

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
August 8, 2016

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

The Vice Chair Svetlana Paliy called roll:

PRESENT: David Hennessey, Svetlana Paliy, Peter McNamara, Chris LaFrance,
Alternate Darlene Culbert, Planning / Zoning Administrator Jennifer
Hovey

ABSENT: Bill Kearney, Alternate Lance Ouellette, Alternate Pauline Guay,
Alternate Kevin O'Sullivan, Alternate Thomas Kenney

Ms. Culbert was appointed to vote.

PLEDGE OF ALLEGIANCE

HEARINGS

Case #Z02016-00015

Map 16 Lots 13-89 & 13-88-4

**19 ST. MARGARET'S DRIVE REVOCABLE TRUST by MARK & KELEY SZYMT, Trustees –
St. Margaret's Drive -Seeking a Variance concerning Article III, Sections 307-12, Table I and 307-
14 to permit construction of a single family home on a lot with less than 200 feet of frontage.**

Mr. Hennessey stated since Cases ZO2016-00015 & ZO2016-00016 were conjoined, the abutter's list would be read aloud once.

Ms. Paliy 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.

Attorney Patricia Panciocco, representing the applicants (for Cases ZO2016-00015 and 00016), came forward to discuss the variance request. She provided the Board with historical information of the original parcel shown on a 1969 plan and the variations up to the present. She showed the current configuration of the lots and the location of the parcel purchased by J&S Investment in January, 2015 and the location of the parcel purchased by St. Margaret's Revocable Trust in 2010. On separate tax lot (Map 16 Lot 13-88-4) is a 50ft right-of-way purchased by J&S Investment from the Town in April, 2016, after being approved by warrant article (March, 2016). Attorney Panciocco displayed photographs of the right-of-way from various perspectives. She explained over the years there had been a variety of attempts to resolve the situation of the right-of-way and land locked parcels. Prior to Town Meeting there were meetings were held with the Conservation Commission, Planning Board and Selectmen. She believed the proposal would be the final solution and hoped to move forward. The request is for the 200ft of frontage be reduced to 25ft per lot and to merge the 25ft strips of land with each of the two lots. Each lot contains more than one acre and has the ability to contain a single family dwelling, individual driveway and well.

Attorney Panciocco read aloud the applicant's responses to the variance criteria as submitted with the application. *(These criteria were also applicable to Case #ZO2016-00016)*

Mr. McNamara recalled the meetings prior to Town Meeting and felt Attorney Panciocco gave a thorough presentation.

Mr. Hennessey opened the hearing to public input. No one came forward.

Mr. McNamara believed the lot qualified for a variance based on the unique factual circumstances and the fact that the lots became land locked over time. He told the Board Attorney Panciocco had spoken to the Town boards and discussed a variety of ways for the parcel to be developed and believed the boards agreed the current proposal was the best way to move forward. Mr. McNamara stated the hardship was evident. Mr. Hennessey agreed that the hardship was evident.

Mr. Hennessey closed public input.

BALLOT VOTE
#ZO2016-00015: Mr. Hennessey – Yes to all criteria
Ms. Paliy – Yes to all criteria
Mr. McNamara – Yes to all criteria
Mr. LaFrance - Yes to all criteria
Ms. Culbert – Yes to all criteria

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

VARIANCE GRANTED

Case #ZO2016-00016

Map 16 Lots 13-87 & 13-88-4

J & S INVESTMENT, LLC - St. Margaret's Drive - Seeking a Variance concerning Article III, Sections 307-12, Table I & 307-14 to permit construction of a single family home on a lot with less than 200 feet of frontage

Attorney Patricia Panciocco, representing the applicants (for Cases ZO2016-00015 and 00016), provided an explanation of the variance request during discussion of Case #ZO2016-00015.

The abutter's list was read aloud when Case #ZO2016-00015 opened *(see note above)*

Attorney Panciocco read aloud the applicant's responses to the variance criteria as submitted with the application during the discussion of Case #ZO2016-00015.

Mr. Hennessey opened the hearing to public input. No one came forward.

BALLOT VOTE
#ZO2016-00016: Mr. Hennessey – Yes to all criteria
Ms. Paliy – Yes to all criteria
Mr. McNamara – Yes to all criteria
Mr. LaFrance - Yes to all criteria
Ms. Culbert – Yes to all criteria

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

VARIANCE GRANTED**Case #ZO2016-00017****Map 14 Lot 390**

KOKINOS, Charles & Rosemary - 17 Mayflower Lane - Seeking a Variance concerning Article XV, Section 307-100 to permit a conservation subdivision on a parcel that contains less than 15 acres of land.

Ms. Paliy 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. Shayne Gendron of Herbert Associates, representing the applicant and Merrimack Construction, Inc., came forward to discuss the variance request. He explained that the parcel contained 9.50 acres and contained an existing single family house. He displayed a plan and showed the location of the parcel, noting that there was an existing easement for the Tennessee Gas line that bisected the property, which posed a hardship for how the property could be subdivided and developed. There were two options: 1) put in enough road for a conventional subdivision and have that road cross the gas line easement, or 2) design a conservation layout to save on road length and only cross the easement with two driveways. Mr. Gendron showed an aerial view of the area with an overlay showing the proposed development. He noted there was a small wetland that was part of a large wetland complex (20 +/- acres). A conservation development would maintain open space and keep development away from the wetland and wetland buffer. Also, by not crossing the easement will keep the access road away from the existing cul-de-sac on Megan Circle.

In preparation for the variance and proposed development, Mr. Gendron reviewed the purpose and intent of a conservation subdivision. He summarized the points in favor of conservation developments: 1) maintain rural character; 2) provide multiple options for landowners to conserve open space while minimizing impacts on environmental resources, 3) design flexibility and efficiency, 4) reduce erosion and sedimentation, 5) provide diversity in lot sizes, 6) connect wildlife corridors, 7) preserve scenic views and 8) provide reasonable opportunities for workforce housing. He felt a majority of the prongs would be clearly met with a conservation development versus having a conventional development.

Mr. Gendron read aloud the variance criteria as submitted with the application.

Mr. McNamara questioned what portion of the 20acre wetland was on the parcel. Mr. Gendron replied the wetland area was approximately 280x100. Mr. McNamara asked if the majority of the open space area was forested. Mr. Gendron answered yes; except for the area immediately around the existing house and driveway and the exception of the gas line easement area. Mr. McNamara inquired if the number of conventional lots had been calculated. Mr. Gendron had a proposal for a conventional development that would allow six lots with a road length of 783ft. and cross the easement. He noted the gas company had to allow reasonable use of property and in this case the property was bisected.

Ms. Paliy asked if the pipeline was existing. Mr. Gendron answered yes. He believed there were two pipelines running down the center of the 50ft easement. Ms. Paliy questioned if houses had to be a certain distance away from the pipeline. Mr. Gendron wasn't aware of that type of restriction. Mr. Hennessey didn't believe there were setback requirements.

Mr. Hennessey stated the applicant had a right to develop their land. He noted when an applicant would like to develop a conservation subdivision, they were required to show what a conventional development would look like. He explained to the public the question in front of the Board was not 'whether' it would

be built, the question was 'how' it would be built. Mr. McNamara pointed out the application was the first to be submitted since the zoning change at March, 2016 Town Meeting. The previous acreage required for a conservation subdivision was a minimum of 10 acres, the new requirement was for a minimum of 15 acres.

PUBLIC INUPUT

Ms. Sandy Moulton, 1 Mayflower Lane told the Board she was informed in the past that the gas line couldn't be built on, so her property was divided in half. She didn't understand how a subdivision could happen if the requirement was to have 15 acres and the applicant had a little over 9. Mr. Hennessey noted the conservation ordinance (up until February, 2016) was 10 acres. He stated the Board's purpose to examine properties asking for an exception to zoning. Ms. Moulton wanted clarification regarding where the proposed road would be located. Mr. Gendron showed the parcel and stated the road would be an extension of Mayflower Lane to a cul-de-sac. He said the question was if the cul-de-sac would be laid out before the gas line or cross over the gas line. Ms. Moulton stated her objection to an extension of Mayflower Lane.

Mr. John Bilsky, 9 Megan Circle, representing himself and his wife told the Board they would be directly impacted by two of the proposed houses. His first objection was the fact that the proposal didn't meet the current requirement for 15 acres, nor did it meet the previous requirement of 10 acres. He spoke about property values and felt having house lots of less than one acre would have a huge impact because they would be adjoining properties to his home. He was concerned with potential blasting given the close proximity of the existing gas lines and potential shifts on his property. In reviewing the map, Mr. Bilsky believed noted the septic system for the proposed house would be right on the property line. He told the Board his well was located in his back yard. He was concerned with the proposed leaching fields being uphill from his well.

Ms. Paliy understood the plan in front of the Board was for a conservation subdivision, but believed the abutters didn't understand there were two different development plans. She said it might make more sense for the public to see the conservation development and the conventional development. She noted the conventional subdivision wouldn't need to come in front of the Zoning Board. She said the applicant was requesting to keep development on one side of the pipeline rather than cross over it. Mr. Hennessey believed the public understood the proposal. Mr. Gendron provided a plan sheet showing how a conventional development could be laid out. Mr. Hennessey noted even if the applicant was granted a variance, they would need to go in front of the Planning Board for the development layout to be approved. Mr. Bilsky reiterated his concern for diminished property values, given that his home would be located at the back of the proposed cul-de-sac.

Mr. David Neal, 51 Priscilla Way, representing himself and his wife Lori, spoke in opposition to the proposal. He was concerned with changing the view and aspect of the area. He noted all the lots on Priscilla Way and Megan Circle were 2+ acres. He said the existing neighborhoods would be sandwiched in between the proposed development and the new development off Nashua Road that each had one acre and smaller lots. Mr. Neal understood the need to preserve open space, but it would be located where no one could see it. The established neighborhoods would view the new development and high density housing.

Mr. David Wing, 20 Megan Circle spoke in opposition to the proposal. He said a very small lot would abut his property, which gave him concern regarding the value of the surrounding neighborhood.

Mr. Robert Marion, 3 Megan Circle was opposed because he wasn't convinced that property values would be maintained. He said the homes in his neighborhood had over an acre and the proposal would affect property values. Ms. Paliy understood Mr. Marion was opposed to a conservation subdivision and

asked if he would prefer a conventional subdivision. Mr. Marion told the Board he would like to see the plans for both. Mr. Hennessey noted the applicant had the right to submit a conventional subdivision. The variance request is for a conservation subdivision. He said the Board was not reviewing the conventional subdivision. Mr. Marion understood there was a difference between a conventional and conservation plan. He felt it was important to see what the development would look like without a variance. Mr. Gendron provided a plan showing how a conventional development could be laid out.

Ms. Beth Tshudy, 57 Priscilla Way told the Board she would be opposed to any subdivision that would back up against her property for the reasons others had stated. In addition, the surrounding area maintained green neighborhoods. The proposed would be a high density development. She felt six houses on nine acres would be tight. Ms. Tshudy found it difficult to believe that the proposed homes would maintain the same rural character and stature of the area neighborhoods. She was concerned with flooding given her property was downhill from the proposed. Ms. Tshudy told the Board that she wasn't home to sign for notification of the meeting, but had read her neighbor's letter. She said it appeared there were two types of subdivision that could potentially be developed, which was different from the notification they received.

After reviewing the plan sets, Mr. Marion understood that a conventional subdivision would cross the gas line and a conservation development would end in a cul-de-sac before the gas line and have all the houses in that one area. Mr. Gendron replied there would be two houses in close proximity to the homes on Megan and Priscilla. He highlighted the area he referenced.

Mr. Hennessey explained to the public that either type of plan would need to be drawn up and provided to the Planning Board for additional hearing. The Planning Board review drainage etc. He stated the Zoning Board was reviewing the application to see if it met the variance criteria.

Ms. Cindy Bilsky, 9 Megan Circle commented that the Town voted to have 15 acres rather than 10 acres and now the Board seemed to be setting a precedence with the first submission under the new zoning. Mr. Hennessey replied every time an application was submitted for a variance the applicant had to convince the Board that the net gain to the Town and reasons why the variance should override the vote by the Town's people for the current regulation. In this case, the applicant had to show the Board that the proposal was a better way of doing things despite the vote at Town Meeting. Ms. Bilsky pointed out that the proposal didn't meet the previous zoning rule (of 10 acres). She felt a lot of the new developments in Town were quite nice; however, the proposal for 'cookie cutter' lots was not the reason she moved to Pelham.

Mr. Gendron was hearing that there was stigma with the open space/conservation proposal and that it would be cheaper/workforce-type housing. He stated a 'cheaper' development was not being proposed. He said conservation developments were being done throughout the State to try and conserve more open land and valuable resources. He felt a conservation layout made sense given that the property had special conditions that differentiated it from surrounding properties the biggest was the ability to get six conventional lots on 9.5 acres. He noted the size of the house would be dictated by the market, not necessarily the size of the lot. Mr. Gendron told the Board he could have nice houses on a conservation lot based on setbacks etc. He felt the layout was creative and had merit. He noted a conventional development would need more clearing to be able to make the road length to accommodate the required frontage. He believed the residents on Megan and Priscilla would be more protected with a conservation layout and the buffer versus the traditional layout which would need a cul-de-sac in the rear of the lot.

Mr. McNamara asked for comment regarding potential blasting. Mr. Gendron personally did all the test pits and found there were good soils. He said if they required blasting they had to conform with the Town and gas line requirements. He addressed the abutter's concern regarding flooding. He stated they were at a higher point from flood plain and didn't feel there were issues. He reviewed the topography, which

didn't have a great elevation change in the area to be developed. He noted the elevation change occurred in the area of the wetland.

Mr. Hennessey closed public input to allow the Board to discuss the case. Mr. McNamara asked if there would be a loss of value for surrounding lots with a conservation or conventional development. Mr. Hennessey replied well designed/built developments don't experience a loss of value. He noted a majority of million dollar properties in New England tend to be condominiums in downtown Boston. He said people like buffers and trees, which is why he was a fan of conservation subdivisions. Mr. Hennessey said the problem he had was the Town voted this year to increase the minimum size of a conservation subdivision from 10 acres to 15 acres. He needed to be shown, other than the gas line, what made the lot unique enough to override the wishes of the voters. He didn't see it.

Mr. LaFrance stated they worked hard on the Zoning Subcommittee to try to amend the zoning; however, with the plan in front of him he saw both sides and all the benefits. He said the terrain pitched from one end to the other and the impact of a conservation development would be a lot less than with a conventional development. He pointed out the conservation development also offered a better buffer. His biggest struggle was the additional house lot (6 lots plus 1). He felt it would be a better working area to shrink the road and have six lots. He reiterated his struggle with the case.

Ms. Paliy agreed with Mr. LaFrance. She wanted to hear from the public that they would rather have a smaller road and more space conserved; however, it seemed the abutters would rather have less houses and bigger lots.

Mr. Hennessey believed most of the Board preferred conservation subdivisions, but pointed out the matter in front of the Board. He reviewed the variance criteria. He noted the spirit was upheld at Town Meeting. He didn't see a hardship. Mr. LaFrance also didn't see the amount of hardship because usually conservation subdivisions were shrunk down by a lot. He didn't see how much the Town gained by shrinking the road length a few hundred feet. Mr. McNamara said if the variance was granted, there was still no guarantee that a conservation subdivision would be built. The plan would proceed to the Planning Board and the applicant would have to prove they could legitimately put six conventional lots in the development. Mr. McNamara believed the property would be developed even if the variance was not granted. He felt the too much emphasis of the Town vote was being put on the first and second elements of the criteria; it 'boot strapped' the applicant who was submitting for variance because of the zoning voted by the Town. Mr. Hennessey said the differential wasn't great in terms of the advantages of a conservation subdivision.

Ms. Culbert questioned if this was the only time there would be a guarantee of six lots for either subdivision. Mr. Hennessey answered no. The number could change depending on a lot of factors, which the Planning Board would review. Mr. McNamara noted one of the complicating factors was the pipe line. He felt the conservation subdivision was a better plan. Mr. Hennessey agreed, but had difficulty with hardship, the spirit of the ordinance and public input. Ms. Paliy had difficulty with there being seven lots.

BALLOT VOTE
#ZO2016-00017:

Mr. Hennessey-	1) No 2) No 3) No 4) Yes 5) No
Ms. Paliy-	1) Yes 2) Yes 3) Yes 4) Yes 5) Yes
Mr. McNamara-	1) Yes 2) Yes 3) Yes 4) Yes 5) Yes
Mr. LaFrance-	1) Yes 2) No 3) No 4) Yes 5) No
Ms. Culbert-	1) No 2) No 3) Yes 4) Yes 5) Yes

VOTE:

(2-3-0) The motion failed

VARIANCE DENIED**Case #ZO2016-00018****Map 41 Lot 6-118****PATEL, Andy (PATEL PLAZA, LLC) – 59 Bridge Street - Seeking a Variance concerning Article XI Sections 307-69 (O-1) to permit the use of color electronic message centers**

Mr. Hennessey stated the abutter list would be read aloud once, but would apply to Case ZO2016-00018 and ZO2016-00019, although the cases themselves would be considered separately.

Ms. Paliy 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. Chuck Raz of Signs Now, representing the applicant, came forward to discuss the requested variance. He believed the Board may be familiar with the request based on subsequent case (Mobil Station) with the same request. He read aloud the responses to the variance criteria as submitted with the application.

Mr. Hennessey asked Ms. Hovey what stipulations were added to the Mobil Station variance. Ms. Hovey read the stipulations contained in her memo dated August 8, 2016: 1) gradient from day to night, and 2) toning down brightness at other times. She stated the applicant would still need to meet all other criteria listed in the Zoning Ordinance. Mr. McNamara noted that this variance request only applied to Article XI, Section 307-69, O-1 – to permit the use of color electronic message center. Mr. Raz told the Board he was familiar with the criteria.

Mr. McNamara asked for the sign dimensions. Mr. Raz replied the entire height is planned to be 20ft. and approximately 6.5ft. Ms. Hovey noted that the sign itself met the size requirements and had already been approved and issued a permit. She said it could only be shown as amber unless a variance for color was approved. Mr. McNamara questioned if the gradient from day to night was done automatically. Mr. Raz answered yes; his company would program the settings to comply at the time of installation.

Ms. Culbert asked for clarification of what portion would be color. Mr. Raz showed the portion that would contain a color display. Ms. Culbert questioned if the tenant signs would be lit. Mr. Raz replied they would be stationary internally lit plaques, which were not included in the variance request.

Mr. Hennessey opened the hearing to public input. No one came forward.

It was noted that the applicant agreed to the following stipulations as voted by the Board:

MOTION: (McNamara/LaFrance) Variance stipulations: 1) gradient from day to night, and 2) toning down brightness at other times.

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

BALLOT VOTE
#ZO2016-00018:
Mr. Hennessey – Yes to all criteria, with stipulation
Ms. Paliy – Yes to all criteria
Mr. McNamara – Yes to all criteria, per stipulations contained in motion
Mr. LaFrance – Yes to all criteria, with stipulations
Ms. Culbert – Yes to all criteria, per stipulations

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

VARIANCE GRANTED**Case #ZO2016-00019****Map 41 Lot 6-118**

PATEL, Andy (PATEL PLAZA, LLC) – 59 Bridge Street - Seeking a Variance concerning XI Sections 307-69 (JJ & OO-1) to permit a canopy over gas station pumps to have signs on three sides and more than 50 square feet in sign area

Mr. Hennessey stated the abutter list was read aloud during Case ZO2016-00018 and was also applied to Case ZO2016-00019; however, the cases themselves would be considered separately.

Ms. Paliy 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. Chuck Raz of Signs Now, representing the applicant, came forward to discuss the requested variance. He understood the Town allows for one wall sign per property. He wasn't clear how to apply for canopy signs over the gas pumps and learned that the Town classified them as wall signs, which would require a variance. Mr. Raz showed photographs of the canopy in its present blank white state. He showed the Board photos of the three other gas stations in Town (Mobil, BP, Prime) with their color logo canopies and multiple wall signs. He then showed a depiction of how the R&B canopy would appear.

Mr. Hennessey recalled there had been a lot of discussion regarding the canopy and believed the plan renditions included a station logo. Ms. Paliy couldn't recall the Board ever discussing canopy signs for other locations. Mr. LaFrance didn't recall discussions regarding canopy signs. Mr. Raz noted that the R&B property, being a corner lot, was approved for two free-standing signs, but had dropped one of them. He said they would however, like to be approved the gas canopy sign.

Mr. Raz read aloud the responses to the variance criteria as submitted with the application.

Mr. McNamara stated he would vote in favor of the variance because he felt the business would have an extreme hardship if they were denied the same signage that the three other gas stations had. However, he was concerned with other businesses wanting more signage, which would make Rt. 38 look like Rt. 28 in Salem. Ms. Paliy discussed her concerns about businesses having too many signs. She noted other businesses had not requested permission for their signs and by the variance request coming in it brought attention to the Board. She questioned how many signs a business should have. Mr. Raz pointed out that a gas station canopy was a very specific structure engineered with fire suppression and specific lighting, unlike other structures in Town. He believed if another type of business requested a canopy it would be a different circumstance. Gas stations are required to have specific fire suppression. Mr. Hennessey recalled a lot of discussion regarding the canopy during the initial development. In general, Mr. LaFrance saw no reason to deny the variance.

Mr. Hennessey opened the hearing to public input. No one came forward.

BALLOT VOTE
#ZO2016-00019:

Mr. Hennessey – Yes to all criteria
Ms. Paliy – 1) No 2) No 3) No 4) Yes 5) Yes
Mr. McNamara – Yes to all criteria
Mr. LaFrance - Yes to all criteria
Ms. Culbert – Yes to all criteria

VOTE: (4-1-0) The motion carried.

VARIANCE GRANTED

MINUTES REVIEW

June 13, 2016:

MOTION: (McNamara/LaFrance) To approve the June 13, 2016 meeting minutes as written.

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

DISCUSSION

There was a brief discussion regarding a recent court decision regarding the Town of Sandwich conducting business over the internet outside of regular meetings. The Board was encouraged to review the decision to understand what is not allowed.

ADJOURNMENT

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

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

The meeting was adjourned at approximately 9:21pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary