

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
July 13, 2015

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

The Secretary Bill Kearney called roll:

PRESENT: David Hennessey, Svetlana Paliy, Bill Kearney, Peter McNamara,
Chris LaFrance, Planning Director/Zoning Administrator Jeff Gowan

ABSENT: Alternate Lance Ouellette, Alternate Pauline Guay, Alternate Darlene
Culbert, Alternate Kevin O'Sullivan

HEARING(S)

Case #ZO2015-00007

Map 40 Lot 6-193

FRAIZE, Tim & Patricia - 6A Noela Avenue - Seeking a Special Exception concerning Article XII, Section 307-74 to permit an accessory dwelling within the existing structure.

Mr. Kearney 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. Joseph Maynard of Benchmark Engineering, representing the applicant, came forward to discuss the requested Special Exception. He provided the Board with a brief history of the lot. He noted that the house is considered a two-family/duplex by the Town and believed that consideration dated back to when it was originally constructed given there was no accessory use requirements at that time. The main house is approximately 1,400SF-1,500SF (depending if the screened porch is included); the second unit has 727SF of living area. The site has a State approved 6-bedroom septic design. Mr. Maynard explained that the system was replaced approximately 10 years ago. Because it was considered a duplex, it had to meet the Town's requirements for a duplex. He also told the Board that the applicant had recently gone in front of the Planning Board to subdivide their property into two lots. The Planning Board approval is subject to receiving the requested Special Exception. Mr. Maynard told the Board that his clients were willing to meet all the conditions for an accessory use, including a deed restriction.

Mr. McNamara questioned how the property had been used. Mr. Maynard replied his client had rented the space to known people; it hasn't been a true accessory-type of use. His clients understood and agreed, as part of the approval, to have a deed restriction. Mr. Hennessey confirmed the unit would not be available for open rental. Mr. Maynard replied that was correct.

For public information, Mr. Hennessey pointed out there was a bill in front of the New Hampshire Legislature to allow accessory apartments to be rented. The bill has been hung up in committee. If the State bill passes, the Town will not be allowed to override it. He noted the homes within the Town's mixed use district ('MUZD'), containing accessory apartments were allowed to rent them on the open market. The property being discussed (Noela Avenue) under Pelham Zoning would not be available as a rental unit on the open market.

PUBLIC INPUT

Mr. Jason Pileggi, 4 Noela Avenue wanted to know the distinction of an accessory dwelling. Mr. Hennessey explained that an accessory apartment (in-law apartment) had specific definitions within the Town's Zoning. Mr. Gowan added the resident of an accessory unit could be a family member or caregiver. He said a duplex requires two acres. In this case the applicant went to the Planning Board and received approval for a subdivision with the condition that the applicant come to the Zoning Board for a Special Exception relating to the accessory unit. He stated that the Building Inspector had reviewed the floor plan; testimony given to the Board is accurate.

Mr. Pileggi wanted to know what assurance there was for the unit not being on the open market. Mr. Hennessey told him enforcement went through code enforcement in the Planning Department. He noted that the structures within the MUZD containing accessory units were allowed to be put on the open market. Mr. Gowan added the units within the MUZD would have to be existing and done in compliance with the Town.

BALLOT VOTE Mr. Hennessey – Yes
#ZO2015-00007: Ms. Paliy – Yes
 Mr. Kearney – Yes
 Mr. LaFrance – Yes
 Mr. McNamara – Yes

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

SPECIAL EXCEPTION GRANTED

Case #ZO2015-00008

Map 41 Lot 10-246

FIRST CHANCE CONVENIENCE STORE - 10 Bridge Street – Seeking a Variance concerning Article XI, Section 307-69 (O-4) to permit a 3'x 5' electronic messaging display sign exceeding the 2'x8' restriction.

It was noted that the abutter list would be read once for Case #ZO2015-00008 and #ZO2015-00009; however, the Board would consider the cases separately.

Mr. Kearney read the list of abutters aloud. There were no persons present who had a statutory interest in the case, who did not have their name read, or who had difficulty with notification.

The owner Leo Zisis told the Board they would like to put up a new sign. He spoke of the site and the business that had grown since they first purchased in Pelham in 2002. They are a family owned business and grateful for the Town's support over the years.

Mr. Charles Raz of Hammar Signs Now, representing the applicant, discussed the requested variance. Mr. Hennessey understood the request to erect a 15ft. sign in a location that Zoning allows a 16ft. sign. Mr. Raz showed a photograph of the existing sign, which contained a 3ftx5ft. manual/changeable copy sign at the bottom. The applicant would like to change over to an electronically programmable digitally controlled sign. Zoning indicates a sign cannot exceed 2ftx8ft (16SF) in size; however the existing structure currently contains a 3ftx5ft. sign.

Mr. Raz read aloud the variance criteria as submitted with the application. Mr. Zisis added that the location of the existing sign was on the State right-of-way line. Mr. Gowan told the Board if the applicant had to stick with the Zoning, they would have to move the entire sign structure further away from Route 38.

Mr. Zisis spoke of the difficulties with the existing manual change sign, such as in the winter the removable components becoming frozen. Because gas prices often fluctuate daily, he's had to use pails of hot water to be able to remove components and update the sign.

Mr. McNamara confirmed that the request was only for First Stop Convenience. He wanted to know what would happen if other businesses within the plaza wanted to add a sign below the Mobil sign. Mr. Gowan replied they would have to first speak to the landlord, but it would also require a variance. It was his understanding the applicant was only seeking to use the existing space, which would not exceed the square foot limitation. He explained the plaza contained two separate ground signs (each with a 50SF maximum) because there had previously been two separate lots and two distinct businesses at separate ends of the building. Mr. McNamara had no objection to the request given testimony and evidence provided.

Mr. Kearney questioned if anything else on the sign pole would change, other than the manual change sign. Mr. Zisis answered no. He said having a digital sign would allow them to change information from inside the building versus trying to change information with six feet of snow and frozen components. Mr. Raz noted that the gas price section would change over to be electronic. Mr. Gowan told the Board there were several other stations in Town that had an electronic price component. In his opinion the 'electronic sign' portion of zoning didn't apply to gas price components because they were basically 'fixed' display. Mr. Hennessey agreed.

Mr. McNamara questioned if the photographs provided to the Board were an accurate representation of what the sign would look like. Mr. Raz answered yes.

Ms. Paliy asked if the sign would be similar to a television, with changing pictures every few seconds. Mr. Raz understood Zoning to allow stationary images to be held on the screen for 3-5 seconds. There will not be motion, video, illusion of video etc. Ms. Paliy questioned if there were any studies regarding distraction and how signs affect drivers. Mr. Gowan was aware studies had been done, but he didn't have a specific study on that topic. He discussed when he first became Planning Director and Zoning Administrator the Town's Ordinance didn't allow for any electronic or flashing signs. There were a couple that had been previously permitted. He said the topic was the source of some heated discussions with the result being the section in the Ordinance for electronic signs which was supported by both the Planning Board and voters. Mr. Hennessey read aloud a portion of the ordinance.

Mr. Benjamin Barr of Watch Fire LED Signs came forward to discuss the electronic portion of the sign. Being a U.S. manufacturer, the company had been a heavy advocate for safety. He spoke of the studies that had been done regarding electronic signs, such as motion compared to static.

PUBLIC INPUT

Mr. Daniel Dimastrantonio, owner of 13 Bridge Street Trust (Auto Stop across the street) had no objection to the applicant's request. He felt it would be easier for passing vehicles to read the sign and felt it would be an asset to the area.

Mr. Hennessey spoke of the sign, which would be reduced in size. He said it was a unique situation because of the State right-of-way. If the applicant abided by Zoning, which allowed for a larger sign it

would cross into the right-of-way. He felt it was a difficult case to oppose under the circumstances based on the variance criteria.

BALLOT VOTE
#ZO2015-00008: Mr. Hennessey – Yes to all criteria
 Ms. Paliy – Yes to all criteria
 Mr. Kearney – Yes to all criteria
 Mr. LaFrance – Yes to all criteria
 Mr. McNamara – Yes to all criteria

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

VARIANCE GRANTED

Case #ZO2015-00009

Map 41 Lot 10-246

FIRST CHANCE CONVENIENCE STORE - 10 Bridge Street - Seeking a Variance concerning Article XI, Section 307-69 (O-1) to permit a full color electronic messaging display sign where Zoning restricts to amber color.

It was noted that the abutter list would be read once for Case #ZO2015-00008 and #ZO2015-00009; however, the Board would consider the cases separately.

Mr. Hennessey commented that most of the information read into the record for the variance criteria was the same. His issue was that the Ordinance only allowed amber color. He wanted to know what made the applicant's sign unique and why an exception should be granted.

The owner Leo Zisis and his representative Charles Raz of Hammer Sign Now discussed the variance request. Mr. Raz extracted some of the information submitted with their application and read it aloud. He stated full color illuminated signs are currently allowed in other places throughout the Town. The proposed sign will not have any automated/video movement. The intensity of the lighting can be controlled with an automatic dimming to make it soothing to the eye.

Mr. Hennessey understood the color intensity could be controlled; however the Town's Ordinance doesn't include such control mechanisms. The Town had no way of enforcing brightness/intensity. Mr. Gowan spoke of lit signs and believed intensity could be an issue even with an amber colored sign.

Mr. Benjamin Barr of Watch Fire LED Signs came forward to offer information. He told the Board ten years ago Watch Fire was predominately making red and amber colored signs. At present approximately 93% of the signs manufactured are color. He noted in time the single color signs will eventually have a challenge with service and replacement parts; the industry is moving to color using red, green and blue diodes. He added that manufacturers have color sequenced trademark logos. Mr. Barr told the Board that the applicant's intention was to not have banners, therefore they are investing in a high resolution sign that wouldn't be 'fuzzy' or pixelated. He discussed the benefits to displaying a simple picture, such as a propane tank, would make it easier for people to read (photograph provided to the Board). Mr. Barr spoke of driver safety by having easily identifiable information being displayed.

Mr. Hennessey felt an agreement had been made against an amber sign, but that's what the code restricts. He understood through testimony that a color sign would be safer than the sign the Board just approved

(in the previous case). Mr. Raz replied that was correct. He then called the Board's attention to photographs submitted with their application, that compared amber and color signs.

With regard to intensity/brightness, Mr. McNamara wanted to know if it would only change at nighttime. Mr. Barr explained that Watch Fire would provide a hardware temperature sensor containing a photocell that would automatically react to overcast/snowy days. There is also a variable dimming process for specific times of day into the evening hours. Mr. Barr recommended that the Board make an approval stipulation to conduct a site visit during evening hours after installation to ensure the dimming level is appropriate for the ambient light in the area. The sign has the ability to be dimmed but cannot be brighter than the factory settings. Mr. McNamara asked if the brightness would change from message to message. Mr. Barr replied it would be the same brightness.

Mr. Hennessey asked if the Board needed something amended to the proposal to enforce the offers of the applicant and their representatives. Mr. Gowan felt if the sign differed from what was proposed, he would have the authority to act, in terms of code enforcement.

Ms. Paliy was concerned with having animated pictures cigarettes and liquor. She questioned if the Town had any ordinances against cigarette and/or liquor advertisement. Mr. Gowan was not aware of any. Mr. McNamara warned about discussing 'content'. Ms. Paliy noted amber display would limit content. She pointed out that certain content wasn't done on television and wanted to know if it should be discussed in this instance. Mr. McNamara noted there was a recent Supreme Court case; when content is discussed it gets into the subject of free speech. Mr. Hennessey stated the Board was discussing the medium, not the message. He said the problem was that the medium was controlled by an admittedly outdated ordinance. He felt the applicant had made an affective argument that the new medium was better than what the Town had on the books; it was an improvement both for commerce and safety. Ms. Paliy agreed that the proposed sign would be easier to read; however, she was concerned with opening up a situation (advertising cigarettes and alcohol). Mr. Hennessey commented that the Planning Board had a subcommittee reviewing the Town's zoning. Mr. McNamara added that any new zoning would go in front of the voters for approval.

Mr. Hennessey asked the applicant to go back through the variance criteria with the emphasis on the request to go from an amber sign to multi-color. Mr. Raz read aloud their answers to the criteria as submitted with the application. Special note was made that the Mobil branding requires blue, white and red, which also crosses over to the digital aspect of sign.

PUBLIC INPUT

Ms. Nicki Silvestre (owner's daughter) told the Board she managed and ran the business with her family. She stated they were investing a great deal of money into the property and were looking to purchase the latest technology. She noted 93% of signs sold were color. They wanted to keep up with the times and have the ability to show the products and services they sell.

Mr. LaFrance believed having an amber sign would create a hardship for this applicant, for reasons such as the Mobil branding requirements and amber would be hard to read. Mr. Hennessey commented there was a similar situation with the Tractor Supply Company store and required sign standards. He noted that the applicant had made an argument for the proposed sign because of the need to meet national franchise standards of Mobil. He felt this was a strong argument because of the recent situation with Tractor Supply.

Ms. Paliy felt the discussion would have been simplified had the applicant requested blue, white and red versus requesting full animation. Mr. Hennessey replied the applicant wasn't asking for motion. Ms. Paliy said the request was to have pictures that could change after 3-4 seconds.

Mr. Kearney confirmed with the applicant the proposed sign would be a static sign, programmed as such from the factory. Mr. Barr stated the zoning ordinance regulations within the software would lock pictures in for a specific time period. He told the Board there would be no motion and no video. Mr. Hennessey understood the sign would contain graphics as would be allowed on a static sign. There will be no moving pictures. Mr. Kearney understood the sign would have factory installed night dimming/night vision component. Mr. Barr replied the sign would have a hardware and software photo cell that would regulate brightness. It's programmed to have 7% of light output at night (total sign brightness). He stated upon the Board's request, they could set the sign to a lower brightness based on an evening site review by the Board and/or Building Inspector. He noted that was the nationwide procedure. They didn't have any other feedback from other municipalities. Mr. Kearney confirmed once the factory sets the brightness, it could only be reduced. Mr. Barr answered yes; it would be set for 7% or less and could never surpass that setting. Mr. Kearney stated while the ordinance was plain, the applicant's argument emphasized safety and having the ability to control brightness. He felt the Board would be doing a disservice to the business owner if they didn't consider going to the best technology versus requiring old technology. He felt good about granting an approval on the safety aspects. Mr. Hennessey agreed. He pointed out that the Board approved an amber sign (in the previous case) and the applicant was offering to make the situation more safe through having an effective sign.

Mr. LaFrance wanted to know if the variance was denied if the amber sign would be locked into the system or if it could be easily changed to color through reprogramming. Mr. Barr told the Board their manufacturer was either single color red, single color amber, or color. In order to change an amber sign to full color (red, green & blue) the interior of the sign would have to be completely removed. He said it was like changing the engine in a car.

Mr. Hennessey wanted to stipulate all offerings made by the applicant would be made part of the variance approval. Including, but not limited to the gradient from day to night, toning down brightness at other times.

MOTION: (McNamara/Kearney) All offers made by the applicant and their representatives through the course of the hearing and in writing are made part of variance approval.

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

Mr. Gowan clarified that the approval will be stipulated for the sign to follow perimeters and preprogrammed limitations to comply with self-imposed restrictions. The Board didn't object to his suggestion.

BALLOT VOTE Mr. Hennessey – Yes to all criteria
#ZO2015-00009: Ms. Paliy – Yes to all criteria
 Mr. Kearney – Yes to all criteria
 Mr. LaFrance – Yes to all criteria
 Mr. McNamara – Yes to all criteria

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

VARIANCE GRANTED

Case #ZO2015-00010

Map 31 Lot 11-272

KAVANAUGH, Lee & Sandra - 52 Woekel Circle - Seeking a Variance concerning Article III, Section 307-8(C) to permit a 16'x18' shed on an undersized lot.

Mr. Kearney 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. Lee Kavanaugh stated they would like to construct an 18ftx20ft shed on a lot they owned. The lot had been subdivided in 1947 by Mr. Woekel. The lot was over 350ft. from the pond and had no Shore Land Protection issues. He read aloud his responses to the variance criteria as submitted with the application.

Mr. McNamara wanted to know the height of the shed. Mr. Kavanaugh replied it would be approximately 11ft in height with a slight pitch roof; less of a roof line than his neighbor. Mr. McNamara questioned if there were any plans to make any other use of the lot. Mr. Kavanaugh replied in the future he did. He spoke of going in front of the Board of Health in 2009 with a request that was withdrawn without prejudice. He had a medical situation for the past five years, but now that he was healthy he would like to do something with the lot, such as going back to the Board of Health. Mr. McNamara questioned if the shed would be used for storage. Mr. Kavanaugh answered yes.

Mr. Gowan believed Mr. Kavanaugh understood if he eventually wanted to put a house on the lot he would need to come back in front of the Zoning Board of Adjustment, independent of going in front of the Board of Selectmen (acting as Board of Health). Mr. Kavanaugh understood.

PUBLIC INPUT

Dr. Karen Martin, 39 Woekel Circle (year round resident for the past 11 years) spoke in favor of the requested shed. She felt it was a great use of the property and didn't obstruct anyone's use of anything.

BALLOT VOTE	Mr. Hennessey – Yes to all criteria
#ZO2015-00010:	Ms. Paliy – Yes to all criteria
	Mr. Kearney – Yes to all criteria
	Mr. LaFrance – Yes to all criteria
	Mr. McNamara – Yes to all criteria

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

VARIANCE GRANTED

MINUTES REVIEW

May 11, 2015:

MOTION: (LaFrance/McNamara) To approve the May 11, 2015 meeting minutes as written.

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

ADJOURNMENT

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

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

The meeting was adjourned at approximately 8:40pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary