the past 45 days) Mr. Ouellette told the Board there was a professional tree service that clear cut an area behind Mr. Culbert's home. The tree service performs various operations including logging. He told the Board he occasionally would bring hard wood to Mr. Suppa's site but it was not processed; they were not a fire wood company.

To address Mr. Moore's comment regarding traffic and curbing, Mr. Ouellette provided the Board with a copy of the Code Enforcement Officer letter that specified traffic and what he witnessed. Mr. Hennessey noted the violation detail was lengthy and therefore read a section on page two which made reference to Mr. Suppa residing on parcel of land approximately 5.4 acres located on a 'high traffic road'. The letter indicated the land was set back off the road with large wooded areas buffered from neighbors. During the observation period it was Code Officer's opinion that the traffic caused by the landscaping trucks did not disrupt traffic on Simpson Road or cause more traffic than what would be considered normal on the road. No noise was heard that would be a nuisance or hindrance from the time vehicles were loaded and left the site. The letter noted Mr. Suppa's demeanor was friendly and cooperative.

Mr. Ouellette told the Board he currently had two trucks accessing Mr. Suppa's property; one of which was his own. The employees left the site at approximately 7am-8am and returned at approximately 5pm-5:30pm. In the summer the return time may be up to 7pm the latest. Generally the operation hours were 7am to 4pm. Mr. Ouellette understood in the past there had been noise at the site. He stated he had cleaned up the property and removed dead shrubs, stumps, and plants; and would continue to clean as he was able. He told the Board he had no problem repairing the stone wall. Mr. Hennessey told Mr. Ouellette he didn't need to refute everything that was said and suggested continuing the discussion at the site walk. The abutters were encouraged to attend the site walk.

The Case was date specified to the December 8, 2014 meeting.

SITE WALK – November 15, 2014 – 8:30am

Case #ZO2014-00022 - Map 14 Lot 9-132-2 - OUELLETTE, Lance & SUPPA, Jamie- 54 Simpson Road

DATE SPECIFIED CASE

Case #ZO2014-00022 - Map 14 Lot 9-132-2 - OUELLETTE, Lance & SUPPA, Jamie- 54 Simpson Road

MINUTES REVIEW

October 16, 2014:

MOTION: (LaFrance/McNamara) To approve the October 16, 2014 meeting minutes as amended.

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

ADJOURNMENT

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

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

The meeting was adjourned at approximately 8:20pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary