

**APPROVED**  
**TOWN OF PELHAM**  
**ZONING BOARD OF ADJUSTMENT MEETING**  
**January 11, 2016**

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 Darlene Culbert, Planning Director/Zoning Administrator Jeff Gowan

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

**PLEDGE OF ALLEGIANCE**

**CONTINUED 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. Peter Zohdi of Herbert Associates and Attorney Steve Shadallah of Salem, NH, representing the applicant, came forward to discuss the variance request. Mr. Zohdi apologized for requesting an extension at the last meeting, they were gathering additional information based on questions that had been raised. He spoke about the land owned by his client, which was off Tina Avenue, and provided a brief history of the request. He explained that they attended a joint meeting with the Planning and Zoning Boards, reviewed the variance criteria and conducted a site walk. He understood the Boards wanted legal to obtain legal opinion from Town Counsel (Attorney John Rattigan). He noted the applicant tried to work with the Planning Director and receive a copy of the legal opinion. Given that they weren't successful, the applicant withdrew the application.

Mr. Zohdi then reviewed the new proposal submitted to the Board for consideration. On a map displayed for the public, he pointed out highlighted areas where materials were currently stockpiled. He said the applicant was requesting permission to level off approximately two acres that would be used to stock pile materials such as steel, construction material and fill for use on-site and other developments. Mr. Zohdi stated they were anxious to see Town Counsel's opinion.

Ms. Paliy recalled the presentation given by the Plouffe brothers during the site walk, which she didn't feel had anything to do with the application now in front of the Board. She felt the applicant's lot was being used similar to a staging area for Interstate 93 ('I93'). She noted some of the items currently on site and tried to imagine what they could be used for. Ms. Paliy reiterated that the discussion on site made sense, but was different from the presentation being given at the meeting.

Mr. Zohdi told the Board that the application made a request to store material, some would be eventually used on site. He noted the land was comprised of nearly fifty acres. The applicant was seeking a partner to do a mixed-use development (residential and commercial).

Mr. Hennessey questioned if the request was to store construction materials, fill, or both. Mr. Zohdi replied they were requesting both. He explained they would like to grade a two-acre area and material to do so.

As Zoning Administrator, Mr. Gowan told the Board the fill wasn't a Zoning violation. He stated the operation of a construction yard was non-compliant with Zoning and the reason he suggested they come in front of the Zoning Board. Mr. Hennessey noted he spent considerable time reviewing planning and land use statutes and couldn't find a single case where a zoning variance was granted for a temporary use. He asked Mr. Zohdi if he had any such citations. Mr. Zohdi answered no. Mr. Hennessey questioned if the Board, under New Hampshire RSA, could grant a variance that would satisfy the words in the application for temporary use. Attorney Shadallah said the Board could grant a variance and put conditions on it. He added it would be a permanent variance, unless the Board acknowledged in the granting of the variance that eventually the site would be superseded by a mixed-use development and no longer used as described. Mr. Hennessey asked if there was anything to preclude the applicant from using the site to store construction material or selling the property to someone else who would use it for storing materials. Attorney Shadallah believed the Board could place a condition on the variance for it to be unique to the applicant. He reiterated that the property would eventually be developed as mixed-use. He believed the Board could grant a variance for the limited use of the materials being stored on site.

Attorney Shadallah told the Board that he originally became involved with the case when someone suggested there was an impermissible junkyard. He understood someone issued an opinion that the site was a junkyard. He said he didn't view the area as a junkyard, but instead viewed it more as a construction yard. Mr. Hennessey understood it was only the Selectmen who could declare a junkyard. The Board was only reviewing the application in front of them. Attorney Shadallah believed the application in front of the Board was the use of two acres being a contractor's yard. He said the material would be reused. He noted the definition in the Ordinance talked about 'junk' in terms of items that are discarded. Mr. Hennessey was 'hung up' by the temporary use and saw no way to be able to include it in conditions for approval. Attorney Shadallah stated he also was not familiar with granting a variance on a temporary basis, but as a practical matter he noted that the total 50 acres wouldn't be held up, just for two acres to have temporary storage. He said future development would supersede or replace the requested use.

Mr. Zohdi read aloud the Variance criteria as submitted with the application. Attorney Shadallah suggested if the Board were to grant the variance, a condition could be added that indicated the only materials to be stored on site were those associated with Brookwood's business operation, which would prevent other businesses/associations from coming in. Mr. Hennessey said if a variance were granted it would stay in effect, even if the property were sold. Attorney Shadallah noted that any new owner couldn't store materials. Mr. Hennessey reiterated his belief that a variance could not sunset.

Ms. Paliy pointed out that the storage area was underneath the high electric wires and would have limited use in terms of building. She questioned how the construction trucks would access the site. She pointed out again her the application didn't match the representation discussed during the site walk. Mr. Zohdi responded they were using a driveway from Route 38 through the woods.

Mr. McNamara confirmed that access to the property would not be through Tina Avenue. Mr. Hennessey replied they could include a restriction. Mr. Gowan believed if a variance were granted a plan would have to go to the Planning Board where issues regarding ingress/egress are addressed. He spoke of the

history of the property and how it came to be in front of the Board at present. He noted the owner understood trucking was to stay off Tina Avenue.

Mr. McNamara understood that the Plouffe family owned a business in Lowell, MA and wanted to know if there were any plans to move a part or all of the business operation into Pelham. The applicant Roger Plouffe came forward from the audience and told the Board they would not move their business to Pelham.

Mr. Zohdi understood if a variance was granted they would need to go in front of the Planning Board. At this time (prior to receiving a variance) he wasn't prepared to do so.

#### PUBLIC INPUT

Ms. Beverly Grue, 46 Balcom Road stated she attended the first meeting and got the understanding from such that the lot would be used as a staging area for the development of new (commercial) buildings. She now learned the area would be staging for I93 debris. She was confused as to what the land would be used for. She voiced concern about debris being brought in, as it would contain salt, oil etc. and be located near a waterway. Mr. Hennessey believed the description of items had changed and asked for clarification of the definition of 'fill', 'construction material', and 'debris'. Mr. Zohdi stated the 'fill' would be used to regrade the area. He noted the material from the I93 project couldn't be moved unless it was clean. Mr. Hennessey asked if it was considered construction debris. Mr. Zohdi said the material could be called different things, but in his work field, they called it 'fill material'. Mr. Hennessey questioned how much of the material currently on site would be used for 'fill' and how much was being considered temporary 'debris' storage, which was the variance request. He said by definition 'fill' was not temporary. At this time Mr. Zohdi didn't believe fill material had been brought to the site; the only thing currently on site was construction material.

Mr. McNamara said at the end of the site walk they saw two large mounds viewed (one was grassed over). He believed the testimony was that they would be used in part to fill in the sand excavation activity. Mr. Hennessey confirmed that the variance request had nothing to do with the mound that would be put in as permanent fill. Mr. Zohdi stated that was correct. Mr. Hennessey understood the variance was related to debris/construction material from I93. Attorney Shadallah consulted with the applicant to find out what would be used and was told 'dirt' would be used. He said he items being stock piled (i.e. steel) would not be used as fill. Mr. Hennessey believed the variance request related to the temporary storage of construction material.

Ms. Grue recalled the original testimony being that the beams were going to be used to build the commercial property on the land. She was now hearing that was not going to occur. Mr. Hennessey replied the variance is now saying that the material is for temporary storage and will not necessarily be used for the construction of things on the lot. Mr. Zohdi stated that was correct. In doing research, Ms. Grue was told there were no temporary variances and was concerned if the variance was granted the applicant could do whatever they wanted. Mr. Hennessey replied they would have to follow the terms of the variance. He said by definition a variance is permanent and runs with the land.

Mr. Kearney understood the variance request was to store materials primarily from I93 to be used again for some other road project. Also, the existing material would be added to more material being brought in. He hadn't heard any plan to move the material, therefore the word (and timeframe of) 'temporary' wasn't clearly defined. Mr. Zohdi pointed out that the request was to store material on two acres within a parcel containing approximate fifty acres.

Mr. LaFrance said if he was in a similar situation as the applicant he would try to do something with the property as it had a lot of potential. On the other side, he was concerned with granting a variance because it had the potential for being a future disaster.

Ms. Paliy wanted to know what percentage of the property contained the powerline right-of-way. Mr. Zohdi replied it was 350ft. wide on the easterly side. He said of the 50-acres, the powerline area was 7.7 acres. Ms. Paliy said it was easier to understand the request if the Board was considering the use of the area near the powerlines, which could be more restrictive to other uses. Mr. Zohdi said if they wanted to store the materials under the powerlines, they would have to seek permission from the utility company.

Mr. Hennessey was sympathetic and knew the land would eventually be developed. He saw no way that the Board could grant a temporary variance. He agreed with Ms. Paliy that the application didn't square with the reality of what the Board would grant if they approved the variance. He also saw no way of granting a variance under the hardship clause as everyone knew the property was prime development land within the Town. He didn't see how the Board could approve the variance.

Mr. McNamara shared the voiced concerns regarding the word 'temporary'. He had researched the question and found variances were permanent and ran with the land. He addressed the criteria. He saw the list of stored materials and felt granting a variance to allow such would have a negative impact on surrounding properties and alter the essential character of the neighborhood, which would be contrary to the public interest. He said a mixed-use development may come in the future, but there was no timeframe for such. Being that the applicant's property surrounded a number of neighborhoods, the common understanding was that no one would want to be located next to an industrial storage site. He also didn't feel properties would increase in value. Mr. Hennessey noted that was probably why the term 'temporary' variance was being used by the applicant. He stated once a variance was granted there were no guarantees. With regard to hardship Mr. McNamara said the property was located close to the Town center and very valuable. It would be worth a lot of money some day in terms of a mixed-use development. He didn't feel by denying a variance the public purpose would be altered.

Ms. Paliy felt if the applicant re-wrote the request in such a way that they could reasonably see it wouldn't have a negative effect. She said the way it was presented didn't make a lot of sense.

Attorney Shadallah took a moment to consult with the applicant. Once Attorney Shadallah returned, Mr. Zohdi addressed the Board and requested they be allowed to withdraw the application without prejudice. Mr. Hennessey said he would accede to the wishes of the committee; however, he would oppose the request given there were members of the public present and also there were several occasions that meetings were postponed, which has created a tremendous burden on the abutters who have followed the case seeking resolution. He stated his comments were in no way personal toward the applicant.

Mr. McNamara made a motion to allow the applicant to withdraw. Mr. Kearney seconded the motion for discussion. He felt the right thing to do was to allow them to withdraw. Mr. LaFrance agreed. Mr. Hennessey's objection to allowing the withdrawal was related to re-notification. Mr. Gowan said by withdrawing without prejudice there would be a statutory requirement for the applicant to re-notify for any future hearing.

**MOTION:** (McNamara/Kearney) To allow the applicant to withdraw the variance request without prejudice.

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

**MINUTES REVIEW**

**August 10, 2015:**

**MOTION:** (LaFrance/Paliy) To approve the August 10, 2015 meeting minutes as written.

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

**December 14, 2015:**

**MOTION:** (Kearney/LaFrance) To approve the December 14, 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 8:05pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary