

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT
August 8, 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
David Wing
John Westwood
Jeff Caira
Alternate Shaun Hamilton
Planning Director/Zoning Administrator Jennifer Beauregard
Recording Secretary Jordyn Isabelle

ABSENT: None

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

MINUTES

July 11, 2022

MOTION: (Bergeron/Westwood) To approve the July 11, 2022, meeting minutes as amended.

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

HEARINGS

Case# ZO2022-00014

Map 31 Lot 11-22

PAGE, Andrea & BILAPKA, Bruce – 49 Woekel Circle – Seeking a Variance concerning: Article III, Sections 307-8 C and 307-12 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. Hennessey reminded that the list of abutters was read aloud at the previous meeting. Mr. Bergeron recused himself from the discussion. Mr. Hennessey appointed Mr. Hamilton to vote in place of Mr. Bergeron.

Ms. Page and Mr. Bilapka came forward to address the Board. Mr. Bilapka explained the need for a variance and read the five criteria aloud into the record. Mr. Bilapka informed that they had received a shoreland permit from the State. Mr. Bilapka provided a handout of pictures of other garages in the area of the lot.

Mr. Hamilton asked for clarification on the drainage situation for the applicants' neighbor that is being abated with a drainage pipe. Mr. Bilapka stated that was when they put their new septic system in. He further explained that the State required that an 18-inch culvert drainage pipe be put in when he was building the new house due to a vernal pool on the opposite side of his property. Mr. Bilapka explained that people are not permitted to stop the flow of water from a vernal pool or a wetland. Mr. Bilapka noted that while the proposed garage would be close to the property abutting property, he was in ownership of that lot.

Mr. Wing asked for the height of the garage. Mr. Bilapka stated that it would be a hip roof around 26' in height. He noted that he wanted to design the garage to match the dwelling. Mr. Bilapka informed that the impervious surface on the lot would increase from 18 percent to 23 percent due to the removal of a shed.

Mr. Westwood asked how far the garage would be from the house behind the lot. Mr. Bilapka explained that his dwelling was to the left of the lot and that there was nothing behind the lot.

Mr. Hennessey opened the discussion to the public.

Mr. Henry Rousseau, of 50 Woekle Circle, came forward to speak in favor of the variance request. He stated that he believed that the improvements that Mr. Bilapka made to his lot have been positive. He stated that he believed the garage would be the same. He noted that the work would not interfere with anything on his property and should not block anyone's view. He stated that many of the houses that have been built recently look more like storage containers and thinks this would look a lot nicer and could increase tax revenue for the town.

Mr. Ken Kooley, of 51 and 53 Woekle Circle, came forward to speak in opposition of the variance. Mr. Kooley stated that while he did think that the applicant did a good job on the first variance, but believed it was too much to ask for the garage. Mr. Kooley then submitted a packet of pictures into the record dating back from 2017. He then explained each picture to the Board. Some of the pictures showed the change of the vernal pool behind the lot over time, the building of a 6-foot retaining wall, and possible fill that had been used.

Mr. Kooley stated that he did not know of anyone who had surveyed the land. Mr. Kooley continued that he had hired Mr. Jim Grove in 2016 to survey his property and informed that the area behind the applicants' property is an outlet to Mr. Kooley's wetland. Mr. Hennessey asked Ms. Beauregard if it was marked anywhere in Town records that there is a wetland on the applicants' property. Ms. Beauregard replied that she did not have any site specific for Mr. Bilapka's property. Mr. Kooley reiterated that there is a lot of wet land behind the lot. Mr. Hennessey clarified that vernal pools and wetlands are different things that have different regulations. Mr. Bilapka informed that he had a specialist come in and confirm that it is a vernal pool. Mr. Kooley stated that the vernal pool is now dried up. Mr. Kooley stated that he did not believe the applicants' needed another garage, stating that they already have one.

Attorney Daniel Muller of Cronin Bisson & Zalinsky P.C. came forward to represent Charles Smith and Robert Habib of 37 Woekel Circle. He stated that a letter from Attorney John Bisson had been submitted into the record, summarizing the main concerns from the abutters. He clarified that these abutters were the one's claiming there is water being drained onto their property, which is in litigation at this time. Mr. Muller stated that approving this variance could have a negative effect on public welfare and safety. He explained that the excess water going onto 37 Woekel Circle is inhibiting the redevelopment of their lot,

noting that adding impervious surface will make it worse. Mr. Muller continued that there is no special condition of the lot that distinguishes it from others in the area, as all lots in the area are undersized and nonconforming. He stated that the Board approved the precious application that included a garage. He stated that he did not believe that this would increase surrounding property values and that the drainage issues could lead to a decrease in surrounding property values. Mr. Muller then explained the photos that were submitted by his clients.

Mr. Richard Ratcliffe of 48 Woekel Circle came forward to speak in opposition of the application. He informed that he has lived at his property for 25 years and has seen the applicants' property change over time. He stated that he was unsure where the water is going now that so much fill has been put in. He stated he believed it was too much to ask for a garage even though the shed was torn down. He reiterated his opposition of the variance request.

Ms. Judith Habib of 36 Woekel Circle came forward to speak in opposition. She informed that the area of the property where she lives has been in her family for 80 years. She stated that there is a letter from Mr. Blackburn to the state asserting that water has been running through the lot for 100 plus years and it has been flooded over. She then passed around pictures dating back to the house being built in 1949. Ms. Habib stated that since the house at number 49 Woekel Circle has been torn down and rebuilt her house has been inundated with gallons of water. She stated that at times they are unable to get into the building due to the water. She added that she is unclear why the applicant is requesting a garage, as there is already one under the house. She stated she did not understand why anyone would need two garages.

Mr. Bilapka stated that the retaining wall at 35 Woekel Circle was approved by the State and that there are no wetlands on either of his properties, noting that the lot next to him does. He stated that the vernal pool behind 49 Woekel Circle is owned by Kenneth Cooley. Mr. Bilapka informed that the State required him to put the culvert in to continue the flow of the water. Mr. Bilapka reminded that there was a rain event of 18 months the previous year and that the water table was extremely high. He asserted that the water flow from the vernal pool has nothing to do with the property in question. Mr. Bilapka stated that any fill that was brought in was approved by the State.

Ms. Page then showed pictures of the property showing the vernal pool from before any work had been done on the property, showing high water levels on the abutting property. Mr. Bilapka informed that any runoff from the garage would be contained underneath the slab of the garage. Mr. Bilapka asserted that there is no garage on the property now, which has been addressed by the Assessor. He explained that he put a garage door on the storage area under the house, but there is no access in and out of it and that it was not an actual garage.

Mr. Caira asked if the State instructed Mr. Bilapka on where to put the culvert. Mr. Bilapka replied they did. Ms. Page showed the septic design and a letter from the State regarding the culvert.

Mr. Hennessey explained that vernal pools and wetlands are classified by vegetation, not whether water can be seen in them. Mr. Hennessey closed the discussion to the public and brought it back to the Board.

1. The variance will not be contrary to the public interest because:

Mr. Hamilton stated that every case is going to have individualistic plans for their lots. He asserted that he did not believe this would be contrary to the public interest, as it is going along with other properties in the area. Mr. Westwood stated his agreement. Mr. Wing stated that based on the submitted photos of other garages in the area, he did not believe it would alter the character of the neighborhood. He continued that there was discussion of public safety and welfare, noting that based on testimony from abutters and the applicants, the water existed prior to any redevelopment of the lot, and everything has been State approved.

Mr. Caira stated he believed it was a realistic ask from the applicant given the garages of surrounding properties. Mr. Hennessey stated that he was unsure if the request for a garage may be too far from the first variance that was approved.

2. The spirit of the ordinance is observed because:

Mr. Caira stated he was still unsure on this criterion. Mr. Wing stated that he believed the spirit of the ordinance is observed. Mr. Westwood and Mr. Hamilton agreed.

3. Substantial justice is done because:

Mr. Hamilton believed that substantial justice would be done. The Board agreed with this.

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

Mr. Hennessey explained that they were not looking to see if this would improve surrounding property values, just if it would diminish property values, which he did not think this would do. Mr. Hamilton stated he believed it could potentially increase it. Mr. Westwood, Mr. Wing, and Mr. Caira all agreed that they did not believe it would diminish surrounding property values.

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. Caira asserted that he believed there was a hardship with the land. Mr. Wing cited the case *Crossly vs. The Town of Pelham* from around 1990. He explained that the courts overturned the ZBA's decision to allow a 2-car garage as they did not see a hardship because every property in the area was small and nonconforming – meaning it was no differentiation from other lots in the area. Mr. Wing continued that after seeing all the pictures of surrounding properties, he is inclined to say that there is a hardship with the land. Mr. Westwood agreed. Mr. Hamilton stated that he believed there was also a hardship given the garages of surrounding properties. Mr. Hennessey asserted that he did not believe there was a hardship, as he did not see anything differentiating this property from the others. He explained that most variances granted in the pond area are to increase the health and safety of residents around the pond with modern septic systems and protecting the water supply. He believed asking for the garage was too much of an ask.

Ms. Beauregard confirmed that a shoreland protection permit was granted in April of 2021 for the lot that allowed for regrading, loaming, and seeding a portion of the yard as well as adding the retaining wall.

CASE #ZO2022-00014

ROLL CALL VOTE:

Mr. Westwood	–	5 yes's	Final vote	YES
Mr. Wing	–	5 yes's	Final vote	YES
Mr. Hennessey	–	4 yes's, 1 no	Final vote	NO
Mr. Caira	–	5 yes's	Final vote	YES
Mr. Hamilton	–	5 yes's	Final vote	YES

VARIANCE APPROVED

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

Case# ZO2022-00016**Map 18 Lot 12-16**

MAKO Development, LLC – Beechwood Road (Salem) Extension – Seeking a Variance concerning Article III Sections 307-7, 307-12, & 307-14 of the Zoning Ordinance to permit construction of 15 single family homes with no frontage on a Class V roadway, all homes are to be located on a private road.

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

Mr. Hennessey informed that the Highway Safety Committee states that new name roads within proposed developments should remain private roads with the property owners being responsible for maintenance of the road. He continued that the fire chief confirmed that emergency services would be dealt with within the normal and typical mutual aid protocols, explaining that Pelham will be the primary first responders to the property. He further explained that this could mean that response times may take longer to the properties, as first responders would need to go into Salem to access the property.

Mr. Shayne Gendron of Herbert Associates came forward to represent MAKO Development, LLC. He explained that there have been numerous moving parts, noting that a variance was granted in 2020 to subdivide the property with a sole access coming from Salem, NH from Beech Wood Road. He noted that they have been in front of the Pelham Planning Board, Salem Planning Board, and Highway Safety Committee. He informed that Salem has approved Beech Wood Road as the access point. Mr. Gendron stated that Mr. Keach did the initial review, noting that no lots would have frontage on a Town road as the road is to be private – creating the need for another variance. He informed that there is hope to create connectivity to Methuen through this development.

Mr. Hennessey explained that the Board of Selectmen would still need to approve this because it is on a private road.

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

Mr. Hennessey asserted that discussion would be restricted to only issues related to zoning – not any pros or cons of the development.

Mr. Wing asked if there were any existing occupied houses in the area. Mr. Gendron replied that there were some homes in Salem on the town lines, but there were no abutting homes from Pelham that abut close to the property.

Mr. Hennessey opened the discussion up to the public.

Mr. Bergeron gave historical and topographical information relative to the property. He highlighted that the applicants have met with various boards and that this would be peer reviewed by the Town engineer. He stated that this would be the only access point available to the property due to wetlands. He asserted that, in the Planning Board's opinion, the applicants' have gone out of their way to satisfy life safety and other boards. He stated that he hoped that the Board can see the reasonableness and true hardship this property has due to access limitations.

Mr. Hennessey closed the discussion to the public and brought the discussion back to the Board. Mr. Hennessey led the Board through a brief discussion on the five criteria for the variance. Mr. Hennessey stated that it would be difficult to argue that this is against the public interest, it is in the spirit of the ordinance, values of surrounding properties is not diminished, and that there is an unnecessary hardship. Mr. Hennessey stated that he believed that turning the variance down would be a taking of the property. The Board did not have any additional specific comments to make.

CASE #ZO2022-000

ROLL CALL VOTE:	Mr. Westwood	–	5 yes's	Final vote	YES
	Mr. Wing	–	5 yes's	Final vote	YES
	Mr. Hennessey	–	5 yes's	Final vote	YES
	Mr. Caira	–	5 yes's	Final vote	YES
	Mr. Bergeron	–	5 yes's	Final vote	YES

VARIANCE APPROVED

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

Case #ZO2022-00017

Map 41 Lot 6-137

VEILLETTE, Brian T. & Nancy L. – 8 Pulpit Rock Road – APPEAL FROM AN ADMINISTRATIVE DECISION concerning: Planning Board decision rendered on 6-20-2022 in case #PL2022-00023, regarding the minor site plan review to request a change in hours of operation and to allow wood splitting on site, also a review of the code enforcement officer's decision relating to the interpretation and enforcement of the provisions of the Zoning Ordinance.

Mr. Bergeron and Ms. Beauregard recused themselves from the discussion. Mr. Hennessey appointed Mr. Hamilton to vote in place of Mr. Bergeron. Mr. Hennessey explained that Ms. Beauregard also recused herself from the case.

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

Attorney Groff came forward to represent the applicants. He came historical context of the property, noting that the property is in the industrial zone and that the owner had gone before the planning board to apply for a minor expansion of a home occupation. Mr. Groff then stated specific regulations of the industrial zone. He stated that there has been no discussion about whether or not the property being zoned industrial was a pre-existing nonconforming use or about a variance being granted. Mr. Groff showed the original plan approved by the Planning Board in 2007 where it was approved for storage and sale of topsoil, bark mulch, and finished wood products, such as picnic tables and lighthouses. He further explained that between 2007 and 2020 the property was used as various different uses, one being a “chop shop” for used auto parts and that the previous owner did not use the property as a business. He stated that the property owner's boyfriend is involved in demolition and construction and has been dumping construction debris on the property. He noted that photographs had been submitted into the record of this. Mr. Groff continued that there was no discussion of this at the Planning Board meeting. He asserted that there is no evidence that there was a pre-existing wood cutting or splitting and that the lot is less than an acre in size.

Mr. Wing asked for clarification on what the applicants were appealing for. Mr. Groff replied that they are suggesting that the Planning Board did not look at the property to determine whether it met the requirements

of the zoning ordinance, such that there could be a granting of an expansion of use, which did not exist. He asserted that a new variance is needed.

Mr. Hennessey stated that the lot is a lot of record that existed prior to the zoning. Mr. Hennessey asked if wood splitting is an allowed use in the industrial zone. Mr. Groff replied that there is no mention of wood splitting in the zoning ordinance. Mr. Hennessey stated that a 35-ton log splitter sounded industrial. Mr. Groff stated that it does sound industrial, but is not a designated use in the zoning ordinance and that anything that is not designated requires a variance. Mr. Groff brought up the code enforcement cases on the property.

Mr. Hennessey opened the discussion to the public.

Mr. Brian Veillette, of 5 Lori Lane, came forward to address the Board. He stated that the property looked like a landfill for a while. He noted that his wife owns a dog grooming business and that customers always ask and complain about the property, adding that it is embarrassing to live next to. He stated that the dirt line on the property is now over Mr. Veillette's 6-foot fence. He stated that when the property owner first moved in, she told the Town that they were landscapers, but their trucks say demolition on them. He stated that they can hear chainsaws at 8:00 at night, inhibiting his ability to work the next morning.

Ms. Nancy Veillette, of 5 Lori Lane, came forward to address the Board. She asserted that she had proof that there was never any landscaping business on the property, no bark mulch, and that it has served as a demolition drop off site and woodlot. She stated that they had to call the fire department three times due to out of control fires. Ms. Veillette informed that she has a wooden fence that is now covered by dirt on the property owner's side, which has begun to grow through her fence. She expressed concern over the potential destruction of her fence. Ms. Veillette asserted that the property owner is running a demolition business, not a landscaping business. She stated that the yard was beautiful at one point but is now an embarrassment. She stated that she is worried that the noise, gas, and quality of air will force more animals into her home, as activity on the property in 2007 caused the applicant to have roof rats.

Ms. Barbara Nicholas of 6 Pulpit Rock Road came forward to address the Board. She explained that she is on the corner of Pulpit Rock Road and Lori Lane and that she agreed with everything the previous abutters stated. She informed that she came before the Board to speak against them the previous time they came before the Board. She noted that she has never seen a permit posted on the property since they have started work on the house. She stated that while the applicant has stated she lives there, the house has no electricity, and no one is occupying it. She stated that she was in support of the appeal.

Ms. Elizabeth Hamilton and Ms. Sara Began, the property owner and her attorney representative, came forward to address the Board. Ms. Hamilton gave a historical overview of the property, noting that it was approved for a landscaping business in 2007 including yard waste, bark mulch, and storage in the garage. She stated that therefore, there is an existing use of the property as a landscaping business. She informed that there is an affidavit from the owner of the house from that time stating that it was used for landscaping purposes. Mr. Hennessey asked if they were testifying that the wood splitting is a continuation of that landscaping business. They replied that was correct, noting that there was no variance for a landscaping business, but rather a granted use allowing seasonal products. Ms. Began stated that she considered hardwood as a seasonal product.

Mr. Hennessey stated that he did not see wood splitting as an allowance in the table of uses in the industrial zone.

Ms. Began stated that while they do own a construction company, the company does not store material on the property. She continued that the trucks have only ever taken material off the property. Ms. Began

explained that the dump truck normally used for the company no longer works, so they are borrowing the pictured truck to deliver wood. Ms. Beggan then showed pictures of the property to the Board. She stated that her boyfriend and her both work 40 hours a week and use this as their side project. Mr. Hennessey reminded that they were only there to discuss the appeal from a Planning Board decision.

Mr. Jim Bergeron of 27 Plower Road came forward to address the Board. He asserted that he was there to speak for himself, not for the entirety of the Planning Board, noting that the vote was unanimous. He explained that the property had a variance and was before the Planning Board. Mr. Bergeron reminded that variances run with the land. He noted that the lot does predate zoning. Mr. Bergeron stated that while wood processing is not in the allowed uses for the industrial zone, though it could potentially be considered light industry and manufacturing. Mr. Bergeron stated that some of what was brought up should be handled by code enforcement; he stated that they do not know how the applicant is going to perform after they leave the meeting. He stated that he did believe that the Planning Board acted in accordance with what it was supposed to have done that night.

Mr. Cairn asked for clarification on what the minor site plan change was for. Mr. Bergeron stated it was for a change in hours of operation and to allow wood cutting on the site which would be a change of use permit. Mr. Bergeron stated that a sawmill is a form of agricultural use.

Mr. Hennessey asked Ms. Beggan to come back to the Board. She informed that they have a 37-ton sawmill, which is not as big as it sounds. She explained how the log splitter works. She continued that she believed that wood splitting is a section of landscaping, as something needs to happen to the byproducts of cutting down trees and shrubs.

Mr. Hennessey stated that he believed this sounded agricultural to him and that this may require a new variance as he did not believe this was a continuation of the previous use of the lot. Mr. Hamilton stated his concern was in relation to the demolition materials and citations of fires on the property for demolition material, which is against the law. He continued that there are required permits for hazardous materials, which are often demolition materials. He asked for clarification on demolition material going into the property. Mr. Hamilton stated he believed there was a multiuse happening on the property. Mr. Hennessey continued that he did not believe that they were working under and industrial use, he did not believe it was considered a continuation of the previous use of landscaping.

Ms. Beggan stated that the materials burned on the property were all 2'x4's that she took out of the house. She explained that she only used clean pieces of wood to minimize the amount being thrown away. She explained that the pictures shown of proposed demolition materials was material brought in to help level the land. She asserted that no demolition material is brought onto the property. Ms. Beggan stated that metal was taken out of the garage and sat on the lawn for some time, but assured she was not dumping metal on the property – just working on cleaning the property up. Ms. Beggan asserted again that it was her opinion that hardwood splitting and landscaping are related enough to be considered an extension of use.

Mr. Groff stated that he agreed that log splitting is an incorrect use of the lot under the table of permitted uses. Mr. Groff stated that no variance was granted in 2007. Ms. Beauregard clarified that the variances were in 1983 and 1987 related to the size requirements of the lot. She stated that Mr. Gowan, the previous Planning Director, interpreted that the variance in 2007 and asserted that it stood and then the site plan was approved for a landscaping business.

Mr. Hennessey stated that he believed a new variance was required. Mr. Bergeron asserted that the variance runs with the land, not with the owners of the land and that the use of the lot is a separate issue. He stated that the variance was for nonconformity of the lot, which has been granted. He stated that a change of use

is in the purview of the Planning Board. Mr. Bergeron informed that he has four log splitters with the smallest being 36 tons. He explained that he uses wood as his main source of heat, along with hundreds of others in the Town. He explained that anyone can split wood anywhere. Mr. Hennessey stated not for business purposes. Mr. Bergeron replied that landscapers either take logs up north to be split or split the wood themselves.

Mr. Hennessey closed the discussion to the public.

Mr. Hennessey stated that he did not believe that the Planning Board was correct in their decision. He asserted that it was a clear case for him for the need of a new variance, stating that this lot is far removed from the existing businesses that have been there. He stated that he would vote to uphold the appeal.

Mr. Wing stated that there are too many unanswered questions regarding the property and businesses operating there that he would vote to uphold the appeal. Mr. Westwood and Mr. Hamilton agreed that he would uphold the appeal.

CASE #ZO2022-00017

ROLL CALL VOTE:

Mr. Westwood	–	Deny the appeal
Mr. Wing	–	Approve the appeal
Mr. Hennessey	–	Approve the appeal
Mr. Caira	–	Deny the appeal
Mr. Hamilton	–	Approve the appeal

APPEAL TO OVERTURN THE PLANNING BOARD DECISION UPHEALD.

ADJOURNMENT

MOTION: (Wing/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