

APPROVED

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
May 14, 2018**

The Chairman Bill Kearney called the meeting to order at approximately 7:00 pm.

The Secretary Diane Chubb called roll:

PRESENT: Bill Kearney, Svetlana Paliy, Diane Chubb, David Hennessey, Peter McNamara, Alternate Darlene Culbert, Alternate Deb Ryan, Planner/Zoning Administrator Jennifer Beauregard

ABSENT: Alternate Heather Patterson, Alternate Thomas Kenney, Alternate Lance Ouellette

PLEDGE OF ALLEGIANCE

HEARING(S)

Case #ZO2018-00009

Map 4 Lot 9-138

CALLERY, Stephen - 2 Harmony Lane – Seeking a Variance concerning Article XII, Section 307-74(D) & (G) to permit a new entrance to the front of the single-family residence and allow no interior door in the common wall but connected through a porch from the existing accessory dwelling unit to the main house

Ms. Chubb read the list of abutters aloud (for Case #ZO2018-00009 and the associated Case #ZO2018-00010; the lists for both were identical). There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

The applicant Stephen Callery came forward to discuss his request. He purchased a house approximately 2.5 years ago, which at the time thought it contained an existing in-law apartment and found out later that it didn't. He was requesting a Variance and Special Exception to make the in-law apartment legal. It is currently occupied by his mother, who has had a lot of health issues. He explained that three of the four existing house walls are concrete. He understood that one of the requirements for an in-law is to have a common wall from the main house to the in-law. He had two companies tell him he would destroy the house if he tried to create a common wall because of the ceiling supports and rebar. Mr. Callery told the Board he was seeking a Variance to put a front-facing door where there was already an existing door, so his mother could have access to the main house. Approximately a year ago he spoke with the Building and Fire Inspectors about putting a stairway in the main living room that went into the basement to create a common way, but his mother had a bad fall over the summer and after surgery stairs were now an issue. He said they needed 'no stair' access from the main house to the in-law apartment. Mr. Callery noted that his property was just under 1.8 acres, so he didn't qualify for a duplex. He said if he was granted a Variance for the front-facing door, he also needed a Special Exception. He told the Board that the in-law apartment met all the other Town requirements. The apartment already had two existing forms of egress; the proposed door would be a third form.

Ms. Ryan arrived.

Mr. Callery read aloud the responses to the Variance criteria as submitted with his application.

Ms. Chubb wanted to know the issue with the front-facing door. Ms. Beauregard replied the Ordinance didn't allow any new front facing doors to be added for an accessory dwelling. She said Mr. Callery was also seeking a Variance to the common wall issue. The Board was addressing the Variance request for the front door and the common wall. If granted, the Board will then take up the case for Special Exception. Ms. Chubb spoke about how the Board generally reviewed the hardship criteria as it related to the land creating the hardship, not the person living in the house. While she understood it was a hardship for a person to not be able to use stairs, she wanted to know how the request was a hardship to the land/property that a Variance would alleviate. Mr. Callery stated if he had two acres he would be able to have a duplex; however, there wasn't enough property to legally have a front-facing door. Ms. Chubb inquired if a duplex would resolve the issue. Mr. Callery replied a duplex would allow for two front-facing doors. Ms. Chubb understood that when the house was purchased, Mr. Callery thought the house would allow for an in-law apartment and questioned if any steps were taken when he found out it wouldn't. Mr. Callery said at the time of the signing he found that he had signed a disclaimer saying that he realized it was not a legal in-law.

Mr. Kearney stated that the property and structure both had the potential for hardship. Ms. Chubb didn't recall the Board considering an existing building a hardship. Mr. Kearney said it was part of the whole 'package' of the property.

Mr. Hennessey asked if the door currently existed. Mr. Callery answered no. Mr. Hennessey asked if the only access to the in-law was through the property itself. Mr. Callery replied there were currently two exterior accesses; one door in the rear of the house and one door on the side of the house. Unfortunately, neither one could communicate with the main house without doing two flights of stairs. Mr. Hennessey asked how close the nearest neighbor was located. Mr. Callery believed approximately 50 yards. He stated the proposed door would only be visible if someone came down the driveway; the house was set back approximately 80 yards from the main road.

Mr. Callery displayed photographs of his home (using his phone). One photograph showed the house during the daytime. Another photograph showed the section of house where the proposed door would be installed. He was able to zoom in and out of the photographs to provide a thorough explanation of the proposal. The Board discussed the photographs and clarified the location of the proposed door. Ms. Chubb wanted to know where the Building and Fire Inspectors would see two front doors. Ms. Beauregard replied the Town's criteria states that no 'new' front doors can be put in. Ms. Chubb asked what was being defined as the (current) front door. Mr. Callery responded that they hadn't defined the existing front door. He said if he was asked he would tell the Board that the front door was on the side of the house. The door used to access the house was the basement door on the lower level; the house was built into the side of a man-made hill. The daytime picture gave the house the appearance of being one level; however, the photograph from the driveway side showed the house being two levels. He explained that the proposed entrance for the in-law apartment would be on the same level and side of the house as his current entrance. Mr. Hennessey noted that the house was basically a raised ranch. He inquired if the ordinance referenced 'door' or 'entrance/egress'. Mr. McNamara read from the Zoning Ordinance section that spoke to the exterior design; the verbiage was 'ingress/egress' and reference 'no new entrance or exit to an accessory dwelling shall be constructed on the front of the single-family residence'. Mr. Hennessey said it didn't matter that it didn't look like a standard door (it was a sliding door), it was still an entrance/egress. He said the question was whether the proposal essentially changed the appearance, so it didn't look like a single-family. Also, the question was if it met the hardship criteria because of having an unusual architecture rather than issues with the land. He would argue that because the house was built on the slope (with two grades) it was unusual and met hardship. He said the concrete structure made the house far less adaptable and believed the entrance/egress explained why the variance was called for.

Ms. Paliy pointed out that the proposal was for an in-law for an older person. She said there was also a hardship with the land and the ability to construct a handicap entrance. Mr. Hennessey pointed out that there were no longer 'in-laws', the Town had 'accessory dwelling units' that would be available for rent at some point and felt the Board should be careful how they spoke about the units. Mr. Paliy asked if the applicant was creating a handicap entrance. Mr. Callery replied they weren't at that point but knew there would be a time when his mother would be wheelchair bound. The proposal would give her the ability to access him and the grandchildren. Ms. Paliy felt it was easier to see the hardship criteria if they were speaking to a handicap entrance. Ms. Ryan asked if a handicap entrance would change the nature of the request. Ms. Paliy answered no; but it explained more about the hardship to the land.

Mr. Kearney opened the discussion to public input. No one came forward.

In going through the criteria, Mr. Hennessey believed it came down to a couple elements. The first being if the architecture and grade met the hardship definition and the intent of the rule of not having a front-facing egress. He believed the intent was to make the property still appear as a single-family and felt the proposal met the intent.

Based on the submissions, testimony and discussion, Mr. McNamara believed the request probably met the criteria for a Variance, but he had a philosophical concern about melding a variance and special exception. He understood that the Mr. Callery was in front of the Board by court order and the situation was worked out by Town Counsel. He read a section in the Board of Adjustment Handbook, which he found contradictory in terms of an applicant qualifying for special exception if a variance was granted to the criteria. His issue was the fact that 'special exception' and 'variance' were two different legal devices. Mr. Kearney said he grappled with the same concerns and felt that the process of going through the Variance prior to Special Exception gave the Board an opportunity to separate both and keep the Special Exception 'black and white'.

Ms. Paliy believed if they issued a variance it would be for the whole thing. She would rather indicate that the applicant was not putting another front door in because they used a different side of the house (for access). She said the proposed location of the door was the underside of the side of the house. Ms. Chubb noted they still had to address the 'common wall' requirement.

The Board discussed how to proceed. Ms. Beauregard commented that the Town's attorney recommended the Board proceed as proposed on the agenda.

BALLOT VOTE
#ZO2018-00009:

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

(5-0-0) The Variance was Granted

VARIANCE GRANTED

(There is a 30-day right of appeal)

Case #ZO2018-00010
Map 4 Lot 9-138

CALLERY, Stephen - 2 Harmony Lane – Seeking a Special Exception concerning Article XII Section 307-74 to permit an accessory dwelling unit

(Abutter list was read aloud at the beginning of Case #ZO2018-00009)

The applicant Mr. Stephen Callery came forward to discuss his request for Special Exception.

Ms. Beauregard told the Board she received confirmation that Mr. Callery was in the process of having the septic accepted. If the Board votes to approve the Special Exception, she recommended including a condition for the Town receiving the State approved septic.

MOTION: (Hennessey/McNamara) Approval condition – Town to receive State approved septic.

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

There was no public input.

BALLOT VOTE Mr. Kearney – Yes-with stipulated septic in motion
#ZO2018-00010: Ms. Paliy – Yes
Ms. Chubb – Yes-with stipulation of septic approval
Mr. Hennessey – Yes-subject to septic approval
Mr. McNamara – Yes-with stipulation in motion

(5-0-0) The Special Exception was Granted

SPECIAL EXCEPTION GRANTED

(There is a 30-day right of appeal)

Case #ZO2018-00011

Map 27 Lot 3-125

COREY CONSTRUCTION, LLC - 16 A&B Bush Hill Road - Seeking a Variance concerning Article III, Sections 307-12, Table I & 307-14 to permit creation of a lot of a size sufficient for construction of a 2-family dwelling, with 197.79 feet of frontage on a State maintained road (Rte. 128) where 200 feet of frontage is required

Ms. Chubb 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 (Robert Peterson) was Attorney David Groff. He spoke about the request and explained that the proposed lot (part of a subdivision from 1996) lacked approximately 2.5ft. of frontage on Mammoth Road. They were seeking a variance for two primary reasons, one being frontage and the other was they couldn't put in a driveway (or entrance) on Mammoth Road because of the curb cut issued at the time of the subdivision. He said each of the lots had a joint driveway; the existing joint driveway was installed partly on the proposed lot and partly on the lot to the left of the property. There was another joint driveway that serviced the other two lots. By the State only granting two curb cuts for the entire property, the proposed lot was left with the existing entrance and frontage from when the lot was subdivided years ago. Attorney Groff stated they were in front of the Board solely for a Variance to frontage. If the Variance is granted, the applicant will then go to the Planning Board for the lot creation. He then read aloud the responses to the Variance criteria as submitted with the application.

Mr. Hennessey reviewed the documentation for the curb cut, which referred to the plan approved by the Pelham Planning Board. He said it stipulated that the lots were for one-family homes. He wondered why the lot was approved with less than the required 200ft. of frontage. Attorney Groff pointed out that there were three lots created and a notation on the plan that said the three lots (all an acre in size) were for single-family homes. Mr. Hennessey believed somewhere along the line someone kept the frontage at 197ft.

Attorney Groff disagreed because the other lots had 200ft. of frontage except for the middle lot. He noted while the subdivision plan showed 200ft. of frontage for the lot to the right, the Town tax map only showed 197.79ft, which was exactly what the lot in question contained. He said that oddity was found during research. Ms. Beauregard noted that tax maps could contain errors. Attorney Groff said there were only three lots created and believed if the owner (at the time of the original plan) wanted to create duplex lots, they could have done so. He said they chose to create single-family, one-acre lots.

Mr. McNamara asked where a house would be located. Attorney Groff said it would be somewhere in the middle of the lot and believed a proposed leach field was shown. Mr. Peterson said there was a time in the Town that the 'frontage' and 'access' could be in different areas on the lot. He said the current rule was that a lot had to be accessed where it had frontage. Ms. Beauregard noted because the lot hadn't been vested in any way, therefore the 'pre-existing lot of record' didn't come into play. Mr. McNamara questioned how far back from Mammoth Road would the house would be located. Mr. Peterson said it was located approximately 100ft. back from Mammoth Road. Mr. McNamara questioned if any portion of the lot would be developed, other than the duplex. Mr. Peterson answered no and explained the work he would do on the rear thirteen acres off Bush Hill Road.

Ms. Chubb wanted to know what happens when the plan indicates that the lots shall be used for single-families and the applicant is in front of the Board for a duplex. Attorney Groff replied the lots that were created by the subdivision in 1986 were single-family, one-acre lots. Mr. Hennessey said the proposed lot was a left-over and not directly addressed by the Planning Board at the time.

PUBLIC INPUT

Mr. Bob Yarmo, 21 Bush Hill Road reviewed a copy of the plan in relation to his lot. He told the Board he lived across from the parcel for thirty years, which was once an environmentally prosperous piece of land and had now turned into a sand pit. He was concerned that the parcel had already been cleared which made it impossible to maintain a vegetative buffer. He noted there was an intermittent stream that was no longer protected and there was no chance of protecting a wildlife corridor or endangered plant species. Mr. Yarmo felt granting the Variance would limit the Planning Board and the Conservation Commission to the remedy of the lot. He believed the neighborhood values had been decreased because of the condition of the lot. He said if the duplex was constructed the access for the parcel would be off Bush Hill Road. He discussed the road and explained there were numerous accidents and how dangerous it was in the winter. Mr. Yarmo was very concerned with the access to a future development (age 62+) if it was to come off Bush Hill Road and believed access from Mammoth Road was more appropriate. He reiterated his feeling that property values in the neighborhood had been diminished and that the Planning Board's ability to protect the Town and neighborhood would be limited if the proposed parcel had duplexes. He believed the best interest for the Town and neighborhood was to have the access off Mammoth Road, not off Bush Hill Road. He didn't see a hardship based on the fact that an age 62+ development could be built on the remaining acreage. He said there was an opportunity for a wildlife corridor and open space. Mr. Yarmo felt the proposal was not responsible development and what had occurred on the lot was the most irresponsible clearing of property he'd ever seen.

Mr. Rob Olszewski (sp?), 7 Bush Hill Road told the Board the abutters were at a distinct disadvantage because the Board was discussing maps and a plan that was over thirty years old. He stated he was not opposed and was not in favor of the proposal because he couldn't see the proposal. From what he understood by placing the lot on Mammoth Road the other access to the parcels would be pushed to Bush Hill Road at a narrow point on a ninety-degree corner. He wasn't familiar with the Town's code or buffer zones, etc. but pointed out that the lot had already been clear cut and the abutters were feeling the results. He reiterated that it would help the abutters to see what the Board was viewing. He was concerned about lots being landlocked and questioned how many more times the Board would discuss subdividing a thirty-year old plan. Mr. Kearney understood the concern and explained the matter in front of the Board was a

Variance for (3ft) frontage on Mammoth Road. He said if its granted the project would need to go in front of the Planning Board.

Mr. Hennessey was sorry the Board didn't hold a joint meeting with the Planning Board, although the single question in front of the Board was whether they could waive the three feet of frontage for the duplex. He said there was no question that hardship was present. He felt the abutters were rightly aggrieved about the clear-cutting. He felt the Board was looking at two bad solutions but understood that the owner of the land had a right to develop. Mr. Hennessey believed that the fact that the lot was not part of the original subdivision spoke to itself and the Variance made sense.

Mr. McNamara agreed that the landowner had a right to develop their land subject to the Town's rules and regulations. In this case, they had approximately 198ft. of frontage where 200ft. is required. He understood the abutter's concerns and explained if a plan went to the Planning Board they would receive certified notice of such meeting. He suggested they stay involved.

BALLOT VOTE
#ZO2018-00011:

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

(5-0-0) The Variance was Granted

VARIANCE GRANTED

(There is a 30-day right of appeal)

Attorney Groff stated if anyone wanted to see any documents after they receive notification in the mail, all they need to do is ask to see the file at the Planning Department because its all public record. He said if he is representing someone he'll email the whole packet for review. He reiterated that the filings are public record.

MINUTES REVIEW

April 9, 2018

MOTION: (McNamara/Hennessey) To approve the April 9, 2018 meeting minutes as amended.

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

DISCUSSION

The Board members spoke about recent training sessions and made a request to have a question/answer session with Town Counsel. Ms. Beauregard will coordinate available dates.

ADJOURNMENT

MOTION: (McNamara/Paliy) 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