

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
April 12, 2021

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

PLEDGE OF ALLEGIANCE

Acting 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
 Alternate Karen Plumley

Mr. Hennessey thanked Mr. Bill Kearney for his work and dedication to the Board over the last several years.

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.

ELECTION OF OFFICERS

MOTION: (Bergeron/McNamara) To nominate Mr. Dave Hennessey as Chairman of the Board.

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

(5-0-0) The motion carried.

MOTION: (Bergeron/Hopkinson) To nominate Mr. Peter McNamara as the Vice Chairman of the Board.

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

(5-0-0) The motion carried.

MOTION: (Bergeron/McNamara) To nominate Mr. Matthew Hopkinson as Secretary of the Board.

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

(5-0-0) The motion carried.

MINUTES

March 8, 2021

MOTION: (McNamara/Hopkinson) To approve the March 8, 2021 meeting minutes as amended.

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

(4-0-1) The motion carried.

HEARING(S)

CASE #ZO2021-00010

Map 29 Lot 7-95

ZO2021-00010

PELHAM REALTY GROUP, LLC (Owners) / MAPLE ROCK, LLC (Applicant) – 150 Bridge Street – Seeking a variance to Article: XI Sections 307-69-1.A.6, 309-72-1 of the Zoning Ordinance to permit replacement of existing wall sign with redesign that is 15.32 square feet larger, or a total of 152.64 square feet and addition of a second wall sign that is 18.25 square feet.

Mr. Jeffrey Kristensen came forward via telecommunications to represent the applicant.

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. Kristensen informed that the applicant wanted to redesign the signs for the Hannaford located at 150 Bridge Street. He explained that the goal was to update the sign and add the new Hannaford To-Go sign to support the new to-go service that Hannaford's is offering to customers. This service allows customers to order online and then pick up their groceries rather than going through the store to get them themselves. He explained that the three total changes would be to expand the existing Hannaford sign to include "Supermarket," move the "Welcome" placard to another entrance for the building, and then replace the welcome sign with the "Hannaford To-Go" placard. Mr. Kristensen explained that they needed the variance because these changes would increase the square footage of the sign and that there is a limitation on the number of wall signs that a building can have.

Mr. Hennessey asked him to go through all five criteria and read them into the record Mr. Kristensen read the five criteria into the record.

Mr. Caira asked if any other stores were redesigning their signage or if this was the first store. Mr. Kristensen replied that other locations were undergoing similar redesigns.

Mr. Hennessey opened the discussion to the Public.

Mr. Chris Waterworth of 77 South Shore Drive came forward via telecommunications. He stated that he thought everything was laid out very nicely and was in favor of it.

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

Mr. McNamara stated that he believed that they met all the requirements for a variance and that he had seen other store locations with the same signage. He believed that the signage was relatively innocuous.

Mr. Hopkinson noted that having clear signs in an area of Town where the most foot traffic occurs can help clearly direct people where they need to go.

Case #ZO2021-00010

ROLL CALL VOTE:

Mr. McNamara – Yes to all criteria; final vote YES
Mr. Bergeron – Yes to all criteria; final vote YES
Mr. Passamonte – Yes to all criteria; final vote YES
Mr. Hennessey – Yes to all criteria; final vote YES
Mr. Hopkinson – Yes to all criteria; final vote YES

(5-0-0) The motion carried.

VARIANCE GRANTED.

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

REHEARING

CASE #ZO2021-00002

Map 31 Lot 11-22

BILAPKA, Bruce & PAGE, Andrea – 49 Woekel Circle – Seeking a Variance to article III, Section 307-8, 307-12, Table 1, and 307-13 of the Zoning Ordinance to permit an upgrade to and expansion

of an existing 2-bedroom home on an undersized lot with no frontage on a public way and inadequate front and side yard setbacks.

Mr. Hennessey reminded the Board that this was a rehearing and they would act as if the first hearing had never happened.

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. Bruce Bilapka and Ms. Andrea Page came forward to discuss the case. Mr. David Groff came forward to represent the applicants on this case.

Mr. Groff informed that this property is on a private way and is approximately 150ft x 50ft in size. He explained that the lot is undersized and has no frontage, as it is a private road. He stated that as the house stands now, there are two bedrooms on the first floor and was built in 1930. He noted that the house is on a cement block foundation.

Mr. Groff explained that they were applying for a variance for a few reasons. He informed that the applicants' main goal was to update and modernize the existing house. He noted that they had already obtained approval from DES for a septic system to service a two-bedroom home that would sit behind the house along with a holding tank that would sit at the front of the house. He stated that the applicants wanted to upgrade the home by installing two bedrooms into an addition of a second floor, as they can only build up and not out, move the front of the top floor out two feet to accommodate a bathroom and laundry room on the second floor, and upgrade the kitchen on the first floor. He noted that the porch on the house had already been removed to increase the setback to about 8'8", making it more conforming.

Mr. Groff read the five criteria for a variance into the record.

Mr. Wing asked for clarification on the six feet added to the basement height. Mr. Bilapka explained that the existing block foundation is on a crawl in the basement. He wanted to raise the grade so that it would be above the water table, increasing it by six feet.

Mr. Hopkinson asked for clarification on an abutting neighbor's claim that they have four feet from the fence to the property. Mr. Bilapka responded that it is only in one location in the corner of the lot. Mr. Groff showed one of the plans of the lot depicting the wooden stockage fence that an abutter asserts has been there for over 20 years. He explained that there is a claim that the boundary line between the lots dips behind the fence by about four feet.

Mr. McNamara stated that they were asking for a variance for three separate sections of the zoning code. He stated that they were for the nonconformity and expansion of a nonconforming use, for dimensional nonconformity, and for lot size. He asked if the testimony was the dimensions of the sides of the lot would be made less nonconforming because of the removal of the porch. Mr. Groff replied that was correct. Mr. McNamara asked the applicant if the only increase in size would be the two-foot bump out and if that impacted the abutter complaining about it? Mr. Groff replied that was correct and that the abutter would not be impacted as their lot was on towards the back side of the property.

Mr. Wing asked how the impervious percentages were calculated, and if they were calculated based on the square footage on land versus livable space. It was noted that this lot had significantly less percentages compared to surrounding lots. Mr. Bilapka replied that he did the calculations himself and that was how he did them.

Mr. Hennessey opened the discussion to the Public.

Mr. Henry Russo of 50 Woekel Circle came forward. He stated that he wanted to see improvements to the property. He informed that the applicants were jumping through hoops to get this done and would like to see them do it. He noted that it would improve his property and it would not block anyone's view.

Mr. Lee Kavanaugh of 55 Woekel Circle came forward to speak in favor of the application. He stated that it would be a major improvement. He noted that the house had been vacant for several years and that the house was in disrepair. He believed it would be an improvement to the neighborhood.

Mr. Tim Doherty of 29 Wood Road came forward to speak in favor of the application. He showed the Board some pictures of the area to show that there is nothing but woods behind the applicants' home. He showed pictures of the home of the abutter who appealed the case, showing that the abutter had rebuilt their small home to a much larger home. He noted that the applicants would not be blocking anyone's view and would not block any other property by increasing the height of the build. He asserted that they were looking to build within their means and were looking to build something reasonable.

Ms. Karen Martin of 39 Woekel Circle came forward via telecommunication to speak in favor of the application. She noted that she is a direct abutter to the property and has lived in the two-story house year-round for about 17 years. She explained that there are a few rows of housing along the pond with her house sitting in the second row and 49 Woekel sitting in the third row back from the pond, directly behind her house. She stated that she used to be able to have conversations with the previous owner from her backyard to the previous owner's kitchen window, highlighting how small the lots are. She informed that there is a lot of drama in the area, as seen at the November 2020 meeting. She noted that she had been inside the house as a guest and as a helper when her brother did repair work for the house. She stated that the house was in serious disrepair as the previous owner could not keep up with it. She did not think the house was savable by repair and should be torn down and rebuilt. In her opinion, there would be no loss of view by anyone and that this house would only look out over her backyard. There would be no loss of view gained or lost by anyone if this variance were to be granted. She noted that Mr. Bilapka, Ms. Page, and herself were being sued over lot lines, but reminded the Board that these were only allegations. She stated that the lawsuit was not filed until Mr. Bilapka and Ms. Page purchased the lot. She asserted that she was strongly in favor of the application.

Mr. Chris Waterworth of 77 South Shore Drive came forward via telecommunications to speak in favor of the application. He stated that after hearing testimony from abutters, he cannot see why anyone would hold them back from doing this. He noted that it seemed like they were trying to improve the area and that nothing was wrong with that. He wished them well and hoped that it all worked out.

Ms. Kathy Woekel of 38 Woekel Circle came forward to ask a question. She asked if she could have some more information on how far the bump out is to the set back. Mr. Kavanaugh stated that it was not a true bump out. He explained that it did not affect the footprint as it would be on the second floor. He noted that it would be about 6 feet from the septic but would not affect the footprint.

Mr. John Bisson came forward via telecommunication on behalf of Mr. Smith and Mr. Habeeb of 37 Woekel Circle to speak in opposition of the application. He shared his screen to show the plan that he submitted to the Board. He stated that the suggestion is that there is some sort of revolt within the neighborhood. The point he wanted to focus on was where all the lots came together in the back. He stated that the lot line does dip toward lot 49, which Mr. Groff took objection to. He asserted that the problem was that there were two different licensed surveyors that came to two different conclusions on where the lot lines were. He acknowledged that the Board does not handle property disputes, but informed that this was a setback issue. He explained that the pipe that connects to the septic system goes through

the disputed part of the property. He believed that the issue should be resolved before anything moves forward. He stated that he had heard nothing to support the other variance requests and did not see how the upper floor was supported. He stated that what he believed that the variance is dependent on some information that needs to be resolved before it moved forward, which is why they were asking for a rehearing.

Mr. Ken Cooley of 53 Woekel Circle came forward to speak in opposition of the application. He stated that he did not think that Mr. Kavanaugh, who did the design, was a licensed surveyor, he is a licensed septic designer, and that there might be some confusion about that. He stated that the bump out would block his view in the future. Mr. Hennessey asked him to elaborate on that. Mr. Cooley explained that he owned the building at 53 Woekel Circle and planned to rebuilt it in the future. It was his belief that the bump out would block his future view.

As no one else from the Public came forward, Mr. Hennessey closed the discussion to the Public and brought it back to the Board.

Mr. Groff stated that the plan was stamped by a land surveyor. Mr. Kavanaugh explained that he is not a licensed surveyor and that he completed that design. He stated that it was based on a plaque filed with the registry of deeds in 1951.

Mr. Kavanaugh explained that the sewer line had been moved closer to the house and that the State had a red-lined copy of that plan, though it does not show on the approved plan.

Mr. Groff stated that Mr. Bilapka had someone from DES come out to measure from the shore to the fence to see exactly how far they were. He stated that shoreline protection is through DES, not the Zoning Board.

Mr. Groff showed a picture of Mr. Cooley's house. He stated that the property did not have a view of anything and that there was a vernal pool between that property and this one.

Mr. Hennessey asked what the total height of the building would be. Mr. Bilapka stated that it should be no more than 31 feet but should be between 29'6". Mr. Hennessey asked if he would be okay with a stipulation of a height requirement. Mr. Bilapka stated he would, as long as it was 31', as he was unsure of the exact measurements of the ridge, so it could range a small amount.

Mr. Groff stated that, as he mentioned, there is a vernal pool on one side of the property. He noted that the State required that there be a pipe installed under the property to replace what used to be there to allow the water to continue to the vernal pool under the property.

Mr. Bergeron asked if the plan that Mr. Groff had was recorded by the Planning Board and if it had a certification of closure stamp on the right-hand corner. He stated that it would be unlikely that it is not a certified plan with no error in its closure. Mr. Bilapka informed that he got the plan from the Registry of Deed.

Mr. Bergeron stated that very good points were brought up on both sides. He noted that Shore Land Protection and where the line falls on the property is irrelevant, as DES approves septic systems. It was important for him to note that the actual as-built would not affect the contention and would not be part of a future dispute.

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

Mr. Hopkinson stated that he did not think that this would be contrary to the Public and actually believed it would be beneficial to the public interest especially because of the DES approved septic system.

Mr. McNamara stated he agreed with that. He stated that the testimony heard, especially from Ms. Martin stating that the house is not salvageable, shows how it would be in the Public interest. He believed it would improve the value of surrounding homes. He thought it was in the Public interest to install a better septic system and make the lot a little less nonconforming.

Mr. Bergeron stated that the Public interest would be served. He stated that the current building there is not up to code and not safe and he did not see a physical expansion of the foot print. He added that the septic would add to the public interest.

Mr. Passamonte informed that he took a ride down to the area earlier that day to see what it looked like. He stated that he had nothing further to add from what was already said and that he fully agreed with Mr. Bergeron and Mr. McNamara.

Mr. Caira stated that he thought it was realistic with what they were trying to do.

Mr. Wing stated that there was a lot of strong testimony in favor. He stated that there was testimony that asserted that the house was three rows back from the pond and that view was not coming into play.

Mr. Hennessey asked if they should put a height limit on the variance. He was not sure if it was appropriate but left it up to the members to decide to increase the Public interest appeal.

Criteria 2 – The spirit of the ordinance is observed.

Mr. Passamonte stated that he thought the spirit of the ordinance was met. He stated that with what had already been built that he thought it was fine.

Mr. Bergeron stated that everything the applicant was asking for relief from where all sections of the ordinance was in the spirit of the ordinance. He stated that it was a dimensionally insufficient lot but everything else was being observed as far as the ordinance goes. He added that according to the applicants, only 18% of the property is going to be impervious. He informed that this is at the bottom of the list in comparison with the other lots in the area. His opinion was that it supported the spirit and intent of the ordinance.

Mr. McNamara stated that he agreed with what was already stated. He also thought that this bears on the substantial justice is done criteria because the value of the property outweighs any sort of detrimental harm to the public in general.

Mr. Hopkinson stated that he thought the spirit is definitely observed. He stated that the spirit of the ordinance is usually to ensure that there is a definitive cohesion and uniformity in neighborhoods. He noted that with the lots being so close, there will never be conforming lots but that the main point is to have cohesion within those lots. He stated that this would be a detriment to not allow this to be improved.

Mr. Wing thought that the applicant was making an effort to make the lot the best they could to conforming, especially by decreasing the sides of the lot.

Criteria 3 – Substantial justice is done & Criteria 4 – The values of surrounding properties are not diminished.

Mr. Wing stated that substantial justice would be served to allow the applicants to increase the value of their property.

Mr. Hopkinson stated that it would not be a detriment to anyone else's property values in that neighborhood and believed it would actually increase the value of neighboring houses. He noted that there were some eyesores in that area and that the less of those there are, the better.

Mr. McNamara stated that the property was in poor condition in the current state. He believed that rebuilding it, modernizing it, putting in a new septic system, and making it more conforming would increase surrounding property values.

Mr. Bergeron stated that it is a nonconforming lot by dimension. He stated that the applicant was not going anywhere near where some others in the neighborhood had seen relief. He noted that there was no expansion on the footprint, which was very important to him. He asserted that property values would increase.

Mr. Passamonte believed that this would increase the surrounding property values.

Mr. Caira stated it would be a great improvement to the neighborhood.

Mr. Hennessy stated that in dealing with the pond properties is that the first responsibility of the Town should be to ensure the health and safety of the people. He asserted that in general, it is in the best interest to take care of cesspools and old decrepit means of storage, which is one of the main reasons they had been giving out variances since he had joined the Board. He stated that these variances help to improve the quality of the lake by having modern septic systems put in. He stated that there is substantial justice and that the values of the surrounding properties would be improved because the quality of the water in the lake is improving with an upgrade of the septic system.

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

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

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

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

Mr. Caira stated that it was a unique piece of property and that having the storm drain run through the middle of it does create a hardship.

Mr. Passamonte believed that it did show the hardship.

Mr. Bergeron believed that dimensionally nonconforming lots created before the zoning often suffer unnecessary hardships, particularly when applicants go out of their way to make improvements on the

lots. He thought that imposing dimensional setback would create additional hardships to the land. He believed a variance should be granted.

Mr. McNamara stated that this is a residential use in a residential zone, so that the second prog is reasonable. He believed that the applicants made the case, through their statistics on the surrounding properties, that their lot is different from those surrounding properties. He noted that in general, they should not intrude on DES or boundary disputes. He stated that if a boundary dispute is resolved in the abutter's favor, the applicant will need to make accommodations with them or take down the structure. He stated that they need to focus on what was in front of them at that moment and not on what could happen in the future.

Mr. Hopkinson stated that he agreed with Mr. McNamara and Mr. Bergeron completely. He believed that it was important in the pond cases to look to see if the improvements were reasonable. He stated that some people want to add multiple stories or vastly increase their footprint, but that was not what these applicants were doing. He stated he would vote yes on this.

Mr. Wing stated that he would echo Mr. Bergeron's comments. He stated that there would be an issue in trying to bring the lot up to conformance. He stated that the properties in that area and that would present the hardship to the applicant.

Mr. Hennessey stated that he had nothing to add to the discussion. He believed that they had gone through the case thoroughly. He stated that they needed to focus on the five criteria as the guidepost for cases like this, as they are unable to get involved in any legal disputes.

Mr. Hennessey stated that he believed that they had satisfied the issue that caused the rehearing.

Case #ZO2021-0002

ROLL CALL VOTE:

Mr. McNamara – Yes to all criteria; final vote YES
Mr. Bergeron – Yes to all criteria; final vote YES
Mr. Passamonte – Yes to all criteria; final vote YES
Mr. Hennessey – Yes to all criteria; final vote YES
Mr. Hopkinson – Yes to all criteria; final vote YES

(5-0-0) The motion carried.

VARIANCE GRANTED.

There is a 30 day right of appeal.

Mr. Hennessey reminded the Board of the upcoming conference from the New Hampshire Office of the Strategic Initiatives. He stated that the conference would be held on Saturday May 15 from 9:00 am to 12:00 pm. He noted that there was a Planning Board track and a Zoning Board Track. Ms. Beauregard added that it was a free conference. Mr. Hennessey told the Board to reach out to Ms. Beauregard if they were interested.

Mr. Hennessey informed the Board that there was a webinar from the Hampshire Municipal Association tomorrow from 12:00 pm to 2:00 pm on ZBA basics. He stated that they could still register and that it would be beneficial to some of the newer members. He noted that it would be recorded that they were looking to get a copy of the video.

ADJOURNMENT

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

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

The meeting was adjourned at approximately 9:03 pm.

Respectfully submitted,
Jordyn M. Isabelle
Recording Secretary