

APPROVED

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT
July 11, 2022**

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

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT ROLL CALL: David Hennessey
Jim Bergeron
John Westwood
Jeff Caira
Alternate Shaun Hamilton
Planning Director/Zoning Administrator Jennifer Beauregard
Recording Secretary Jordyn Isabelle

ABSENT: David Wing

Mr. Hennessey expressed the importance and need of new alternate members. He encouraged residents to apply.

MINUTES

June 13, 2022

MOTION: (Ciara/Westwood) To approve the June 13, 2022, meeting minutes as written.

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

HEARINGS

CASE #ZO2022-00014

PAGE, Andrea & Bilapka, Bruce – 49 Woekel Circle – Seeking a Variance concerning: Article III, Sections 307-8 C and 3077-12 Table 1 of the Zoning Ordinance to permit construction of a 2 stall garage 24' deep by 26' wide with a walk up storage area, on an undersized lot with no frontage, on a public way and inadequate front and side setbacks.

Mr. Bergeron recused himself from voting on the case, noting that the applicant is on the Planning Board with him. He explained that he did not want to interfere with the Board's decision due to knowing the applicant. Mr. Hennessey appointed Mr. Hamilton to vote in place of Mr. Bergeron.

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

Mr. Bilapka asked to be put on the August 8, 2022, meeting as he wanted there to be five voting members for the case as opposed to four.

CASE #Z02022-00015

WELCH, Matthew – 33 Brookview Drive – Seeking a Variance concerning Article V Sections 307-18 of the Zoning Ordinance to permit Light Industry / Light Manufacturing, a General Home Occupation, in a Residential Zone.

Mr. Caira read the list of abutters aloud. There was no person whose name was not called that is an abutter. One resident voiced that she believed she had statutory interest in the case and was not officially notified. Mr. Hennessey addressed this and continued the meeting.

Mr. Matthew Welch came forward to address the Board. Mr. Welch read the five criteria for the variance into the record.

Mr. Hennessey asked how long the garage that the home occupation would operate out of had been there and asked what it was primarily used for. Mr. Welch replied that it was built three years prior and had been built for personal usage. He explained that he likes to “tinker” and did not build the garage to work out of it originally. Mr. Hennessey asked if the applicant needed a variance to build the garage. Ms. Beauregard replied that he did not. Mr. Welch continued that he had been running his business out of his employer’s shop, but since COVID and no longer working there, he no longer has access to the shop which is why he started to do some work out of his garage. He explained that once he realized he needed a variance, he applied right away and that he has made significant effort to reduce his impact on neighbors.

Mr. Ciara asked specifics about the garage. Mr. Welch replied noting specifically that the building is insulated and made of steel. Regarding gasses used, he explained that he uses small bottles of propane, two shielding gasses, and would consider getting a fume extraction system if that was something that the Board would like to stipulate.

Mr. Hennessey opened the discussion to the public.

Mr. Sean Capone of 6 Crescent Circle came forward to address the Board. He stated that someone could drive down Brookview Drive and never know that the applicant owns a business on the property, noting that it does not bother anyone. He stated that he does not see why this is an issue with other people in the area. He expressed that he was in favor of granting the variance.

Mr. Richard Halde of 77 Nashua Road came forward to address the Board. He stated that he was unaware there was a business at the property until the notice for the hearing was delivered. He stated that he never saw anything that would detract from his enjoyment of his property, noting that he is directly across the street from the applicant. He expressed that he is in support of the variance.

Mr. Bob Taplin of 31 Brookview Drive came forward to address the Board. He informed that he is a direct abutter to the east/right of the property. He passed around pictures of the property to the Board. He expressed that he felt that granting this variance and allowing a light manufacturing business that close to his property would negatively impact his property value. He stated that the business should be located in the industrial zone, not a residential zone. He expressed his concerns over the applicant expanding his business and not keeping it within the “light manufacturing” guidelines. He continued that he has seen an increase in delivery trucks such as Amazon and Fedex over the last several years on the road, noting that when deliveries go to the applicant’s house – the trucks block the road and hinder traffic. He felt that the noise will increase as they already hear tools and banging from the location, noting that they believe the

applicant is working in there full time. He expressed worry that this would set a precedent for industrial businesses to go in residential zones. He asked the Board to complete a site walk to see.

Ms. Sheila Taplin of 31 Brookview Drive came forward to address the Board. She expressed that she is opposed to having a light manufacturing business 20 feet from her property and 97 feet from her house. She stated that it is close to her swimming pool. She stated that she has lived in her house for 45 years and wants the neighborhood to stay family friendly and does not want it to change. She stated that she believes that industry and manufacturing does not belong in a residential zone or in her neighborhood. She stated that when the garage was built, she did not believe it was for personal use. She expressed that she believed he always planned to use it for work on cars. She stated that her husband went to the Planning Department to look at the building permit for the garage, where it explicitly states: "not for commercial use." She stated that she has heard banging and compressors from his property and has seen equipment going into and out of the garage. She stated there was a dumpster she saw on the property for two days and was not sure what it was there for. She stated that on July 1, 2022 there was a large machine outside of the garage for a couple days and then was put into the garage. She noted that they reported the applicant to the Planning Department and the request for a variance was filed the next day. She continued that she believed this would decrease her property value, noting that she does not believe people will want to purchase her home with a machine shop 20 feet away. She expressed worry about noise from vehicles, work, deliveries, and increased traffic into the neighborhood which would be dangerous for kids, bikers, and walkers. She agreed that this would set a precedent for other industry going into neighborhoods. She asked what would protect against the applicant from expanding.

Mr. Mike Soucy came forward to speak on behalf of him mother, Joline Soucy of 40 Brookview Drive. He informed that she echoed much of what had already been said. He noted that Ms. Soucy had lived there for 54 years, and would like to continue living in a quiet residential neighborhood throughout her senior years. He read that industrial business should not be in residential neighborhoods. He read that she was concerned for the impact on property values, traffic, and the general integrity of the neighborhood. She asked the Board to not approve the variance.

Ms. Mary Viera of 6 Heritage Road came forward to address the Board. She explained that she had only lived in the neighborhood for 5 years after relocating from Lowell, Massachusetts for less of the "city life." She explained that she has three grandchildren who live with her and that traffic has been picking up from people who cut through her street. She stated that there are many children who play on the street. She expressed that she was in favor of homebased businesses, but not a manufacturing business as it is too much for a residential district – noting that it would be like living back in the city. She stated that she is not concerned with decreasing property values, mor just the increase in traffic.

Ms. Bonnie Moore of 29 Brookview Drive came forward to address the Board. She noted that she has been a resident for about 50 years. She expressed that for all the reasons stated previously, she is opposed to this kind of manufacturing in her neighborhood.

Ms. Irene Atkinson of 10 Heritage Road came to address the Board. She stated that she is not a direct abutter, noting that she is less than a quarter mile away. She stated that there has been an increase in traffic and noise. She stated that Mr. Welch's hours of operation on his website are listed as 24 hours a day. She expressed concerns about how things would be vented outside, about decreasing property values, and worried about the children playing in the streets. She stated she believed this would be a domino effect if this variance is approved, noting that this would not give her any security or protection that the next neighbor won't convert their lot into another industrial lot. She asked the Board to not approve the variance.

Mr. Dan Daigle of 11 Heritage Road came forward to address the Board. He stated that his main concern was devaluation of his property and an increase in sound. He showed a video of him grinding wood using what he believed the applicant was also using. He stated he was not in support of the variance.

Mr. John White of 62 Nashua Road came forward to address the Board. He informed that he met the applicant the week prior and is not in favor of the variance. He asked if the variance stays with the property or just the applicant. Mr. Hennessey replied that the variance would stay with the property, noting that it would be constrained by what had been granted in terms of the variance and then the site plan. Mr. White asked if this could set a precedent or if it could cause litigation for the Town. Mr. Hennessey replied that the Town faces litigation each time a case comes before the Board. Mr. White asked if there would be notification for additional hearings on the case, as they were already notified. Mr. Hennessey explained that if the variance was not granted and a request for rehearing is submitted, then abutters would receive notification if the case were reheard. He stated that there are many people not in favor of the variance request.

Mr. Hennessey then read three letters into the record from Ms. Jennifer Gilligan of 77B Nashua Road, Mr. Sebastian Osoria of 75 Nashua Road, and Mr. Dave Provencial stating their support for the variance request. Mr. Hennessey then read a letter from Ms. Sara Espinal of 12 Heritage Road stating her opposition to the variance request into the record.

Mr. Welch responded to the testimony brought forth by the abutters. He stated that he is unsure how he could be help responsible for traffic in the area, as customers do not go to his house. He continued that if something cannot be delivered to his address in a normal delivery truck, he will get it with his pickup truck. Mr. Welch informed that the dumpster that was mentioned was something he was fixing for a friend, noting that he understood that was noisy as the work was completed outdoors for that. He emphasized that this was not for work purposes. Mr. Welch informed that the large machine delivered to his address on July 1 was purchased to limit the noise. He explained that the machine bends metal, which will limit the amount he must hammer metal. Mr. Welch informed that he applied for the variance after the fact because he misunderstood the criteria for a minor home occupation. He stated that once he realized he needed a variance, he immediately applied for one. Mr. Welch stated that while he had plowed the driveway for the previous tenants of 75 Nashua Road, he no longer does this and does not plow the driveway of the aforementioned abutter. Mr. Welch emphasized that the Board looks at each case individually, meaning that there should not be a large domino effect regarding industrial zoning in a residential zone. Mr. Welch added that regarding the size of the garage – it was approved by the Planning Board and does not violate Zoning regulations.

Mr. Westwood stated that he was concerned about the possible decrease in property values. He stated that it was not the intent of the housing area to have a business in the neighborhood. Mr. Westwood stated that the hours of operation was easy to rectify. Mr. Welch stated that his hours are not 24 hours a day, noting that Facebook will auto populate certain information if it is left blank. He continued that his “website” is a Facebook page, as he does not pay for a business website. He added that he has no more than 1-2 customers a month.

Mr. Hennessey closed the discussion to the Public.

- 1. The variance will not be contrary to the public interest because: &*
- 2. The spirit of the ordinance is observed because:*

Mr. Ciara stated that he was not sure what the noise level of the business is, as there was conflicting testimony from abutters.

Mr. Bergeron stated that as it was brought to the need of a variance, it is more than just a minor home business. He stated that as the garage fronts on Brookview Drive and not on Nashua Road, he sees it as an impact on the neighborhood on Brookview Drive. He added that the garage is closer to the property line than the applicant's house. Mr. Bergeron added that the Board looks at everything on a case-by-case basis and that there are businesses in the residential district on Nashua Road, but that each case needs to be decided on its' own neighborhood. He added that he believed it could be contrary to the public interest and that it may have a negative impact on the property values of surrounding properties.

Mr. Westwood expressed his agreement with Mr. Bergeron. He added that he was very impressed with the number of abutters who came forward to speak on the case.

Mr. Hamilton stated that he could understand all sides of the situation, especially as he is a business owner as well. He stated that he empathizes with the applicant, as the applicant has worked hard to not impact the neighborhood. He stated that the business operates under normal business hours, and that if neighbors were not home all day, then it would not be as large of an issue. He added that the applicant does not have control over traffic and other residents' deliveries.

Mr. Hennessey explained that if someone meets all the criteria for a home business, it is automatically granted and there is no need for a variance. He stated that the need for a variance elevates the case a great deal. He explained that this would be a zoning change that would stay with the property, not the owner and that the public has expressed agreement and disagreement with the variance request.

3. Substantial justice is done because:

Mr. Hamilton expressed that he believed substantial justice had been done as the applicant has done everything he can to appease the neighbors in the best way he could. Mr. Westwood expressed agreement with this.

Mr. Bergeron stated that substantial justice is not done, as the lot fronts on Brookview Drive. He explained that he is unaware of how the property could be used in a similar fashion to surrounding properties if the variance were granted.

Mr. Ciara stated that he could see both sides of the argument, noting that he agrees with both Mr. Bergeron and Mr. Hamilton.

4. The values of surrounding properties are not diminished because:

Mr. Hennessey stated that he has weighed in on some cases regarding his background as a realtor. He explained that he is not familiar with the values in the neighborhood, so cannot say how the property values would be impacted.

Mr. Hamilton stated that he did not believe property values would be diminished. He explained that the yard looks well kept and that the only noise is during business hours. He stated that the garage is relatively new and not an "eyesore." He added that he worked in construction sites and did not believe this property looked anything like a construction site.

Mr. Westwood stated that he was having difficulty with this criterion, as it is dependent on individual perception. He stated that he would vote no on this one.

Mr. Bergeron emphasized that if the variance was granted, it would stay with the lot not just with the applicant. He stated that if the variance is granted for light industrial, then anything in the light industrial

zoning would be allowed there. He stated that he could not see how surrounding property values would not be negatively impacted. Mr. Ciara agreed with Mr. Bergeron.

5. *Owing to 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) *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 because?*

(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. Ciara stated that while the garage is a little close to the neighbors, he did not know if he could see a hardship.

Mr. Bergeron explained that the hardship is when an applicant cannot use their property in a reasonable manner similar to uses in the surrounding area. He expressed that he did not believe that was applicable to this case.

Mr. Westwood stated that he believed there was enough negative that it could constitute as a hardship.

Mr. Hamilton stated that he felt for both sides of the argument but did not think it was an unreasonable use of the property.

Mr. Hennessey stated that he did not see the case for a hardship, as the hardship must run with the property, not the overall situation. He explained that there must be something with the property that causes the property to be different from the others around it. He reiterated that he did not see a hardship with the property on this case.

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ROLL CALL VOTE:

Mr. Westwood	–	5 no; final vote “NO”
Mr. Bergeron	–	5 no; final vote “NO”
Mr. Hennessey	–	3 yes, 2 no; final vote “NO”
Mr. Caira	–	3 yes, 2 no; final vote “NO”
Mr. Hamilton	–	4 yes, 1 no; final vote “NO”

VARIANCE DENIED

Mr. Hennessey explained there is a 30 day right of appeal.

DATE SPECIFIED CASE(S) – August 8, 2022

Case #ZO2022-00014 – Map 31 Lot 11-22 – PAGE, Andrea & BILAPKA, Bruce – 49 Woekel Circle

ADJOURNMENT

MOTION: (Hamilton/Westwood) To adjourn the meeting.

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

The meeting was adjourned at approximately 8:33pm

Respectfully submitted,
Jordyn M. Isabelle
Recording Secretary