

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
September 18, 2017
APPROVED – October 12, 2017

The Chairman David Hennessey called the meeting to order at approximately 6:00 pm.

The Vice Chairwoman Svetlana Paliy called roll:

PRESENT: David Hennessey, Svetlana Paliy, Bill Kearney, Peter McNamara, Diane Chubb, Alternate Darlene Culbert, Alternate Heather Patterson, Planner/Zoning Administrator Jennifer Hovey

ABSENT: Alternate Deb Ryan, Alternate Lance Ouellette, Alternate Thomas Kenney

PLEDGE OF ALLEGIANCE

CONTINUED

Case #ZO2017-00024

Map 39 Lot 1-89

RAMALHO, Donna & Steven - 38 McGrath Road -Seeking a Variance concerning Article III, Section 307-8 to permit the construction of a new house with “second floor expansion” within the same dimensions of the existing house.

Mr. Hennessey informed the present hearing was a continuation from the Board’s last meeting as well as a continuation from a site walk. He read aloud the minutes of the site walk dated August 19, 2017.

MOTION: (McNamara/Chubb) To accept the minutes from the site walk.

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

Mr. Hennessey stated the Board was under some time constraints, but would not rush the hearing. He asked that people coming in front of the Board not go back over the same points that have already been made. He noted because there had been a second notification to abutters the Board would read the abutter list into the record.

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.

Representing the applicant was Mr. Alden Beauchemin of Keyland Enterprises, LLC.; seated in the public was the applicant and the builder Joe Forrest. Mr. Beauchemin stated after the site walk several things were discussed. He understood there was also concern about the boundaries so he engaged the surveyor that had been involved and produced a plot plan to show the boundaries in relation to the existing building.

Mr. Hennessey wanted to know if the applicant had a certified plot plan that had been certified by the surveyor. Mr. Beauchemin stated it was certified by Michael Grainger. He provided the Board with a copy

and displayed the plan on a projection screen. He noted Mr. Grainger had been involved with the project since the beginning and on the plan was holding essentially the same line that was referenced on the abutter's plan.

Mr. Beauchemin stated there were a few comments made on site. He amended the Shore Land Protection plan he was working on. He believed the main concern was the existing sill elevation and went on to review the pre-construction and post-construction plan. Mr. Hennessey wanted to know if the Shore Land Protection application would be amended. Mr. Beauchemin stated they hadn't submitted the plan yet and were holding off until they were done. Mr. Hennessey understood that any approval would be subject to Shore Land Protection. Mr. Beauchemin agreed and further stated it would not only be subject to Shore Land, but also State septic approval for the new septic. A note was added to the plan to discontinue the existing septic tank and fill as necessary. Mr. Beauchemin understood a request was made to pull the proposed vegetated area closer to the plunge pool, which he had done. He reworked the driveway grading. He also included detail on the plan to show the drip infiltration trench in relation to the full foundation drain.

Mr. Hennessey recalled during the site walk there was some discussion regarding the building height and questioned if anything on the plan changed. Mr. Beauchemin replied nothing changed on the plan regarding the building height. He said there was discussion about the sill elevation. The original plan showed the sill elevation at least a foot lower; however they have not held the existing sill elevation.

Ms. Chubb questioned why the structure had to be in the proposed location. Mr. Beauchemin replied when there was a non-conforming lot, holding a structure in the location simplified the whole process at the State and Town level because there were rights to the existing location.

PUBLIC INPUT

Attorney James Lombardi, representing Brian and Erin Wilson of 40 McGrath Road, who are the direct abutters to the Ramalho's property. He understood the Wilsons were in attendance at the first hearing as well as the site walk, which he didn't attend, but they had since asked him to assist during the process. He asked if there was a time limit for the particular matter. It was 6:16pm and Attorney Lombardi wanted to know if they would be held to 6:30pm, understanding there was another matter to be heard. Mr. Hennessey apologized in advance to the second applicant and noted the case was a carry-over from the last meeting and added that the Board would do what they had to. He noted he would be disappointed if they went much beyond that time, but would not put a time limit on their testimony.

Attorney Lombardi understood the Wilson's provided comments on August 14th and had prepared an additional letter dated September 17, 2017 that reiterates their comments. A copy of the letter was submitted to the Board and read aloud by Mr. Hennessey. Attorney Lombardi stated they had a letter from Richard Groll, Industrial Seismologist who had reviewed the property and rendered his assessment as to what the effect of hammering and drilling rock to put in the foundation (on the applicant's lot) would have on the Wilson's home. A copy of Mr. Groll's letter, dated September 12, 2017 was provided to the Board. A letter was submitted to the Board from Susan Tisbert of RE/MAX Properties dated September 16, 2017, that gave her opinion of how the proposal may affect the value of the Wilson's property given the process and end result of having a two story home next to theirs in such close proximity. Also submitted to the Board was a letter drafted by Attorney Lombardi dated September 18, 2017, which provided additional comments from a legal perspective on the Wilson's behalf.

Mr. Hennessey asked that the letter from Ms. Tisbert of RE/MAX Properties be read aloud as it directly addressed one of the five variance criteria. Ms. Wilson read the letter aloud. In summary the points were: 1) the Wilson's currently enjoy a view of the lake from their second story bedroom window, this view will be compromised and by the height of the new structure and looks like completely blocked; 2) existing road

is very narrow and only allows the passage of one car at a time. The applicant's property is at a bend in the road and the influx of cars, maneuvering the bend and snow removal will be tougher; 3) proposed roofline will change from front to back to a side to side pitch. The applicant's home is so close to the Wilson's property that the water off the roof will fall to the Wilson's property and most likely cause water problems in their already damp basement; and 4) Diagram shows 'ledge outcrop' as a circular rock. The ledge protruded inside/under both houses at 38 and 40 McGrath Road. Jack hammering and removal of the rock may have serious repercussions. It was Ms. Tisbert's belief that the removal of the rock at 38 McGrath may cause foundation problems, cracks and settlements and have adverse impact on the structure of 40 McGrath compromising its integrity.

Mr. Hennessey said he knew Ms. Tisbert and would focus on her comments about value because she was an expert. He was not discounting her other comments. He asked Attorney Lombardi if he wanted to expand on any of the information. Attorney Lombardi answered yes and asked if the Board would consider continuing the matter so they would have an opportunity to review the revised plan and allow the Board to take into consideration the comments being made and information contained in the letters submitted. Mr. Hennessey replied the Board rarely had two extensions on a case; however, he would put it to a vote of the members since a lot of information had been submitted. He acknowledged changes were made to the plan since the site walk. He said he would accept a motion to continue the matter and also allow further discussion for approximately 10-15 minutes.

Mr. McNamara made a motion to continue the case to the next Board meeting. Mr. Kearney seconded for discussion. Mr. McNamara felt it was unfair to have all the materials given to the Board at the last minute and expect them to assimilate it at the same meeting for a vote. Mr. Hennessey and Mr. Kearney both felt they needed additional time to review the information provided. Ms. Paliy wanted to be sure the Board had the latest plan and acknowledged they had time constraints at the present meeting. She didn't want to rush the process and suggested that the applicant meet with the abutter outside the meeting and see if a compromise could be reached. Ms. Chubb stated she knew how to interpret legalese, but felt there was a lot of information to which she had a lot of questions. Ms. Patterson stated she didn't have all the information. Mr. Hennessey asked that Attorney Lombardi provide members and alternates will a copy of all the information.

Mr. Hennessey said if the Board votes to continue the hearing he will allow additional public input for approximately 10-15 minutes.

MOTION: (McNamara/Kearney) To continue the case to the next Board meeting (Thursday, October 12, 2017).

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

Attorney Lombardi stated to his knowledge the application had not changed; the same paperwork was in place for the variance request to Section 307-8 of the Zoning Ordinance with respect of the non-conforming use of land and buildings. He pointed out it appears the applicant is seeking a variance from the non-conforming use provision, which states that any non-conforming use of land or buildings may not be extended, but there's also a provision underneath (307-8,d) that says non-conforming use of land or buildings may not be rebuilt after damage exceeds 50% of its value has occurred. He said it appears that the applicant needs a variance to both, since they claim in their application that the existing house had become a health issue due to mold and other health concerns. They also state that the existing structure has mold issues and leaking roof, making it uninhabitable and of little value to the Town or the owner. He said based on that language, the applicant seems to be claiming that the home has excessive damage and cannot be used at all; therefore they must seek permission to rebuild under the separate section.

As far as the variance itself is concerned, Attorney Lombardi said there are five elements (for approval). In response to criteria 1, the applicant indicates that the variance will not be contrary to public interest because the character of the locality will not be altered and the neighborhood will be improved. He noted that the applicant had not shown how the character of the neighborhood would be improved. He said the decision of the Board shall be based on evidence presented at the hearing, not allegations contained in the variance application. The Wilson's have expressed concerns that the character of the neighborhood will be impaired due to the height and narrow configuration of the proposed construction. They were also worried about the possible harm to their home arising from the hammering of the ledge that must occur to install a foundation for a new home. They were also concerned about basement flooding and contamination that could arise from the project. These issues are addressed in the letter submitted to the Board from Richard Groll, Industrial Seismologist.

Attorney Lombardi stated that the application spoke to the spirit of the ordinance with the applicant saying they will meet all Town codes and requirements, including having a State approved septic system designed for that purpose. He said the response didn't address the expansion of a nonconforming use. The applicants did not say how expanding their non-conforming use will observe the spirit of the ordinance. He noted the ordinance stated they couldn't do it. The ordinance further states (Section 307-2) that its purpose is to (among other things) promote the health, safety and general welfare of the inhabitants of the Town and to lessen congestion in the streets, prevent overcrowding of land, avoid undue concentration of population and conserve property values. Aside from the aesthetic concerns, the Wilson's believe that their health and safety are threatened by the risks associated with the construction process (i.e. jackhammering, removal of ledge) and the design of the home as re-built with the proposed roof pitch directing water onto their property. They also believed the proposal will increase congestion, overcrowding and concentration of population at their property given that McGrath road is only built for one lane traffic and a second floor will likely mean more bedrooms and more residents/guests at the applicant's home. The Wilson's are also very concerned about the effect the project will have on their property.

With regard to variance criteria 4, the applicants state that the values of surrounding properties will not be diminished because the proposed structure will be of equal or greater value than the surrounding properties. Attorney Lombardi commented that erecting a larger residence with presumably greater value than the one that previously existed does not insure that the value of surrounding properties will not be negatively impacted. He stated it was the applicant's burden, not the abutter's burden, to prove that the value of surrounding homes will not be diminished.

In response to criteria 5 – hardship, (A) the applicant states there will be no adverse impact to the town or surrounding properties, there will be an improvement to both. They also state that the proposed use is reasonable because it will result in a newer structure more compatible with surrounding properties. (B) the applicant states specifically that the existing structure has mold issues and a leaking roof, making it uninhabitable, being of little value to the town or the owner. In the first instance, Attorney Lombardi said the applicants had not described the special conditions of the property that distinguish it from other properties in the area. Moreover, they haven't established the lack of a fair and substantial relationship between the general public purposes of the ordinance and the specific application of that provision to the property. He said the better involved ordinance provisions would be Sections 307-8(C) and (D), regarding an extension of a non-conforming use and rebuilding of a residence after more than 50% of its value has been lost. As to whether the proposed use is reasonable, Attorney Lombardi believed the applicants do not explain how the newer structure will be more compatible with surrounding properties than the existing one. He said by the applicant simply stating it, did not make it true; the Board could not merely accept allegations contained in the application. He commented that the applicant had not satisfied part A or B of the hardship criteria. The applicant has not established special conditions that apply to property that distinguish it from other properties in the area. Even if they did, he pointed out that the property could be used in strict conformance with the ordinance; as a single story residence on its current foundation. The applicant's preference for a two-story residence doesn't allow them to avoid the requirement.

Attorney Lombardi noted that his letter included discussion about non-conformance and how the courts treat that issue. Specifically, at the time it was his understanding that the applicant was going to use the current footprint/current outline of the foundation. Now they've just learned that the applicant was going to expand it; in virtually all cases the court indicates that can't be done. He said there was an existing non-conforming building on a lot that didn't meet setback or lot size requirements.

Briefly, Attorney Lombardi reviewed the letter submitted by Richard Groll (Industrial Seismologist) who stated that the act of breaking rock by mechanical means would most likely involve the use of a hydraulic breaker. A breaker of sufficient size to quickly break the rock will produce perceptible vibrations at the Wilson's residence. The letter contains technical language to describe peak particle velocity, which is the most widely observed attribute of ground vibration to assess damage potential. Mr. Groll references a pre-construction inspection and for the contractor to take commonly employed measures to prevent damage to the Wilson property.

Mr. Hennessey noted the time. He said on the specific recommendations, which carry the assumption a variance would be granted, he commented that Attorney Lombardi had come in and stated a variance should not be granted. He said the Board would go over the criteria and asked that the recommendations by Mr. Groll could be put aside and added to a request, if in fact a variance was granted. He understood that Attorney Lombardi was attacking the very validity of the applicant's claim for the five criteria. Attorney Lombardi felt the information was important to be considered as part of the overall process. He noted that Mr. Groll indicates that it could be accomplished as long as the precautions were taken. He believed the two things the Board should focus more on were the provisions on water quality and drainage. He noted Mr. Groll states the water quality could be affected by the process and by the placement of a new well and septic system. He felt the important point was the information regarding the pitch of the roof and how it could affect drainage onto the Wilson's property. With the applicant's roof pitch being changed toward the Wilson property, it has the potential to direct roof drainage onto the ground of the Wilson property as the eave will extend past the new dwelling toward the common property line. The ground surface between the existing/proposed dwelling and the Wilson's home is pitched steeply toward the Wilsons. Much of the ground surface is exposed rock, and therefore impervious. Because the proposed home will be 2-4 feet from the common lot line, there is a strong likelihood that water draining from the proposed roof will cascade directly on to the Wilson property. Even moderate storm events have the potential to shed substantial amounts of water toward the Wilson's property. The additional runoff bears the potential to be captured against the side of the Wilson's home and subsequently penetrate into their basement.

Mr. Hennessey apologized, but said given that the Board had already voted to continue the case, he didn't feel it was fair for the applicant to try to respond at present as they would need to review the information and come back to the Board. Under the circumstances, he said he would continue the case (as voted). Attorney Lombardi mentioned they had photographs with descriptions to enter into the record. Mr. Hennessey apologized and stated the Board would date specify the case to Thursday, October 12, 2017.

HEARING(S)

Case #ZO2017-00025

Map 24 Lot 11-308

RIEL, Zachary & SIROIS, Jennifer - 1 Little Island Park - Seeking a Variance concerning Article III, Section 307-12, Table 1 to permit a 16ftx16ft free standing deck 9ft. from the side setback

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. Zachary Riel came forward with his father David Riel to discuss the variance application. Mr. D. Riel read aloud the responses to the five variance criteria as submitted with the application.

Mr. Z. Riel explained that he was a new home owner and had constructed the deck without understanding the Town's requirements. Mr. Hennessey asked if he understood the responses to the variance criteria read into the record. Mr. Z. Riel answered yes. Mr. D. Riel commented that the deck encroached the Bulmer's property, but didn't affect a property or view. Mr. Hennessey spoke about the importance to pull permits, especially on undersized lots. He wanted everyone to understand that the Board took this type of situation seriously.

Mr. McNamara thanked the Code Enforcement Officer for bringing the situation to the Code Administrator's attention so the Board could review and make a decision.

PUBLIC INPUT

Ms. Paulette Bulmer, 79 Honor Roll Road told the Board she was the direct abutter to the applicant. She said she welcomed him to the neighborhood and had no objection to the deck. She noted the property was very close to the water and knew in the future the applicant would probably want to tear down the existing structure and build something nicer. She believed doing so would be a good idea, but wanted the applicant to be reminded that there were a lot of rules and regulations, especially around the waterfront. She wanted to see them do the right thing for the protection of everyone around them.

Ms. Chubb commented that she didn't understand the drawing and wanted to understand where the house was located and the setback area. Mr. Z. Riel pointed out his property and location of the deck. Mr. Hennessey confirmed that the deck wasn't closer to Little Island Pond. Mr. Z. Riel answered no. He contacted the NH Department of Environmental Services ('DES') and provided the measurements from the deck to the lot line. He said DES informed him they weren't worried about it as it was 85ft. to the pond.

BALLOT VOTE #ZO2017-00025:

Mr. Hennessey – Yes to all criteria
Ms. Paliy – Yes to all criteria
Mr. Kearney - Yes to all criteria
Mr. McNamara – Yes to all criteria
Ms. Chubb – Yes to all criteria

(5-0-0) The Variance was Granted.

VARIANCE GRANTED

Mr. Hennessey noted there was a 30-day right of appeal.

DATE SPECIFIED PLAN(S) – October 12, 2017

Case #ZO2017-00024 - Map 39 Lot 1-89 - RAMALHO, Donna & Steven 38 McGrath Road

MINUTES REVIEW

August 14, 2017 - Deferred

ADJOURNMENT

MOTION: (McNamara/Chubb) To adjourn the meeting.

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

The meeting was adjourned at approximately 7:00pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary