

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT
July 10, 2023**

Chairman David Wing called the meeting to order at approximately 7:01 pm.

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT ROLL CALL: David Wing
David Hennessey
Danielle Masse-Quinn
Ken Stanvick
Alternate Matthew Welch
Alternate Shaun Hamilton
Planning Director/Zoning Administrator Jennifer Beauregard
Recording Secretary Cassidy Pollard

ABSENT: John Westwood

MINUTES

June 12, 2023

MOTION: (Hennessey/Masse-Quinn) To approve the June 12, 2023, meeting minutes as amended.

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

MOTION: (Stanvick/Hennessey) To approve the June 23, 2023, Site Walk minutes as written.

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

CONTINUED HEARINGS

Case #ZO2023-00012

Map 10 Lot 13-167-6

PICHASACA ZARUMA, Manuel E. – 1197 Bridge Street – Seeking a Special Exception to Article XII Section 307-76 III of the Zoning Ordinance to permit applicant/owner to conduct his siding business from his home, with no more than 2 registered business use vehicles kept in view, and all other business-related equipment garaged or screened from neighboring view.

Mr. Wing appointed Mr. Matthew Welch to vote for the case.

Mr. Wing explained that this case was continued from the last meeting. He stated that the abutters and the 15 criteria for a Special Exception were read into the record at the previous meeting. He explained that the floor had been opened to public input for those who were in favor or opposed the variance.

Mr. David Groff approached the Board. Mr. Wing asked Mr. Groff if there was anything that he would like to add. Mr. Groff explained that the Board and the residents that were interested attended the Site Walk and unless there were other questions, then he would just ask the Board for a vote on the matter.

Mr. Wing opened the floor to the public. No one came forward that was in favor to this proposal.

Daniel Demers and his fiancé Cathy Sallese of 1199 Bridge Street approached the Board in opposition of this proposal. Ms. Sallese explained to the Board that it's been very frustrating time for them since September of last year. She stated that her neighbors at 1197 Bridge Street have not been approved to run a business, yet they are. She explained that they are advertising as a business with a phone number and address of 1197 Bridge Street. She stated that on the website for Manny's Roofing that it lists both the Lowell address and the 1197 Bridge Street address. She explained that they looked into after last months meeting and that he has been advertising for over a month on the website which lists his business hours as available 24 hours a day Monday through Sunday. She added that he is not following the rules and waiting for permission as far as the trucks go. She explained that they had first started with their complaint by calling the Town and saying that their neighbor was running a business and had trucks and launched a complaint with Code Enforcement Officer John Lozowski. She stated that Mr. Lozowski met with Manny on September 22, 2022. She quoted Mr. Lozowski's Code Case#2022158, "I was handling a complaint and I asked him why he had three vehicles coming home and staying overnight when four weeks ago he told me he had a place for them in Lowell and would only be bringing home one vehicles and one trailer. He stated one vehicle is his sons, one is his wife's and the other is his and they are all company vehicles. I read him the Zoning article that pertains to company vehicles being parked in a residential area and he was very argumentative. I told him at one point that I was going to serve him with a notice of violation, and he told me to go ahead." She explained that that was back in September and that they have called several times up through December and that nothings been done. She stated that they have stopped calling because they feel that the Town is not helping them in any way, shape, or form. She explained that they have shown the Board pictures and that they have more pictures with them now. She stated that most of the vehicles are not even registered in New Hampshire and that they are company vehicles registered in Massachusetts and that a lot of other vehicles have been coming there are from other companies too. She explained that this has been a constant problem and that this is not a small company asking for this and it is probably a million-dollar business with probably 20 employees. She stated that one of the criteria says that the occupation is clearly secondary and subordinate to the primary residence and shall not change the residential character of the neighborhood. She explained that putting a 28' x 40' garage in the middle of their yard with no shielding to their neighbors plus six parking spots outside of the garage would change it from a residential to a commercial area. She stated that by having that there it would lower the value of their home and that nobody would want to move in if they went to resell it as nobody would want to buy something with a commercial property right next to it. She explained that they would be allowed a maximum of two on-site non-resident employees and that

they are concerned about that as their company picture on the website shows that they have more than two employees. She stated that they do have a sign and that they had a sign before that they took down and replaced with another sign. She explained that they are permitted one sign to advertise and that it shall be unlighted. She stated that their sign is a neon sign with scrolling neon letter, so they are clearly violating that. She referenced criteria number that a general home occupation is not permitted in a duplex or multi-family dwelling. She stated that although it is not a multi-family home, it does have a shared driveway, making it a multi-family driveway. She explained that they've had constant issues with them backing their trucks up and blocking her side of the shared driveway. She stated that they've had to call the police several times and have gone on record four or five times saying that there's been issues with them blocking the driveway and nothing has been done about it. She expressed that she hopes the Board votes no and will put an end to their frustration and keep it a residential area by not allowing this large business in their backyard. Mr. Demers added that everyday there is a container truck on the property that is registered in Massachusetts. He stated that it's constant and that on a Saturday morning they were woken up at six in the morning to the sound of a back up beeper on a truck. He explained that he leaves for work at 4 o'clock in the morning Monday through Friday so he doesn't hear it during the week but knows that that truck moves everyday and beeps every time it moves and reiterated that it is a residential area.

Mr. Mario Figueiras of 8 Plower Road approached the Board in opposition of this proposal. He explained that at the Site Walk he noticed that the trees appeared to be cut back all the way to his property. He stated that in the paperwork it appears like there should have been a buffer of trees over there and that he doesn't think there is a buffer there now. He asked the Board if they approved this how far they would need to be from the property lines. Mr. Wing stated that the structure would need to be 15' from the rear property line in order for the building of it commence. Mr. Figueiras stated that he doesn't have exact measurements, but it appears that the stumps of the trees were dumped on his property. Mr. Hennessey asked if he was aware that on his side of the property line was within the Wetlands setback. Mr. Figueiras replied that he was and asked if that made it okay to dump the stumps on it. Mr. Hennessey replied that it didn't, and that the removal of the trees was a violation because it was within the Wetland setback. Mr. Figueiras replied that he understood and that he doesn't mind his neighbors doing stuff on their own property, but if there is a property line then they shouldn't cross it. Mr. Hennessey asked if the stumps were still there. Mr. Figueiras explained that they were there when the Site Walk took place but wasn't sure if they were there now. Mr. Hennessey stated that it appeared to him when he looked at that section that at least five or six feet of it is Mr. Figueiras' property. Mr. Figueiras explained that this is a residential neighborhood and by allowing this he's sure that it will change the whole neighborhood because if they allow one business, they'll be allowing others in the future.

Mr. Wing asked Mr. Groff if there were any comments, he would like to make based on the voices of the opposition. Mr. Groff replied that there were a couple and asked the Board to keep in mind what they are in front of them for. He explained that there is no regulation other than general zoning about building a garage on their property. He stated that there are a number of garages on people's properties in Pelham, large garages, small garages and that there is no restriction on this. He explained that they could go down to the Planning Department with their plans and get

approved as they meet the zoning requirements and could build their garage. He stated that it isn't really something that they would be restricted from doing in any event whether this is granted or denied. He explained that the only reason they're in front of the Board is because they have three vehicles. He stated that one of the vans is out in the parking lot right now and that they can see what they look like and explained that it's just a van with a ladder on the top of it. He explained that the neighbors complained about the vans and Mr. Lozowski went out and informed them that they couldn't have more than two vans there and if they wanted to, they could just bring two vans home every single night and they could do that without any involvement of the Town Boards as it would be a minor home occupation. He reiterated that the only reason they are here is because they want to bring three vans home and that the only reason they want to build a garage is because they want to house two of their vans and a trailer inside of it. He explained that that was the only distinction between what they are allowed to do without any permitting other than a building permit and without any Board approvals. He stated that they don't have any off-site employees and that they are allowed to advertise whatever business they want as long as it is a minor home occupation, so they can have their business advertised there because there is no restriction on that. He explained that if they wanted to get a sign out there then they could go down and apply for a sign permit and they could put a sign up and bring their two vehicles home every night and advertise their business there and have their minor home occupation as long as they don't violate any of the minor home occupation restrictions. He stated that they can have one off-site employee which there aren't any off-site employees, it's just the husband, wife, and son, but they could have one. He explained that they do have another location in Lowell and the fact that the vehicles are registered in Massachusetts as opposed to New Hampshire doesn't have anything to do with this Board. Mr. Hennessey stated that he believes Mr. Groff misspoke and that it is a general home occupation. Mr. Groff replied that that was what they were applying for. Ms. Beauregard added that she believed that he was talking about what he would be allowed under a minor home occupation, although it would only be one vehicle related to the business and only 25% of the structures used for the business. Mr. Groff replied that currently there is no part of the residential structure that is being used for the business and it is simply just parking the vehicles there. He explained that there was a complaint made about the wetlands and that Mr. Lozowski went out and did some measurements and, in his report, it was determined that Mr. Lozowski doesn't believe that he cut within the buffer zone. He stated that Mr. Lozowski informed him of the buffer zone and its location so that he doesn't encroach into it in the future and doesn't see it as an issue for this Board or as an issue in general. He explained that the Board knows why they're there and if they have any questions, he would be glad to try and answer them, but he believes that they meet all the criteria.

Mr. Stanvick stated that he went through the Zoning Ordinance and looked at the requirements for a home occupation and it is listed as permitted by special exception and that the applicant can not go outside of those requirements. He asked if the special exception allows for storage of vehicles. Mr. Groff stated that it does because that is why they are there for storage of vehicles inside the building. Mr. Wing read, "a maximum of two registered vehicles related to the business may be kept in view. All other business-related equipment must be garages and screened from neighboring view." Mr. Stanvick asked if the number of vehicles was unlimited based off that criteria. Mr.

Wing replied that it's limited by the size of the property and that the business shall not occupy more than 49% of the total square footage of the house and garage. He explained that the house is already there, and they can't build a garage greater than 49% of that house. Mr. Stanvick asked if that included the parking area as well. Mr. Wing replied that it did not.

Mr. Hamilton expressed some confusion as Mr. Wing had said it can't be greater than 49% of the existing dwelling, but the proposed garage looks like it's the same size as the existing dwelling. Mr. Wing stated that he misspoke and explained that it shall not consume more than 49% of the gross residential living space including accessory structures and shall not change the residential character of the property. Mr. Hamilton explained that according to his calculations for this garage it would exceed the 49% of gross living space as it is a monstrosity and would surely change the whole landscape of the neighborhood. He stated that they're not just storing vehicles there as the applicant has stated that they're going to be storing roofing materials and items in the garage for the business making it commercial. Mr. Wing stated that they did make a motion at the last meeting to stipulate that the garage shall not exceed 49% of the gross living area. He explained that it does look big on paper and that's why they've added that stipulation. Mr. Hamilton stated that their drawings show six parking spaces with no off-site employees, but there's only three people that live at the house and run the business yet they have six parking spaces.

DISCUSSION

Mr. Hennessey asked if the Board could close the public session. Mr. Wing asked if there were anymore questions for Mr. Groff. No one came forward with any questions and Mr. Wing closed the floor to the public.

Mr. Hennessey stated that he did make a stipulation on the garage because he too was concerned with the size of it. He stated that this is administrative because when they come in for the building permit for the garage it's up to the staff and the Code Enforcement Officer to confirm that it is indeed less than the size of the house and is less than 49% of the gross living area. Mr. Wing added that this is only step one for them as this would also require a site plan review by the Planning Board. He explained that what this Board sees is a plan, and they request a special exception to the Zoning Ordinance to go ahead with the General Home Occupation, but it is up to the Planning Board if this is approved to review the Site Plan to check the size of the sign, the garage, and the parking spaces. He stated that if they are not following the criteria or stipulations then enforcement would be done by the Planning Department and the Code Enforcement Officer. Ms. Masse-Quinn informed the Board that they did make a stipulation last meeting that prior to the issuance of an occupancy permit on the garage that the fire department do an inspection, an inspection to make sure it meets all applicable codes. Ms. Beauregard added that they had also stipulated a 30' height restriction on the garage. Mr. Hennessey explained that the only thing that this Board can really deal with and have some wiggle room is on criteria 14. He asked what this Board can do for stipulations to protect the residential character of the neighborhood. He stated that the Board can recommend to the Planning Board that they reimpose the vegetation that was there to provide screening on the right and left of the rear property. Mr. Hamilton agreed but believes that a lot

more than screening needs to be stipulated. Mr. Hennessey added that the Planning Board would step in and look at it make their conditions. Mr. Hamilton replied that once the barn doors are open it'll be impossible to close, so they need to get the horses in the barn now. Mr. Hennessey agreed with Mr. Hamilton and explained that if this is approved then the abutters need to attend the Planning Board meeting and actively participate in the discussion of the Site Plan.

MOTION: (Hennessey/Masse-Quinn) To recommend that Planning Board consider stipulating that screening be installed by requiring the restoring of the trees that were removed along the right and left of the rear of the property.

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

Mr. Stanvick asked if the Board be requesting that the trees be equal to or greater than the height of the building that's being proposed or were they taking about two-foot trees. Mr. Hennessey stated that he worded it that way to not tie the hands of the Planning Board because that would be under their Site Plan. Mr. Hamilton stated that he believes whatever screening they put it will eventually be the height of the building. He explained that if they're building a 30' building that it is virtually impossible to bring in a 30' tree. Mr. Stanvick asked what kind of screening would be put in. Mr. Hamilton stated that they would probably bring in indigenous vegetation that would eventually grow to be 30'.

Ms. Masse-Quinn stated that she believes all the criteria has been met and that they have the three stipulations as well as the recommendation for the screening and that they've done as much as this Board can do. She explained that the abutters concerns and items like that are more for the Planning Board and the Site Plan Review.

Mr. Wing stated that Mr. Groff is correct and that he could build the garage with a permit and he's only here for the home occupation. He explained that the garage could be the size it is on paper as long as it meets the setbacks.

MOTION: (Wing/Hennessey) To stipulate that portion of the shared driveway is to be blocked by vehicles at any time.

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

Mr. Wing added that it is the Planning Board who executes the plan, they get to comment and add input to it and if there were any more comments from the Board.

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ROLL CALL VOTE:

Mr. Hennessey - "YES" with stipulations

Mr. Welch - "YES" with stipulations

Mr. Stanvick - "NO"

Ms. Masse-Quinn - "YES" with stipulations

Mr. Wing - “YES” with stipulations

(4-1-0) The Special Exception was **APPROVED**.

Mr. Wing informed the applicant and the public that there is a 30-day right of appeal.

HEARINGS

Case #ZO2023-00013

Map 22 Lot 8-85-1

BRIDGESIDE COMMONS (Applicant), & GENDRON, Patrick (Owner) – 579 Bridge Street – APPEAL OF AN ADMINISTRATIVE DECISION concerning: Article III General Provisions, Section 307-13A lot size requirements of the Zoning Ordinance and the Planning Board’s interpretation of the Zoning Ordinance specifically, whether the provisions of the Section listed above are applicable.

Mr. Wing explained to the public that this is typically not what the Board does, but they do have the capability to hear appeals of decisions by the Planning Board or the Board of Selectmen. He stated that a yes vote would mean that the Board agrees with the applicant in terms of their interpretation of the Zoning Ordinance and a no vote would mean that the decision of the Planning Board would be upheld. Mr. Hennessey agreed with Mr. Wing but emphasized that this Board is only interested in the portion of the decision made by the Planning Board that applied to the interpretation of the Zoning Ordinance. Mr. Wing agreed and added that this is not an assessment of the Site Plan itself, but it is a particular question regarding that Site Plan.

Ms. Masse-Quinn read the list of abutters aloud. There was no one whose name was not called that is an abutter or has a statutory interest in the case.

Ms. Masse- Quinn recused herself from this case as she is the Secretary of the Planning Board. Mr. Wing appointed Mr. Hamilton to vote in her place.

Mr. Stanvick recused himself from this case as he is also a member of the Conservation Commission which has made recommendations to Planning Board regarding this case. Mr. Wing appointed Mr. Welch to vote in his place.

Mr. Chris Drescher of Cronin, Bisson, & Zalinsky, approached the Board. He stated he was representing Patrick and Kim Gendron of 579 Bridge Street as well as the applicant Bridgeside Commons. He issued an apology to the Board, but especially to Ms. Beauregard and her staff for submitting so much paper for this case. He stated that his goal was simply to provide some background and context to the Board and get everything on the record to protect his client’s rights. He explained that the question before the Board is very narrow and is a yes or no question, does Section 307-13A of the Pelham Zoning Ordinance apply to multi-family housing. He stated that Section 307-13A has lot sizing requirements that dictate certain amounts of contiguous non-wetland area for its lot sizing calculations. He explained that this very narrow question is part of a larger appeal that is already off and on its way to the Housing Appeals Board, however since this one small piece of it was an interpretation of the Pelham Zoning Ordinance by the Pelham Planning

Board the law dictates that the ZBA weigh in on this first. He explained that the Planning Board held that 307-13A is applicable to the property at issue because the lot is bisected by wetlands, and he doesn't dispute that fact. He stated that however this project is for an apartment building, a multi-family housing building. He explained that Section 307-13A is clear that it's restrictions and lot size calculations apply to new single-family lots, new two-family lots, and parent lots to certain workforce housing project, neither of which are applicable to this project. He stated that multi-family housing, single family lots, two-family lots, and workforce housing are defined under the Ordinance. He explained that it is for that reason that he contends Section 308-13A does not apply to multi-family housing for the simple fact that it doesn't say it does. He stated that this is statutory interpretation 101, and that the Supreme Court has said on a number of times that it's not going to add words that are not there and that the case law was cited in his appeal. He explained that they submit that the wording for Section 307-13A is clear and unambiguous and if it were meant to apply to multi-family housing it would have said so. He stated that all other matters having to do with that Planning Board decision are not before the Board tonight, and it's just this very specific question. He then thanked the Board for hearing him out.

Mr. Wing asked if the Board had any questions for Mr. Drescher. Mr. Hamilton asked when that particular section of the Ordinance was written. Mr. Wing answered that it was amended March 8th, 2022, at the Town Meeting. Ms. Beauregard added that it was amended in 2022, but the section came out in 1975 with multiple amendments along the way. She stated that the addition of workforce housing lot sizing was what was amended in 2022. Mr. Hamilton stated that the Board is looking for a black and white answer and that this is not black and white. He explained that they're essentially skirting on the edges of a loophole because that section was written in 1975. He explained that Pelham is a very small Town, and it didn't have multi-family dwellings back in 1975 so the wording is not there because it didn't exist then. Ms. Beauregard reiterated that the sections has been amended multiple times. Mr. Hennessey explained that it was in the table of uses until last year and was changed by the addition of workforce housing and the elimination of the line on multi-families and that's why it's black and white. He stated that it's not a loophole and that the Planning Board chose to write it that way and that's why the courts have consistently held in the State of New Hampshire that you have to abide by what's written there and not what we think ought to be written there.

Mr. Wing opened the floor to the public. No one came forward that was in favor to this proposal.

Ms. Danielle Masse-Quinn of 9 Meadow Lane approached the Board in opposition of this proposal. She stated that she sits on the Planning Board as Secretary and on this Board as Secretary, on the Master Plan Subcommittee as Vice Chair, on the CIP Subcommittee as Vice Chair as well as the Agricultural Commission as Vice Chair. She asked if the Board would open their Zoning Ordinance to pages six and seven and go to Section 307-13. She stated that her reason for being here is to educate the members with the interpretation only of the Pelham Zoning Ordinance for Section 307-13. She explained that when you look at 307-13 under letter A the first three words stated are 'in addition to', meaning when you want to mention another intel connected to the subject you are discussing. She stated that under 307-13A it tells us that it is discussing a subject from Section 307-12. She asked what the subject was from 307-12 and stated that it is discussing the subject of multi-family dwellings. She stated that according to the 2022 Avanru Development Group versus the Town of Swanzy Case# 2021-0015, the court stated that we determine the

meaning of a Zoning Ordinance from its construction as a whole, not by construing isolated words or phrases. She explained that when they look at 307-13 and its construction as a whole, it's clear to see that it is simply a continuance of 307-12, that it's an add on, it's additional. She continued that 307-13 relies on 307-12 to function, meaning that it connects the subject, which in this case is multi-family dwellings to another item which is additional under 307-13 that could not stand on its own. She stated that they can't get to step two if they don't qualify for step one. She explained that when an applicant comes in front of them, they have to qualify for 307-12 and if they don't then they can't utilize the benefits of 307-13. She stated that the first line under the lot requirements specifically states that they must go to Section 307-12 in order to get what they need for their build and 307-13 can't stand by itself. She explained that for the interpretation of 307-13 you can't get to step two if you don't qualify for step one.

Mr. Drescher responded that he doesn't dispute that the project is subject to the provisions of 307-12 and he would contend that under those provisions the lot sizing was fine. He explained that when you get to step two, that's where it starts talking about those specific requirements of non-contiguous land versus wetland having to do with new single family, new two-family, and workforce housing.

Mr. Wing closed the floor to the public.

DISCUSSION

Mr. Hennessey stated that he has butted heads with the Housing Court and the Superior Court as well as the New Hampshire Board of Registration. He explained that sometimes he won and sometimes he's lost, but what he came to realize is that you have to read the words. He stated that they are restricted by how the Court interprets the laws that are passed by the General Court, by the House of Representatives, by the Senate in the New Hampshire Legislature. He explained that it is cut and dry as there are no cases that contradict what the appellant is asking for and he believes that they have to abide by that.

Mr. Wing stated that in the brief submitted by Mr. Drescher for item 23, for the first time since the inception of the application, the defendant raises a different take on the density calculation. He explained that he thought it was brought up at both the May 16th and June 6th Planning Board Meetings. He read from the May 16th Meeting Minutes, "Doherty asked if he was aware of the board created zoning that definitively allows workforce housing in all the districts, Mr. Doherty said they set a number in the business and residential districts based on square footage. Maynard said he was unaware that was adopted. Doherty said it was voted on the ballot this past spring and then, he said, needs to look at that. Doherty said they might have to give up the remainder of the wetlands and the 14-acre part to meet the units that he is proposing". He then read from the June 5th Meeting Minutes, "Bergeron talked about the Zoning that was adopted this past March about mentioning workforce housing. He said we were very generous in the he said that the engineer can include wetlands in the gross carry accolades, but niche. He said because they're only using the 30.65 and they want to put 66 units, they will have another commercial development on the remaining acres...Bergeron said if you isolate those six acres, the Zoning Ordinances going out the window and that would be telling the voters of Pelham that their vote would be disregarded". He

stated that the appellant is right and perhaps the words aren't there, but he believes the spirit and intent of that was conveyed. He referenced Section 100-3, "Design standards contained in these land use regulations shall be interpreted as minimum requirements and compliance with said minimum requirements shall in no instance obligate the planning board to approve any potential particular applications solely on that basis. Only after the planning Board is fully satisfied that an application complies with these regulations shall the application be approved. These land use regulations shall be broadly construed to promote the purpose for which they were adopted or amended". He stated that he believes that the spirit and intent of it was conveyed and that the Planning Board is granted the authority to regulate within the bounds of the spirit and intent.

Mr. Welch stated that he sides with the Planning Board and thinks that they got it right in looking at Section 307-13A. He explained that in addition to meeting the minimum lot size requirements of 307-12, if you look at 307-12 for multi-family dwellings it says 130,680sqft with an asterisk. He stated that if you go to the asterisk, it states that's for every additional bedroom it requires that the lot increase by 10,000sqft. Mr. Drescher responded that under 307-12 Table 1, a multi-family project is allowed in the B5 District and requires three acres of land and theirs is five, and for each additional bedroom of 10 you need another 10,000sqft. He explained that in this project if you include the whole lot which has 1,332,598sqft because the whole lot is 30.59 acres. He stated that they meet the needs of 307-12 and that 307-13 doesn't come into play because they are talking about multi-family housing and 307-13 is clear that it doesn't apply to multi-family housing. He addressed the Chair's comments from the meeting minutes and explained that they were still talking about a conceptual design at that time for a workforce housing project and that that idea was abandoned over the summer to change it to a market rate apartment building. Mr. Wing replied that Mr. Drescher had brought up the Zoning Board of Adjustment Case#2021-00005 in his brief stating that he went back in history, and he felt that he could do the same.

Mr. Hamilton asked if the project was originally sold as workforce housing. Mr. Wing stated that in 2021 the applicant presented a request for variance for workforce housing. Mr. Hamilton asked if it didn't meet the requirements under the label of workforce housing. Mr. Wing explained that the Zoning Board denied that application and the applicant appealed to the HAB and made a case that financially a workforce housing project was the only viable option going forward. He stated that the HAB remanded it back to the Zoning Board who approved the application with certain stipulations. Mr. Hamilton asked if they didn't meet the requirements of 307-12 and 307-13 and changed the wording from workforce housing to make it multi-family market value. Ms. Beauregard added that it was before the Zoning Board originally because there were no regulations on workforce housing, therefore it was not allowed, and the density of that project exceeded what the calculations were in that table of dimensional requirements as there was no mention of workforce housing at that time in the ordinance. She stated that for those reasons it didn't meet the Zoning Ordinance. Mr. Wing added that the Town voted last March and made an amendment to include workforce housing requirements in the Zoning Ordinance. He stated that the meetings he mentioned in May and June is when the Planning Board conveyed to the applicant that there were new requirements in the Zoning Ordinance.

Mr. Hennessey added that what the Zoning Board dealt with back then was just a narrow slice of what the Planning Board and applicant have been going through for over a year. He stated that in their review they approved the variance under the first four criteria and denied it on the base of hardship. He explained that the HAB said no uncertain terms that the Board was mistaken and while it was remanded back to them, the HAB made it very clear that they were wrong and that they should've taken the financial consideration into account. He stated that he is looking at the Zoning and believes that Planning Board got it wrong as the Zoning Board did when they denied it on the basis of hardship that didn't exist in their opinion.

Mr. Drescher added that the variance for the workforce housing project is not relevant to the question in-front of them tonight. He stated that a new applicant came along to present a project with a variance sort of handed to him for a workforce housing project. He explained that he could see that this was not being met particularly well and and started to go through conceptual design review for a market rate project through several meetings. He stated that it wasn't until December of 2022 when he finally submitted an official application for review. He explained that all they're here for tonight is to determine whether that section of the Ordinance applies to multi-family housing and that's it.

Mr. Wing explained to the Board that a yes vote would be remanding it back to the Planning Board and that a no vote would be to uphold the Planning Board's decision.

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ROLL CALL VOTE: Mr. Hamilton - "NO"
Mr. Welch - "NO"
Mr. Hennessey - "YES"
Mr. Wing - "NO"

(1-3-0) The motion failed.

The Board voted to **UPHOLD** the decision of the Planning Board.

Mr. Wing informed the applicant and the public that there is a 30-day right of appeal.

Ms. Masse-Quinn and Mr. Stanvick rejoined the Board.

ADJOURNMENT

MOTION: (Hennessey/Masse-Quinn) To adjourn the meeting.

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

The meeting was adjourned at approximately 8:17pm.

Respectfully submitted,
Cassidy Pollard
Recording Secretary