

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
January 10, 2022

Mr. David Hennessey calling the meeting to order at approximately 7:00 p.m.

PLEDGE OF ALLEGIANCE

Mr. McNamara called roll.

PRESENT ROLL CALL: David Hennessey – Present
 Peter McNamara – Present
 Jim Bergeron – Present
 Joseph Passamonte – Present
 Alternate David Wing – Present
 Planning/Zoning Administrator Jenn Beauregard – Present
 Recording Secretary Jill Atkinson – Present

ABSENT: Alternate Jeff Caira
 Matthew Hopkinson
 Alternate John Westwood

Mr. Wing acted as secretary for this meeting in the absence of Mr. Hopkinson.

MINUTES:

December 13, 2021

MOTION: (McNamara/Passamonte) To approve the December 13, 2021 meeting minutes as written.

 (5-0-0) The motion carried.

Mr. Hennessey explained that one board member, Jim Bergeron, is recusing himself for the remand case. There were only five board members present, including Mr. Bergeron. Mr. Hennessey explained that it has been the tradition practice of the board, not the law, to allow an applicant to decide whether to proceed with only four voting members. This choice is given because three affirmative votes are needed to grant a variance or special exception. The board allows the applicant to decide whether to proceed or put their case off until the next meeting. Mr. Hennessey also noted that the board usually does not allow a new case to be heard after 10:00 p.m. and they would keep this practice for tonight's meeting.

COURT ORDERED REMAND

CASE ZO2021-00001-CR

GENDRON, Patrick & Kim – 579 Bridge Street – Map 22 Lot 8-85 (Court Ordered Remand to review only the hardship criterion as directed by the Housing Appeals Board's decision order dated September 16, 2021) 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. Bergeron stepped away. Mr. Hennessey explained that Mr. Bergeron is a member of the planning board and if this variance is approved, it will end up in front of the planning board, so he is recusing himself.

Mr. Hennessey gave some background on the case. He explained this is a court ordered remand by the new housing board in the state. The housing board decided the zoning board was in error in denying the variance and has remanded the board to review. The board will only be reviewing one part of the case. Mr. Hennessey explained that there was a joint meeting with the planning board last February with a presentation about the case, a site walk, and a further meeting about the case with healthy debate about work force housing. The board struck down the variance and did not allow the case to proceed. The housing board was clear in stating why the denial and went into the definition of hardship, which is what the board went against the applicant on in a 4-1 vote, finding there was no hardship. Mr. Hennessey read some of the ruling for the public and into the record. Mr. Hennessey said he had made a ruling, as chair, that they could not get into a hardship argument and the applicant did not present a hardship argument. The ruling explained that the rejection of the variance request has been eliminated and has been remanded to the Town of Pelham ZBA in order to review only the hardship criteria. Mr. Hennessey explained the board is starting anew on the one hardship criteria, not whether workforce housing is good for Pelham or to rehear the entire variance request. If the board votes to approve that, the board also needs to assign a number of units to be put into the case and it will go back to the planning board for their own determination. What the planning board decides in terms of density will prevail.

Mr. Hennessey noted there are only four voting members. The applicant was given the right to decide whether they want to continue with the rehearing tonight.

John Cronin, attorney from Manchester representing the applicant this evening, came forward. He said he has spoken with Mr. Gendron briefly and due to the importance of the case from Mr. Gendron and the time he has invested in it, his preference is to put it off until there is a full board.

Mr. Hennessey date specified this to the next meeting. He explained that the delay in the rehearing after the housing board's remand was to give the applicant time to come up with the economic argument and data to support it. Mr. Hennessey explained no one was dragging their feet. He noted that he didn't see the request as unusual or harmful.

Mr. Cronin explained that Mr. Donahue, from Donahue and Associates, was present tonight and he has done an evaluation and detail to provide the board with the information they feel is needed for the board to look on this favorably. They are hoping Mr. Donahue will be available for the next meeting.

Mr. Hennessey confirmed with Ms. Beauregard that the next meeting will be February 14. He noted this will be the first case that will be heard that night. Mr. Hennessey said he will do his part to make sure there are 5 voting members in attendance for that meeting.

Mr. Cronin noted that they are sympathetic to the composition of the board and how difficult it can sometimes be to get alternates and noted the effort was appreciated.

CONTINUED:

CASE ZO2021-00033

SOUSA, Jose – 25 Hearthstone Rad – Map 14 Lot 3-36 – Seeking a Special Exception to Article XII, Section 307-74 of the Zoning Ordinance to permit an existing unpermitted Accessory Dwelling Unit located within the basement to remain and to bring it into compliance.

Mr. Hennessey noted there were five voting members for this case.

Mr. Wing read the list of abutters aloud. There was no one whose name was not called that is an abutter or has a statutory interest in the case.

Mr. Sousa apologized for missing the last meeting.

Mr. Hennessey explained that a special exception is not the same as the variance. With a special exception, if the criteria are met, the variance must be approved.

Mr. Sousa explained he would like to add an in-law apartment. Mr. Hennessey explained it was an Accessory Dwelling Unit, not an in-law, as the state law changed a few years ago allowing the units to be rented out to the public on the open market, even though Mr. Sousa is planning to add it for a family member.

Mr. Sousa explained it is for his parents and the intention is not to rent it out.

Ms. Beauregard explained they meet the criteria. She believes a new septic has already been installed to support the Accessory Dwelling Unit with a three-bedroom home. Everything has been looked over and approved by the building inspector and the applicant has been working with the code enforcement office to bring the already existing unit into compliance.

Mr. Hennessey thanked Mr. Sousa for his cooperation with the town and the town working with a preexisting unit to make everything legal.

No one from the public came forward with questions or comments.

CASE #ZO2021-00033

ROLL CALL VOTE:

Mr. McNamara – yes
Mr. Bergeron – yes
Mr. Passamonte – yes
Mr. Hennessey – yes
Mr. Wing - yes

(5-0-0) The motion carried.

SPECIAL EXCEPTION GRANTED

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

HEARINGS:

CASE ZO2022-00001

BILLINGS, Raymond – 143 Old Gage Hill Road – Map 17 Lot 13-49 – Seeking a Special Exception to Article XII, Section 307-74 of the Zoning Ordinance to permit construction of a 960 sq. ft. Accessory Dwelling Unit to a single-family home while expanding the existing house with a new Master Bedroom suite (this lot is the result of Voluntary Lot Merger between 17-13-49 & 17-13-50)

Mr. Wing read the list of abutters aloud. There was no one whose name was not called that is an abutter or has a statutory interest in the case.

Mr. Billings explained he was here representing 143 Old Gage Hill Road and seeking a special exception for an ADU to an attached, single-family dwelling.

Michelle Morgan, 130 Old Gage Hill Road, was present.

Ms. Beauregard explained that this is not existing yet. Everything has been reviewed by the building inspector. It doesn't exceed 1,000 square feet. They have a state approved septic design for a two-bedroom ADU and a three bedroom house.

Harmony Maraldo, 145 Old Gage Hill Road came to show her support stating she has no problem with the special exception.

Mr. Bergeron asked if the lot line merger will need any action in front of the planning board. Ms. Beauregard explained it would have already been signed by the chair of the planning board and recorded by the registry of deeds. Lot mergers do not formally go before the planning board. They are approved by the assessing department and assigned a lot number, signed by the planning board chair, and recorded at the registry of deeds.

Mr. Bergeron explained the lot had come before the board before and this is probably the best possible and most efficient way this could be handled. He is in favor and will probably sit on it on the planning board. Mr. Bergeron thinks it's a good thing, which Mr. Hennessey agreed.

No one else from the public came forward with questions or comments.

CASE #ZO2022-00001

ROLL CALL VOTE:

Mr. Passamonte – yes
Mr. Bergeron – yes
Mr. McNamara – yes
Mr. Hennessey – yes
Mr. Wing - yes

(5-0-0) The motion carried.

SPECIAL EXCEPTION GRANTED

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

CASE ZO2022-00002

SCHNEIDER, Eric – 2 Little Island Park – Map 24 Lot 11-310 – Seeking a Variance to Article III, Section(s) 307-12 Table 1, 307-13, 307-14 & Article VII, Section(s) 307- 37, 307-41 of the Zoning Ordinance to permit construction of a 2nd story on a newly renovated existing single-story home, using the homes original footprint on a non-conforming lot located within the WCD's 50' setback. Proposing to add a master bedroom with a ¾ bath and laundry room, with partial attic space above and storage. Also, an enclosed 5' x 5' entrance located approximately 6' from property line and a 20'

x 24' 2-car garage to be constructed from 5' to 10' from property line. The total height of home will be 27' from grade.

Mr. Wing read the list of abutters aloud. There was no one whose name was not called that is an abutter or has a statutory interest in the case.

Mr. Schneider asked Mr. Hennessey to read their letter into the record, which Mr. Hennessey did.

Mr. Schneider had nothing to add to the letter that was read.

Mr. Hennessey explained there are five criteria used to decide on variances. Mr. Schneider read the five criteria and his responses into the record. He had nothing else to add.

Mr. McNamara asked for clarification as to which side of the property the driveway was located. Mr. Schneider explained it was on the right side.

Mr. Hennessey asked what the total height from grade will be with the addition. Mr. Schneider explained that the drawing showed a total height of 27' but in having reviewed the detailed design, it may need to be 28 to 28 1/2'. Mr. Hennessey confirmed it would be under 30' and Mr. Schneider asked if it was possible, he would like to get an approval for a design under 30' in case it does need to go higher going through the design process.

There were no further questions from the board at this time.

No one from the public came forward in favor of the proposal.

Paulette Bulmer, 79 Honor Roll Road came forward stating that to see the property improved would be great and a new septic system would be better. She was looking for clarification as to the placement of the septic in relation to the house and the garage being in the driveway. Mr. Schneider put a drawing up for the board. Ms. Bulmer explained that they've been before the board in the past and their first concern is always septic. The home has always been improved greatly. They would be happy to see a nice place going in.

Mr. Hennessey said that normally it's a given that state approval would be required on a septic. He explained that he understands the cost, but it would be a requirement if the variance was approved.

Mr. Bulmer said they know how hard it is to be involved with DES, the town, etc. She is fine with the project if all groups are watching over it.

Ross Sargent, 12 Little Island Park and owner of 4 Little Island Park, came forward. He is concerned on the setbacks, where the garage would be on the property, as it doesn't seem like there's room, and mentioned they don't know much about the project.

Mr. Hennessey asked for the project plans to be shown on the projector. Mr. Sargent explained that none of the abutters have any information. Mr. Schneider showed the site layout and explained where the garage was shown but how it could be moved.

Mr. Sargent asked what the setbacks would be from the right of way to his lot. Mr. Schneider said if the garage is moved up to the building, there would be a 15-foot setback from that side to the road going down through and that was the most setback that could be done. Mr. Sargent asked where the septic would end up. Mr. Schneider explained where the cesspool currently is and explained the new septic would probably

going in the same place and showed on the diagram where it would probably leach into and noted that it hasn't been designed yet. Mr. Sargent said the current septic is leaching out into his property through the wall when it's full. He said it was probably pumped recently and the Schneider's might not be aware.

Mr. Hennessey said the concerns were valid, and he is more than welcome to bring them in front of the board. He told Mr. Sargent he is welcome to call the planning department and speak to the compliance officer if the variance is allowed.

Mr. Sargent said he just wants to make sure it doesn't deter from his property. Mr. Hennessey explained that in the five criteria, one of the criteria is to make sure values of surrounding properties are not affected. He mentioned there are very few properties around Little Island Pond that are totally in compliance with the current zoning. Mr. Sargent said he is all for making it a better place. They are adding another bathroom and another floor and taking away from people's views.

Mr. Hennessey asked if the addition would interfere with Mr. Sargent's or any other surrounding properties' views of the pond. Mr. Sargent said he was sure it would. Mr. Hennessey explained that if there is a suggestion that views would be affected, it is usually the practice of the board to ask for a site walk and have the applicant show some of indication of the new height of the structure. He mentioned there is no height restriction in Pelham, but in granting a variance, the board wants to make sure surrounding values are not adversely affected. If there is a concern about views being blocked in any way, Mr. Hennessey said the board should have a site walk before the next meeting.

Mr. Sargent noted that a site walk would be great, and he would like to have a better understanding of the plan. He said everyone deserves to have a nice place but feels it will be overwhelming.

No one else came forward in opposition or with questions about the property.

Mr. Schneider asked how to address compromise during the meetings and if there's anything in particular that he can do to address concerns. Mr. Hennessey explained that unlike with the planning board, the board has to approve or deny the request as given to the board.

Mr. Hennessey asked if anyone's view of the lake will be interfered with. Mr. Schneider said he can't say for certain. He mentioned there was one unit that might have a mild change. He showed on a drawing that the house on the corner could potentially have part of their view obstructed but he cannot speak for anyone in particular.

Mr. Bergeron said he believed he knew where the lot was. He asked if to the east of the lot was a building that has recently had some renovations. The Schneiders believe it was #1. Mr. Bergeron asked if to the west was an empty lot, which the Schneiders confirmed. Mr. Bergeron explained that shoreland protection input will be critical as they have certain percentages of increased imperviable area that cannot be exceeded. Going up would not affect that. Mr. Bergeron's concern would be with the addition of the garage. He agreed there should be a site walk.

Mr. Hennessey asked if they just purchased the property and whether or not they got a site assessment. Mr. Hennessey explained it was required by the state of NH if a property is within a shoreland protection agreement. Mr. Hennessey noted that by law, the Schneiders should have received it prior to signing their purchase and sales agreement. Mr. Schneider said they may have. They got something regarding the septic but was not sure about a site assessment. Mr. Hennessey asked the Schneiders to take a look for it and noted it would help them in their application to DES for septic system approval.

The public hearing was closed.

MOTION: (McNamara/Passamonte) To make the application subject to approval by DES in general and specifically approval of the septic system design.

Mr. Bergeron added for discussion. He explained there were two variance requests in front of the board and asked if the contingency upon the vote would be with the assumption that the garage would be part of the consideration with NH DES. Mr. Hennessey said that is what is before the board.

VOTE: (5-0-0).

The motion carried.

Ms. Beauregard asked if Mr. Hennessey including shoreland protection with the DES approval, which Mr. Hennessey confirmed.

Mr. Wing asked if that included a state approved septic. Mr. Hennessey said DES does septic system design approvals.

The site walk was scheduled for Saturday, January 29 at 9:00 a.m.

Mr. Hennessey explained a site walk is an extension of the hearing and is a public hearing. He asked the property owners to rig something so the board members can see the height of the proposed addition, which Mr. Schneider agreed. It was also asked that they lay out something to show where the garage will be going. Mr. Hennessey explained that the board will be looking for obstructions of view, questions will be run through him. Abutters will be able to see where the garage will be going.

Mr. Hennessey date specified the continuation of the hearing to February 14 and noted it will be the first case heard after the rehearing.

CASE ZO2022-00003

CLEMENS-FOX, Carol – 466 Windham Road – Map 8 Lot 9-144-5 – Seeking a Variance to Article II, Section(s) 307-6, 10 & Article III, Section(s) 307-12 Table 1, 307-14 of the Zoning Ordinance to permit one lot of a future 3 lot subdivision to have 0.83 acres where 1-acre is required. All other requirements for this lot if approved will be met. Also, to permit the continued use of a private drive to a single-family home that has been in use since the 1800's.

Mr. Wing read the list of abutters aloud. There was no one whose name was not called that is an abutter or has a statutory interest in the case.

Carol Fox, the owner of the property, came forward explaining she was requesting a two-part variance for 466 Windham Road.

Mr. Hennessey asked Ms. Fox to read the 5 criteria into the record. Ms. Fox read the responses into the record.

Mr. Hennessey explained the board has two letters of intent that he believed Ms. Fox has covered with her answers to the five criteria. Mr. Hennessey confirmed the first variance request is for the driveway as they do not have 200 feet of frontage and that's the way it's always been. He said the board has the letter of intent but explained for the public is that there is not 200 feet of frontage where the driveway exists. He

noted the rule is that you need to have 200 feet of frontage where the egress or entrance into the property is. He confirmed that Ms. Fox is asking for a variance to maintain that because she is interested in subdividing some of the other land. Ms. Fox explained that she would like to keep the current driveway as is in any event. It is integral part of the historic farmhouse. It is tree lined, self-contained unit with stone walls on either side the length of the driveway. Mr. Hennessey explained they would not need a variance except they are talking about subdividing the property and would lose right to maintain a grandfathered property that doesn't have sufficient frontage for the existing driveway. Ms. Fox gave some explanation of the property. She said there are then two lots, each with 200 feet of frontage on Arlene. She explained the historic farmhouse is one contained area and then there is a field that has a total of 420 feet of frontage wrapping around to Gordon Avenue that would accommodate two one-acre lots.

Mr. Hennessey explained there are 2 variance requests, the first for the driveway to be maintained integral with the property and the second request has to do with the fact that by subdividing, it leaves an undersized lot, under 1 acre. Ms. Fox confirmed the undersized lot would be part of the farmhouse. Mr. Hennessey explained they are not here to discuss the proposed subdivision, except that it would create an undersized lot where the house is.

Cindy Ronning, 8 Andover Street, realtor with Century 21 Northeast was present with Ms. Fox. She explained that they would not know the exact lot size until it was surveyed. Ms. Fox said she believes it 2.8 acres.

Ms. Beauregard explained that if they were to sell the lot, Ms. Fox wants to be able to sell with the potential to subdivide two additional lots. If someone wanted to subdivide just one part, part B would not be needed. Ms. Fox wants to be sure that the access to the farmhouse is preserved either way. Ms. Beauregard explained that Ms. Fox prefers to sell with the potential for two additional lots.

Mr. Hennessey believes part B needs to be part A. He said if a variance is not granted for an undersized lot, the variance for the driveway is moot. Ms. Beauregard said Ms. Fox could do a two-lot subdivision with two conforming lots without a need for a variance for an undersized lot. Mr. Hennessey noted if a variance for the undersized lot isn't granted, she has a non-conforming, preexisting lot. Ms. Beauregard said Ms. Fox would need a variance if somebody were to subdivide the property and she loses access on Gordon Heights. Mr. Hennessey explained that Ms. Fox's testimony is that her egress is on Windham Road. Ms. Beauregard said if the lot were to be cut up, they would have to meet current zoning and Ms. Fox wants to be able to sell with the potential to subdivide. The only way to ensure her access would remain intact would be to get a variance for the access. Mr. Hennessey confirmed with Ms. Beauregard that the variances are for the driveway to be in place if it becomes an undersized lot and the variance to have an undersized lot to allow the subdivision to take place.

Mr. McNamara confirmed the driveway was a long standing, preexisting use and is the current right of way. He asked if property were to be subdivided, even just into two, the right of way would be extinguished. Ms. Beauregard said that was not true but based on current zoning Ms. Fox would have to access her lot where her frontage is, and she would still need that variance.

Ms. Ronning said it would be easier to get one additional lot if the driveway was in use because of the barn and the house. She showed the proposed lots on a diagram.

Ms. Fox added that if the variance was allowed, it would allow for two lots, each of which are conforming, assuming the understanding of the acreage is correct.

Mr. Hennessey explained the board would continue discussion on the two requests together, but the vote would be separate.

Mr. Wing asked if the depiction shown was to scale with the approximate location of the existing home and barn. Ms. Ronning confirmed it was.

Ms. Ronning noted the house is in the reflections book of Pelham.

No one from the public came forward to speak in favor of the proposal.

Mr. Hennessey explained he had a letter sent by Mark Wholley, 1 Arlene Drive, which he read into the record. Mr. Hennessey explained that in response to Mr. Wholley's question, the process would be the same as done here, an applicant would have to appear before the board and show there is a hardship, a need from the applicant's point of view to make an exception to the zoning laws. Mr. Hennessey commented that the board is not a court, is quasi-judicial, follows the rules and when exceptions are made, they don't hold precedence for future decisions. Each case is different and stands on its own and the five criteria are gone through. There is no precedence, unlike a court case.

Christine Dupont, 462 Windham Road, came forward with a couple questions. She said the information received in the mail talks about an undersized lot and two additional, one-acre lots. She said she understands the frontage from Windham Road has been grandfathered in. She asked if the two other lots would come in from Arlene Drive. She said that by looking at the zoning map, it doesn't look like there's enough frontage for two lots. Mr. Hennessey explained his understanding is the total parcel is naturally fronting on Windham Road and the other parcel on the other side of the trees that the applicant is saying is naturally amendable to subdivision. In order to subdivide, the applicant would need a variance to keep the existing homestead at .85 acres, which is undersized. Ms. Dupont asked if the private drive would be used for the two new lots. Ms. Dupont said it was confusing the way it was written. Mr. Hennessey said the board has to decide what to do with the land, having a request to allow a portion of the parcel to be undersized and allow for the continued access to that section from Windham Road without enough frontage. Mr. Hennessey said the subdivision itself is another request and would have to go in front of the planning board. Ms. Beauregard explained they would have to have an engineered plan showing they meet the current zoning before another board.

Diane Joslin, 10 Gordon Avenue, an abutter directly behind this property came forward. She said her name was mentioned but not her address. She said the subject driveway goes in the back of Ms. Joslin's home. Mr. Hennessey confirmed she is a direct abutter. She asked if the barn is being kept. Mr. Hennessey said he is unaware, but it is a good question. Ms. Joslin doesn't believe Ms. Fox has enough land in the back of the house because she is in the backyard. Ms. Joslin can see the subject driveway from the back of her house. Ms. Joslin said it is unknown what Ms. Fox has in the front because there is a lot of debris and it's not well maintained. Mr. Hennessey confirmed that Ms. Joslin doesn't know exactly where Ms. Fox's lot line is. Ms. Joslin said she would like to know where the two proposed houses are going in relation to the driveway. Ms. Beauregard believes they are asking that if there are new houses, for them not to be accessed through that driveway, just the existing farmhouse. Ms. Beauregard said she understands that they are asking for the potential for a buyer to be able to put in another house or two. Ms. Joslin said she thought Ms. Fox was building two new houses.

Mr. Hennessey asked if there will there be a setback problem. Ms. Beauregard said there could potentially be one with the barn, but they would have to ask the applicant. Mr. Hennessey said there is a variance request for the frontage for the driveway and a variance request to create the subdivision behind it into two lots, but no variance request for setbacks. Mr. Hennessey said he is bothered because he doesn't know how they can vote on it, without a certified plot plan, if there is a potential for setback issues. Ms. Beauregard said they could not do a subdivision plan without meeting the setbacks.

Ms. Joslin asked where the septic would be. Mr. Hennessey said that would go to planning. Ms. Joslin said she would like to see a layout as she is a direct abutter.

Mr. Bergeron clarified that Ms. Joslin's lot is 9-144-4 and is the lot directly to north, sharing about 289 feet of common lot line.

Ms. Joslin confirmed she received notification. Ms. Joslin asked if there is the rule that you need to have an acre to build in Pelham, which Ms. Beauregard confirmed. Ms. Joslin explained she has nothing against the applicant building, but just wants to make sure it's legal. Mr. Hennessey explained that a lot of properties in town do not meet current zoning because they were there before zoning laws and they are non-conforming, preexisting use. He said this is before the board because Ms. Fox wants to make a change and it would no longer pre-existing and has to come before the board for a variance.

Ms. Joslin said Ms. Fox's home is over 200 years old and the land was farmland. She asked if the land, barn and what exists would matter. Mr. Hennessey said the state of New Hampshire is built upon local rules and laws. He explained that in some towns, like Bedford, you can't change a barn and the homeowner has an obligation to maintain it in good working order. Pelham does not have that. Towns like Bedford and Amherst have historical districts. Pelham doesn't have that. Ms. Joslin asked if Ms. Fox could knock her house down if she wanted. Mr. Hennessey said she could be because there is no historical district. Mr. Hennessey said if the variances are approved, planning would be involved, and the abutters would be re-notified. Ms. Joslin asked if at that point, would she know where the houses would be and could she deny them. Mr. Hennessey said the planning board is always interested in what neighbors, abutters have to say, but she could not personally deny them. Ms. Joslin asked if one house would be on Arlene Drive. Mr. Hennessey said he does not know. Ms. Beauregard said they would not be able to be accessed from that lot without a separate variance. No additional homes could be accessed off the current driveway. Ms. Joslin commented that the land abuts three streets. Mr. Hennessey mentioned that he has said several times that a variance is needed if the lot size is reduced because Ms. Fox' access to her house is off Windham Road. If changes were to be made to the zoning and there is less than an acre, it would be nonconforming, not preexisting. He explained that Pelham works off of where the access is actually off of a public road and Ms. Fox has been using the access off Windham Road. She is here for the driveway and the variance for back lots.

Mr. Wing confirmed that Ms. Joslin was read on the abutter's list, but no address was read because she uses a P.O. box. Mr. Wing asked for confirmation that the variances are for the frontage on the road and to have an undersized lot and have nothing to do with the back lots. Mr. Hennessey said that is correct. The board is not dealing with the subdivision. Ms. Fox would be creating an undersized lot and because it will be undersized, she wouldn't have enough frontage for the driveway.

Andrea Bernier, 4 Arlene Drive, came forward for clarification. She asked to confirm that the variances before the board do not subdivide the lot, which Ms. Beauregard confirmed. The variances before the board are not covering subdivision. Ms. Beauregard explained that Ms. Fox would be shrinking her lot if somebody were to go ahead and subdivide the lot and her lot would be smaller. Ms. Bernier asked if it's going to be two lots or three. Mr. Hennessey explained there is one chunk of land and Ms. Fox wants to carve off a piece that is less than an acre with current house. Doing so creates the driveway without sufficient frontage and creates an undersized lot, both needing variances. Ms. Beauregard said it doesn't create the lot but gives permission to create the lot. It would go to the planning board to create the lot. Mr. Hennessey said the zoning board doesn't create lots. Ms. Bernier mentioned if the variance was allowed, it would in turn allow the lot to be subdivided and that's the issue the abutters have a problem with as it would develop the corner lot. It would create more traffic, another driveway, she would have no more privacy. Ms. Bernier said she knows it won't be decided tonight but if approved, that could happen in the future. Ms. Beauregard confirmed if the variances were approved, there is the potential for a subdivision.

to be before the planning board in the future. Ms. Bernier commented that that would go against why Gordon Heights was created.

Pat Regan, 8 Arlene Drive, said she thinks that allowing the variance will create less than an acre per plot, which the development required one acre plus. She noted that in the last few months, several homes in the development have been sold to multiple generations in a single dwelling, which has created more traffic and noise. Mr. Hennessey asked if she meant Accessory Dwelling Units. Ms. Regan explained they were single family homes with two to four generations in them and this is creating more traffic and more noise. She believes this would be too much and once a variance goes through, anything could happen. She said the land could be sold to anyone, not just family. She noted that everyone else has been required to maintain at least an acre plus lot and she does not approve of this.

No one else from the public came forward.

Ms. Ronning said she talked to the surveyor and according to the deeds, there are 420 feet of frontage on Arlene and Gordon, but that is all up to the planning board. Mr. Hennessey noted she is saying there is sufficient frontage to put in two additional lots there, but that would leave the property with the current house on Windham Road nonconforming.

There were no further questions from the board. The public hearing was closed.

Mr. Bergeron noted that the piece of property was previously subdivided. It was originally owned by the Emerson Family, who were a selectman and town clerk and tax collector in town for years. The subdivided the property in approximately 1970. There was no road system built at the time, so they came off the road to the property. Mr. Bergeron said the board has to put application up against the spirit and intent and the criteria that has to be adhered to in the zoning ordinances. Mr. Bergeron pointed out the particular lot is approximately 2.8 acres. It has seven direct, contiguous abutters with property sizes of 1.1, 2, 1.5, 1, 1.4, 1.7 and 1.9 acres. These lots either abut the driveway or the main portion of property. The average lot size of the lots is greater than 1.5 acres. Mr. Bergeron said that directly across the street, legal abutters within 200 feet, there are 4 more lots. Those lots are 1.3, 2.3, 1, 1.1 acres with an average greater than 1.4 acres. Mr. Bergeron said that looking at the property in relation to the criteria that has to be followed, you have to ask if the lot is being used to its full potential. Maybe it is and maybe it's not. It is similar to the uses around it, single family on a relatively large parcel. The property has 400 feet frontage on Gordon and Arlene Drive with access off of Windham Road. The driveway uses close to 6,000 square feet for the driveway access. Mr. Bergeron said what he is getting at is if the variance is granted, it is creating a nonconformity within a subdivision that happened legally and properly in the '70s and '80s and happened according to reasonable conditions and standards. It was not previously existing. It was created by the planning board. Mr. Bergeron said there is no supporting documentation with the application that two other lots could exist. The applicant has said they don't have the survey information and don't want to pay for the survey information until variance happens. Mr. Bergeron said it's hard for him to see how it meets the spirit and intent of the zoning ordinance because it would create a nonconforming lot that doesn't exist within the subdivision. It would create two lots smaller than the average in the subdivision, and it is unknown if they can be created because there is no engineering. It would eliminate the frontage that this lot has. Mr. Bergeron said he is having a difficult time. He mentioned he sees it may have the potential, with engineering, for a single lot subdivision, with 400 feet of frontage in the back. This lot could continue as a conforming lot with the farmhouse and driveway onto Windham Road with the potential for another lot to exist if the soil conditions were found to be adequate. Mr. Bergeron said he sees only one direct abutting lot that is one acre in size and is triangular shaped and it probably wouldn't fly today. Mr. Bergeron doesn't think it meets the criteria, the spirit and intent and might possibly have diminution in surrounding property values because there would be two out of character lots for the area. Mr. Bergeron noted there is current use happening on the property and there is no denial of a property right in not granting variance.

There is still the potential for a subdivision into two lots, not three. Mr. Bergeron mentioned again, he is having difficulty as it's being presented.

Mr. Passamonte said he agreed with Mr. Bergeron. He sees the potential for one additional lot, not two. Mr. Bergeron noted that is not the board's purview. They have to look at it as it's being requested.

Mr. McNamara asked if the two requests be separated. Could the board grant the request for the access and deny the other?

Mr. Bergeron noted the lot now is not non-conforming in any way. It is a natural setting with 400 feet of frontage plus the driveway down to the road. Mr. Hennessey noted the driveway exits onto Windham Road. Mr. Bergeron said the requirement is for frontage be the place for access. The variance would be creating substandard lot within a legally and properly created subdivision. A nonconformity would be created in area and frontage. Mr. Bergeron explained that he sees that as ruffling the spirit and intent.

Mr. Hennessey said that in terms of separating the variances, the driveway would not be permitted today. He said he is struggling with the hardship and is not sure he sees a hardship. He understands why she wants to do it get the variances, but she doesn't need to unless the second variance is granted. Granting the variances would be creating two nonconformants, the frontage as well as undersized lot, which the board have always been reluctant to do.

Mr. Bergeron said that in his years on board, he hasn't seen the board take a subdivision that was created after zoning and start to make it nonconforming. He noted a proper and legal subdivision was done in '70s and '80s. He explained there is the potential for another subdivision without having to come in front of board, and that was pointed out by the planning director and Mr. Wholley, for one other lot.

Ms. Beauregard mentioned she thinks the applicant is requesting the variances to be split. Mr. Hennessey said the board will be taking two votes, as he mentioned at the beginning.

Mr. Wing said he wasn't familiar with the property. He looked at it on zoning maps and Google Maps. That's why he asked the question regarding whether the drawing was to scale. Mr. Wing said he was concerned how you would get .8 acres and 2 acres on other side. He didn't see the hardship at creating a conforming lot. He questions why they couldn't have 2 conforming lots with appropriate frontage. He said he is okay with driveway but doesn't see the hardship on the other.

Mr. Bergeron said if the lot happened to meet engineering and all the standards for a zoning ordinance, both lots would average 1.4 acres. That would be the same as the average in the area by subdividing one more time and wouldn't need action by the board. It would create two lots at approximately 1.4 acres each. He said it is currently 2.8 acres with a large driveway and driveways don't function to the health of the lot.

Mr. Hennessey said he has been struggling with the driveway issues more than the lots. He said he's feeling the lack of a historical commission. With a property like this, the board would be asking for input from a historical commission. Mr. Hennessey believes the access off Windham Road has some historical interest, but he doesn't feel qualified to get into it. Mr. Hennessey said he is struggling to see hardship that necessitates the granting of a variance. He feels he wants to grant the variance for the driveway, but as far as granting the variance for an undersized lot, he feels it's an overreach for this board and they shouldn't be doing it. Mr. Hennessey said he would love to grant the driveway variance, but he doesn't see it. He mentioned if the board is not granting the variance on other, that variance is not needed.

Mr. Bergeron confirmed they are splitting the vote. He asked if either fails, would the application fail in its entirety. Mr. Hennessey said he was struggling with if the board doesn't grant B, they don't need A.

Ms. Beauregard mentioned they don't know how the engineer would get a second lot in. It is unknown if it can be done in a way that would have 200 feet of frontage remaining for the existing house. That is where the applicant wanted to preserve the access just in case.

Mr. Hennessey said he felt the presentation of necessity was well done and made sense. It is a historic property. He wouldn't want to see the driveway straightened out and come in from the backside.

CASE #ZO2022-00003A-driveway

ROLL CALL VOTE:

Mr. Hennessey said he is voting for that. He wants to see it maintained as it is now.

Mr. Bergeron asked Mr. Hennessey to explain what they are voting for. Mr. Hennessey said they are voting to allow the driveway to exit onto Windham Road. It is currently not confirming, but it is legal. The variance would make it legal by allowing it to continue no matter what happens in the future. He said the second variance is to allow an undersized lot, subject to the planning board creating the subdivision. Mr. Hennessey said he has a hard time with that one and the five criteria. Mr. Bergeron confirmed they are labeling the undersized lot vote a 00003B. Mr. Passamonte confirmed the driveway is vote A.

Mr. Passamonte - 5 yesses; final vote yes

Mr. Bergeron - 5 yesses; final vote yes

Mr. McNamara - 5 yesses; final vote yes

Mr. Hennessey - 5 yesses; final vote yes

Mr. Wing - 5 yesses; final vote yes.

(5-0-0) The motion carried.

VARIANCE GRANTED

Mr. Hennessey explained the variance was granted for the driveway to be conforming and now runs with the land. It can be maintained and is a valid access to Windham Road.

CASE #ZO2022-00003B-undersize lot

ROLL CALL VOTE:

Mr. Passamonte - 5 nos; final vote no

Mr. Bergeron - 5 nos; final vote no

Mr. McNamara - 5 nos; final no

Mr. Hennessey - 4 nos, 1 yes; final vote no

Mr. Wing - 5 nos; final no

(0-5-0) The motion failed.

VARIANCE DENIED.

The variance to create a nonconforming lot was denied.

Mr. Hennessey noted the 30-day right to appeal.

Mr. Bergeron asked if the housing board was taking all land use appeals, which Mr. Hennessey said they were.

Mr. Wing said he had a question in regard to the Gendron case. He said in Mr. Donahue's report, the data references the Regional Planning Commission for Hillsborough County and Mr. Fogere's analysis almost a year ago references the Regional Planning Commission for Nashua. Mr. Wing said he believed we are Nashua. Mr. Hennessey said this is the Nashua Regional Planning Commission. Mr. Hennessey said it is a project of regional issue and it may be of three different regional planning commissions. He believes it's an error, but it is not meaningful. He said the distinction between the two is more important. The Nashua Regional Planning Commission stated it's of regional importance. They have notified Rockingham and Salem.

Ms. Beauregard announced there are two full time members whose terms will be up in March. She will be contacting the selectman's office to put out the normal press release that they are looking to fill the positions. She mentioned there will be alternate positions open as well.

DATE SPECIFIED CASE(S) – February 14, 2022

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

CASE ZO2022-00002 – Map 24 Lot 11-310 - SCHNEIDER, Eric – 2 Little Island Park

ADJOURNMENT

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

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

The meeting was adjourned at approximately 9:10 p.m.

Respectfully submitted,
Jill M. Atkinson
Recording Secretary