

APPROVED

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
December 14, 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, Alternate Lance Ouellette Planning Director/Zoning Administrator Jeff Gowan

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

PLEDGE OF ALLEGIANCE

HEARING(S)

Case #ZO2015-00013

BROOKWOOD REALTY GROUP, LLC - Off Tina Avenue, 10 Tina Avenue & 15 Tina Avenue – Seeking a Variance concerning Articles IV & V, Sections 307-16 & 307-18 to permit the temporary use of a property to store non-hazardous materials such as steel and other construction materials and to regrade an area less than 2 acres. The closest of the stored material is 500+ feet from the end of Tina Avenue. We are currently working on a site plan for Residential and Commercial uses. The stored materials will be used for future development.

Mr. Hennessey read aloud a letter left on his desk prior to the meeting from Peter Zohdi of Herbert Associates (applicant's representative) requesting a postponement of the hearing to the January 11, 2016 meeting, due to a scheduling conflict.

Mr. LaFrance felt it was unfair to continue to push the case back and felt the request should be denied. Mr. McNamara noted that the previous application was withdrawn; therefore, the case was technically under a new application. He said the Board typically gave people more time, but at the same time note the case would forward and be heard during the January 11th meeting.

Ms. Paliy commented that she had read through the application and the Board had conducted a site walk. She believed during such people saw that certain things didn't match up to what was contained in the application. She didn't feel the new application reflected anything different from what was originally presented. She said no one had done anything to correct the mistakes; the contents of the application didn't match up to anything viewed at the site. She wasn't in favor of hearing the case until the situation was cleared up. Mr. Hennessey appreciated the comment, but was not present for the site walk. He said if there was a discrepancy in what was stated during the site walk and what was being presented in the application. He said it was the applicant's decision whether or not to request variance. He hoped Ms. Paliy would bring up her concerns at the time the Board heard the case.

As a non-voting member, Mr. Ouellette disagreed that the request was a new application. He felt it was the same application and the Board was being passed off delaying the inevitable. He said it wasn't fair to

the Board or the abutters. He noted that the first case had nearly a year and a site walk. The reapplication case had nearly thirty days since submission to reach out to abutters. Mr. Hennessey replied the applicant had a right to ask for a variance, if the Board turned them down it would delay and punish the applicant by making them re-notice the hearing. He pointed out it was a new application from what was previously in front of the Board. Mr. Ouellette said the applicant had asked to hear the case at a later date, but it didn't mean the Board had to do so. Mr. Hennessey didn't see the point in requiring the applicant to re-notice the hearing since it was the first hearing with the new case.

Mr. Kearney understood the other member's frustration. He reiterated that the previous case had been withdrawn and there was a new case submitted to the Board for consideration. He felt denying a continuation would be punitive. He didn't feel it would be the right thing to do.

Although Mr. Hennessey found the situation to be rude and unfair to the abutters, he didn't think it would be a good thing to re-notice the case over the holidays out of concern that not everyone would receive notice.

Mr. Ouellette questioned if the case would be pushed out further than the next meeting. Mr. Hennessey replied they would need to submit a request if that was the situation. He said at present there wasn't much the Board could do except express their irritation.

Hearing the member's arguments Mr. LaFrance commented that his earlier statements were made out of disappointment and frustration. He would vote in the affirmative to continue the hearing.

MOTION: (McNamara/Kearney) To approve the applicant's request to extend for the specific date of January 11, 2016.

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

The case was date specified to January 11, 2016.

Mr. Hennessey requested that the Board's comments be attached to the extension request. Mr. Gowan understood that if the applicant didn't attend the January 11, 2016 meeting the applicant would need to re-notify abutters.

REQUEST FOR REHEARING

Case #ZO2015-00022

Map 28 Lots 3-115-10 & 2-2

N & C REVOCABLE TRUST - 12 Luann Lane - Seeking a Variance concerning Article III, Sections 307-7 & 307-12 & Table 1 to permit the existing landlocked property (Map 28 Lot 2-2) to adjust the lot line with the adjacent property (Map 28 Lot 3-115-10) so that the landlocked property would have 50-feet of frontage on Luann Lane. Rehearing requested by the abutter Mitchell Mansfield.

Mr. Hennessey explained the rehearing process. He asked if the members had all reviewed the request. The request was separated into three parts: 1) Clarification of the term 'hardship'; 2) question of possible conflict – applicant's representative (Joseph Maynard of Benchmark Engineering) and Board member LaFrance having a working relationship; and 3) assumption made by Board that the applicant would minimize abutter concerns of headlights, blasting, future resale value, creation of potential hardship for abutters having a significant financial impact.

Mr. Hennessey discussed the term 'hardship', which for the Board was in reference to the land. In this case it referred to zero frontage. He apologized that it wasn't explained further and felt it was a fault from the hearing.

With regard to the applicant's representative having a working relationship with Mr. LaFrance, Mr. Hennessey replied there were very few clear cut cases of conflict relative to personal pecuniary interest; being an abutter would be another reason. Under State Statute the Board member is who decides if they have a conflict severe enough that they could not impartially hear a case. He said the Board was not who made that decision.

To address the third concern, Mr. Hennessey explained Pelham had site requirements for the placement of the driveway as well as a Blasting Ordinance. Mr. McNamara understood if the variance was granted, the matter would then go in front of the Planning Board. Mr. Gowan answered yes; there would be a subsequent lot line adjustment. In that context, Mr. McNamara explained that the Planning Board had jurisdiction about the placement of shrubbery, headlights (placement of driveway) and the Fire Department would oversee any necessary blasting. His comments during the hearing related to the fact that he felt the abutter's comments could be addressed at a subsequent hearing (of the Planning Board. In terms of the hardship requirement, Mr. McNamara pointed out that the applicant had a land-locked five-acre parcel and the applicant agreed to limit themselves to a single-family house. He recalled the frontage deficiency was viewed by the Board as a considerable hardship. Mr. Hennessey explained the Board's review in regard to the hardship criteria, which contained two-prongs. He noted one of the prongs specifically indicates if the land cannot be used for anything that by itself constituted severe hardship.

Mr. LaFrance commented about point number two. He stated he always voted for what he felt was best for all parties, including the Town. He explained that he occasionally had working relationships with Mr. Maynard because they 'bumped' into each other on different jobs; however he votes based on how it should be in the correct way, not because of the representative. He said shouldn't be on the Board if he had to step down on every case Mr. Maynard presented. Mr. McNamara asked Mr. LaFrance if he had any financial interest in the particular case. Mr. LaFrance answered no, not whatsoever. He pointed out if there as any involvement, the record shows that he always steps down. In regard to the case being discussed, it had no effect on him whether it was approved or denied. Mr. Hennessey said Board members each discussed their involvement in the Town and on the Board. He noted it was a volunteer job and each person brought their own skill sets. He reiterated State Statute says it's the Board member's decision and Mr. LaFrance had stepped down on a number of occasions when there was a real conflict. He felt Mr. LaFrance was very helpful in looking at cases because of his technical knowledge. Mr. LaFrance said it seemed people thought he would have a lot to gain from being on the Board, but in reality it was the complete opposite. He informed there were a lot of projects that came through the Board that he chose to pass work on because he didn't want there to be a conflict.

Mr. McNamara made a motion to deny the request for rehearing. Ms. Paliy seconded for discussion. With regard to Mr. Mansfield's letter, Mr. McNamara stated he saw nothing new, or anything that showed the Board, as a matter of law, made a mistake that deserved a rehearing. He believed the issue was fully vetted at the hearing. Mr. Hennessey spent time reviewing the submission to bring clarity to the questions raised.

MOTION: (McNamara/Paliy) To deny the request for rehearing.

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

Request for rehearing was turned down.

DATE SPECIFIED CASE(S) – January 11, 2016

Case #ZO2015-00013 - BROOKWOOD REALTY GROUP, LLC - Off Tina Avenue, 10 Tina Avenue
& 15 Tina Avenue

MINUTES REVIEW

November 9, 2015:

MOTION: (Kearney/LaFrance) To approve the November 9, 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 7:27pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary