

APPROVED

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING MINUTES
March 14, 2022**

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

PLEDGE OF ALLEGIANCE

ROLL CALL

Mr. Wing volunteered to be Secretary and called the roll.

PRESENT ROLL CALL: David Hennessey – Present
 Peter McNamara – Present
 Jim Bergeron – Present
 Alternate David Wing – Present
 Alternate Jeff Caira – Present
 Alternate John Westwood – Present

ABSENT: Matthew Hopkinson
 Joseph Passamonte
 Recording Secretary Jordyn Isabelle

Mr. Bergeron explained that Mr. Passamonte was worn into the Planning Board, so he could no longer be a member of the Zoning Board. Mr. Hennessey informed that the Board was losing three members including Mr. Passamonte, Mr. Hopkinson, and Mr. McNamara. He stated that Mr. McNamara has been a member for 23 years, noting that he has been a valuable liaison with the Planning Board as a lawyer in giving insight into procedures. He noted that he would miss working with these members. Mr. Hennessey stated that interviews have taken place and that the selection process was proceeding.

MINUTES REVIEW

February 14, 2022

MOTION: (Bergeron/McNamara) To approve the February 14, 2022 meeting minutes as amended.

(5-0-0) The motion carried.

HEARINGS

CASE #ZO2022-00004

OUELLETTE, Lance - APPEAL from ADMINISTRATIVE DECISION – 24 Cardinal Drive – Map 41 Lot 6-148 – Concerning Article II, Sections 307-6, 2 and Article III, Section 307-12C Table 1 of the Interim Planning Board’s Director’s decision regarding building setbacks as those setbacks pertain to applicant’s temporary container pods to be located on that site from time to time.

Mr. Hennessey recused himself from the discussion.

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. Groff came forward to address the Board. He explained the context of the case, stating that the client received Planning Board approval. He stated that an addendum was added to the approval requiring that a building permit for a container pod on the address. He explained that the lot is narrow, meaning that it is difficult to meet the setbacks for industrial zoning, and that the electric company said that they cannot connect a permanent electrical service to the pods. He stated that one of the requirements from the Planning Director was that an electrical service be connected to it. Mr. Groff stated that it is problematic to require a building permit for a non-permanent structure that cannot be connected to electrical services. He asked if anyone who wants to rent a pod will need variances for setbacks and if they would need a building permit. He added that there are fees associated with those things. He asked that temporary storage pods not be classified in a way that they require building permits, and if they do require building permits, that they not be required to meet the setback requirements.

Mr. Wing asked if Mr. Ouellette was renting the pods out or just using them for storage on his property. Mr. Ouellette informed that his company owns five pods, two of which are being stored on the property currently. He explained that his company uses a trailer on site for storage, not the pods.

Ms. Beauregard informed that container pods were added to the Zoning Ordinance to clarify that they were no longer allowed within the residential zone. She highlighted that the pod is 252 square feet in size. She stated that it was never required to put electrical into the pod. She stated that the applicant was the one who wanted to put electrical into the pod. She added that as Liberty Utilities stated they would not put a permanent electrical service on a container pod, Mr. Ouellette was going to put it on a utility pole, suggesting that he may have intended to keep the pod there. She explained that she recommended that he apply for a variance so he could keep it there with the electrical service that he wanted. She highlighted that the pod could not be moved to the residential district, as it is not allowed under Zoning.

Mr. Ciara stated that it seemed like the intentions were to leave the pod there, as he was trying to put electrical on it. Mr. Ouellette stated that he contacted Ms. Beauregard in September, informing her that it was a temporary structure. He informed that he had to enter an agreement with Liberty Utilities to bring power down the street. Liberty Utilities informed him that they could not put electricity onto the pod, but they could put it onto a pole on his property. The electrician then denied his permit. After explaining that it was a temporary pod, the electrician was given the permit and handled the rest himself. Mr. Ouellette stated that he became frustrated after two weeks and cut the service off. Mr. Ciara asked for clarification that Mr. Ouellette was going to connect power to the pod. Mr. Ouellette stated that he was, though only for a short time. He explained that they needed it to plug into their diesel trucks in the winter and that in the spring, everything would be moved to the back of the lot.

Mr. Ouellette stated that he never asked for an administrative decision, just Ms. Beauregard's interpretation of the zoning law regarding pods.

Ms. Beauregard stated that the electrical permit was issued based on Mr. Ouellette's request, because he had a deal with Liberty Utilities that he needed to get hooked up to the pole. She stated that it was specifically for putting a permanent service in and they decided that they would not put a temporary service that would go strictly to the pod. When Mr. Ouellette informed Ms. Beauregard that he could not meet setback, she recommended that he apply for a variance or request an appeal to an administrative decision.

Mr. McNamara opened the discussion to the Public.

Mr. Wing asked if the pods were to be moved relatively soon? Mr. Ouellette stated they would be moved sometime in April.

Mr. Cairra asked how the pods were moved. Mr. Ouellette explained they get loaded into a trailer. He stated that people rent the pods strictly to commercial applications only. He also explained that this is the first time since 2004 that they had to go through this process. Ms. Beauregard stated that the packet of information states why she made her decision and that she feels she does not have the authority to waive the requirement of the setbacks, and that the Board would have to issue a variance to do so.

As no one from the Public came forward, the discussion was brought back to the Board.

Mr. Bergeron stated that he was in agreement with Ms. Beauregard. Mr. Wing, Mr. McNamara, and Mr. Cairra voiced their agreement as well. Mr. Wind stated that due to the evidence that Attorney Rattigan provided, he believed that the proper course of action would be to change the zoning laws to address the issue of temporary structures. Mr. McNamara added that violations should be brought to the attention of the Code Enforcement Officer. Mr. Bergeron stated that until zoning laws can be changed, they need to follow the current regulations.

CASE #ZO2022-00004

ROLL CALL VOTE:

Mr. Westwood – No
 Mr. Bergeron – No
 Mr. McNamara – No
 Mr. Cairra – Yes
 Mr. Wing – no

(1-4-0) The appeal to administrative decision failed.

REQUESTS FOR REHEARING

CASE #ZO2022-00002 & #ZO2022-00005

#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 nonconforming 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. RSA 677:2 Motion for Rehearing requested by Jeffrey Norton, 15 Little Island Park, Pelham, NH 03076.

#ZO2022-00005

SCHNEIDER, Eric – 2 Little Island Park – Map 24 Lot 11-310 – Seeking a Variance concerning: Article III, Sections 307-7, 307-8C, 307-12 Table 1, 307-13, 307-14 & Article VII, Sections 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' ft. setback. Also, an enclosed 5' x 5' entrance located approximately 6' from property line. New application to increase proposed height to under 30' from driveway grade. Proposed

garage will be heard on original application (Case #ZO2022-00002). RSA 677:2 Motion for Rehearing requested by Jeffrey Norton, 15 Little Island Park, Pelham, NH 03076.

Mr. Hennessey stated that there was a letter from an applicant requesting that this case be re-heard. He explained that the applicant did not believe that the Board had enough information regarding property lines and setbacks to make a decision for a variance. Mr. Hennessey explained that there is a lot of problems over conflicting deeds and property lines by the ponds in Town and that the Board does not get into arguments over property disputes, per advisement from the Town attorney and the State. Mr. McNamara added that the Board does not have the authority to make decisions on property line disputes.

Mr. Bergeron highlighted his initial problem with the plan was the lack of specificity. He asked if applicants need to come in with more specific plans. Mr. Hennessey replied that his understanding was that applicant's plans do not have to as specific as what is required for the Planning Board, and that the onus still resides with the applicant. He explained that the applicant takes a risk when coming to the Board, as the plan will go to the Zoning Administrator and the State and if the plan fails at those steps, the applicant needs to start over.

Ms. Beauregard added that she believes the Board rightly makes the decision to put conditions on variances that require applicants to have State approved septic designs and shoreline protection approval. She explained that if an applicant cannot get those things, they are not going to be able to proceed with their plan.

Mr. Bergeron stated that he is going to affirm the Board's original decision and not rehear the case.

Mr. Hennessey appointed Mr. Wing to vote on the case.

CASE #ZO2022-00002

VOTE: (0-0-5) The request for a rehearing was denied.

CASE #ZO2022-00005

VOTE: (0-0-5) The request for a rehearing was denied.

CONTINUED CASES

CASE #ZO2022-00006

WALKER, Richard & Ethel - 81 So. Shore Drive; Map 31 Lot 11-268 – Seeking a Variance concerning: Article III, Section 307-12 Table 1, & Article VII, Section(s) 307-41A, 307-41B of the Zoning Ordinance to permit an existing seasonal camp structure and garage to be demolished and replaced with a 32' x 36' 2-bedroom year round residence with a 10' x 36' deck and an attached 24' x 30' garage on a undersized and non-conforming lot with less than 200' of frontage. The construction will be shifted to meet the 15' setbacks but will be located within the 50' WCD setback and the deck and steps will be located 6' from the side setbacks where 15' is required. Also, replacing and relocating septic, setback will be 110' from WCD where 125' is required.

Mr. Hennessey explained that the site walk for the location happened and that this would be a continuation of the case. Mr. Hennessey appointed Mr. Ciara and Mr. Wing to vote on the case.

Mr. Sanford came forward to represent the applicants. He explained that he did not have anything to add that was not addressed at the previous hearing, and that he was looking forward to hearing comments from the Board. He noted that the applicant already submitted the shoreline protection plan.

Mr. Hennessey opened the discussion to the Public.

Julia Steed Mawson of 17 So Shore Drive came forward to address the Board. She thanked the Walker's and the Campbell's for their willingness to allow neighbors to ask questions and give comments. She noted they had been very good neighbors. She thanked Mr. Hennessey for addressing her question about notification of abutters on this case. She replied that she was still going to follow up on that to ensure she understands her rights and responsibilities are.

Ms. Mawson stated that she had looked into the regulation concerning who is responsible for paying for damages on a private road. She explained that her understanding was that the owner who caused damage to the road would be the one to pay for it. She stated that those on the road want to be very diligent in understanding the process of development on the road. She wanted to emphasize that if anyone were to damage the road, that they should be aware they may need to pay for those damages.

Ms. Mawson asked if there was a plan for drainage on the property. Mr. Sanford stated that shoreline protection would require stormwater management to ensure that the lake is protected. Mr. Hennessey added that drainage off a specific lot into another is not permitted. Ms. Mawson asked who oversees the plan to ensure it is being executed properly. Mr. Sanford explained that the State or building inspector could look at some of it, but the neighbors are often the ones who inform the State to check in with the development. Mr. Hennessey added that the State has had issues getting to projects the last several years and encouraged neighbors to be responsible so that if they see a problem, report it.

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

Mr. McNamara stated that it was refreshing to see the applicant being so forthcoming and welcoming of questions at the site walk. Mr. Hennessey echoed Mr. McNamara's statement, including the abutters.

MOTION: (McNamara/Bergeron) To subject the plan to DES approval of shoreline protection, septic system design, and well separation.

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

MOTION: (Wing/McNamara) That the height from grade on this property be no more than 34 feet.

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

CASE #ZO2022-00006

ROLL CALL VOTE:

Mr. Bergeron – 5 yesses, final vote “YES with stipulations”

Mr. McNamara – 5 yesses, final vote “YES with stipulations”

Mr. Hennessey – 5 yesses, final vote “YES”

Mr. Ciara – 5 yesses, final vote “YES”

Mr. Wing – 5 yesses, final vote “YES with stipulations”

(5-0-0) The motion passes.

VARIANCE GRANTED.

Mr. Hennessey explained there is 30 days to appeal.

CASE #ZO2022-00007

CAMPBELL, Ronald & Ellen - 80 So. Shore Drive - Map 31 Lot 11-269 – Seeking a Variance concerning Article III, Section 307-12 Table 1 of the Zoning Ordinance to permit development of an existing undersized non-conforming undeveloped lot, created in 1925 (prior to current Zoning Regulations) with a single-family residence, 8’ from side lot line where 15’ is required. Also, seeking to build on a lot consisting of 6,680sf. where 43,560 (1-acre) is required, and lot frontage of 50’ on a private road where 200’ on a class V road is required.

The applicant informed that they are not directly on the water, but still within the 250 feet of shoreline protection. Mr. Sanford showed a graphic of the tax map of the property. He informed that a well release was made and recorded at the Registry of Deeds. He stated that due to the uniqueness of the lot, it leaves a lot of wiggle room for them moving forward.

Mr. Bergeron asked if the 1469 square foot section of the lot would require Planning Board and WCD release. Mr. Beauregard stated that anything on a 2,000 square foot lot is exempt from the setback requirement and that the plan will need to go to the Planning Board for comment and to the Board of Selectmen for approval of construction as it is an undeveloped lot right now.

Mr. Hennessey opened the discussion to the Public.

Angela Harkins of 61 So Shore Drive came forward to address the Board. She asked how it will be ensured that the wetlands get marked. Mr. Sanford informed that the area was marked with flags and if they were gone, then someone must have taken them down. Mr. Hennessey stated that they would need to reflag the wetlands. She explained that the owners on the road have spent around \$20,000 improving the road over the last several years, only for it to be decimated during construction of a lot. She stated that under SB 39, if someone damages a private road, they are responsible for fixing it. She asked if the Board was able to stipulate that if the road is damaged, that they follow law SB 39. Mr. Hennessey stated that he knew of no way for the Board to enforce that save for a warrant article. Ms. Harkins added that she is not opposed to the development, she just wants to ensure that the development does not negatively impact the rest of the road.

Julia Steed Mawson of 17 So. Shore Drive came forward to address the Board. She asked how issues with a well are address if the well put in before the house, especially as there would only be 8’ of clearance on either side of the house. Mr. Hennessey stated that as he is not a lawyer, he could not answer the question. He suggested that she consult with an attorney about common law and access to the water supply or to call DES.

Christine Kamal of 79 So Shore Drive came forward to address the Board. She asked if the abutters would be made aware of the decision of the wetlands protection and if the abutters could be notified about each step of the process. Mr. Sanford replied that it would all be public record. Ms. Beauregard informed that they will not be able to put the well in until they have met all the criteria. Ms. Kamal stated that she is worried that with additional development, there will be less earth to absorb water, meaning that there will be additional flooding in the area. Mr. Hennessey reiterated that the abutters are the “watchdogs” and to report if they see an issue. Mr. Sanford replied to Ms. Kamal explaining where some of the water would go, highlighting that it was engineered to keep water from going into abutters properties.

Mr. Bergeron pointed out a 50-foot wetland setback that crosses through the structure. He explained that if it is a jurisdictional wetland, that the Planning Board would need to be involved. Mr. Hennessey stated that they would need to see where the markers are and asked if the Code Enforcement Officer will be sent to check this. Ms. Beauregard replied that he would. Mr. Hennessey stated that if that is the case, the stie plan would need to be approved by the Planning Board and the abutters would need a new set of

notifications for the hearings. Mr. Bergeron highlighted how the process is to protect the wetlands and the pond.

Mr. Wing pointed out that there is a proposed temporary access for well installation and permanent emergency access that crosses into the conservation district. Mr. Sanford replied that it is currently a parking lot and that no trees need to be cut to make access. Ms. Beauregard asked if the access is going through someone else's property and if they have permission to use it. Mr. Sanford stated that permission has been requested and if it is denied, the construction sequences would need to be adjusted.

Maureen Beattie-Waterworth of 77 So Shore Drive came forward to address the Board. She stated that she wanted to be clear that the Little Island Pond Realty Corporation has ownership of 26 acres with the back of the land, noting that no permission for access has been granted or discussed yet.

Mr. Hennessey closed the discussion to the Public.

MOTION: (Wing/McNamara) To subject the plan to DES approval of shoreline protection, septic system design, well separation, and the height not to exceed 34 feet.

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

CASE #ZO2022-00006

ROLL CALL VOTE:

Mr. Bergeron – 5 yesses, final vote “YES with stipulations”

Mr. McNamara – 5 yesses, final vote “YES with stipulations”

Mr. Hennessey – 5 yesses, final vote “YES”

Mr. Westwood – 5 yesses, final vote “YES”

Mr. Wing – 5 yesses, final vote “YES with stipulations”

(5-0-0) The motion passes.

VARIANCE GRANTED.

Mr. Hennessey explained there is 30 days to appeal.

HEARINGS (CONT.)

CASE #ZO2022-00009

MURRAY, David E – 16-18 Bridge Street – Map 41 Lot 10-249 – Seeking a Variance concerning Article IV, Section 307-16A and Article V, Section 307-18 Table 2 of the Zoning Ordinance to permit the renewal of previously approved Variance allowing the property to be used for any commercial purpose allowed in the business zones (1,2,3,4 or 5). Previous Variance case #ZO2019-00009.

It was explained that this was a new variance for commercial building on residential lot.

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.

Groff came forward and read the five criteria into the record.

Mr. Hennessey stated that the remarks made back in 2019 in relation to this property still stand. He stated that it is obviously a commercial property and suggested that they should look for a zoning change. He added that he was in favor of the proposal.

CASE #ZO2022-00009

ROLL CALL VOTE:

Mr. McNamara – 5 yesses; final vote “YES”

Mr. Hennessey – 5 yesses; final vote “YES”

Mr. Bergeron – 5 yesses; final vote “YES”

Mr. Caira – 5 yesses; final vote “YES”

Mr. Wing – 5 yesses; final vote “YES”

(5-0-0) The motion passes.

VARIANCE GRANTED.

ADJOURNMENT

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

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

The meeting was adjourned at approximately 9:05 pm.

Respectfully submitted,
Jordyn M. Isabelle
Recording Secretary