

**APPROVED**  
**TOWN OF PELHAM**  
**ZONING BOARD OF ADJUSTMENT MEETING**  
**August 11, 2014**

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

The acting Secretary Chris LaFrance called roll:

PRESENT: David Hennessey, Svetlana Paliy, Peter McNamara, Chris LaFrance,  
Alternate Lance Ouellette, Alternate Darlene Culbert, Planning  
Director/Zoning Administrator Jeff Gowan

ABSENT: Bill Kearney, Alternate Pauline Guay, Alternate Kevin O'Sullivan

Ms. Culbert was appointed to vote in Mr. Kearney's absence.

**HEARINGS**

**Case #ZO2014-00017**

**Map 38 Lot 1-182**

**COCO, Blaise – 1 Spaulding Hill Road – Seeking a Variance concerning Article XI, Sections 307-69 AA, GG & FF to permit a directional sign to the Skyview Homes Development**

Mr. Hennessey appointed Mr. Ouellette to vote. He then stepped down. Vice Chair Paliy conducted the hearing.

Mr. LaFrance 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. Blaise Coco, principal owner of Coco, Early & Associates and marketing agent for the Skyview development (off Spaulding Hill Road) came forward to discuss the requested variance. He explained he was seeking permission to put a sign at the end of Spaulding Hill Road where it meets Sherburne Road to give direction for consumers to find the project. The project has been marketed for approximately 1.5 years. They've had one sale and currently have three potential pending sales. Mr. Coco said consumers have a difficult time finding the project. The project owner asked Mr. Coco to seek relief in order to put a sign at the corner of the road. He noted that the plastic tent style sign (approximately 4ft in height) is difficult for the agents to move and potentially dangerous to keep putting up due to the location and vehicle traffic. Mr. Coco said he approached several of the neighbors and asked permission to put a sign up, one said yes. He believed having the sign would help the agents and notoriety of the project.

Mr. Coco read aloud the variance criteria as submitted with the request.

Ms. Paliy asked for public input. No one came forward.

Mr. McNamara asked on who's property the sign would be located. Mr. Coco said the sign would be on the owner's lot on the corner (of Spaulding Hill Road/Sherburne Road). Mr. McNamara wanted to know how long the sign would be up. Mr. Coco guessed they would need 15-16 sales to get the project off the ground. For those sales to occur, he estimated it would take approximately eighteen months to two years.

Mr. McNamara asked Mr. Coco if he would have an objection to the Board stipulating a time limit for the amount of time the sign could stay up, if the variance was approved. Mr. Coco would like to see the sign up through the timeframe of the subdivision project, but didn't have an objection (to a time limit). Mr. McNamara questioned if the sign depiction submitted with the application was an exact representation. Mr. Coco answered yes.

Mr. McNamara asked Mr. Gowan if the Highway Safety Committee had given an opinion regarding the sign. Mr. Gowan didn't feel it was necessary. He said as long as the sign was placed in a fashion that it didn't impede safe sight distance. He said if the variance was granted, he offered to go to the site to ensure that the sign was located in a spot so as to not block any traffic. He suggested that the sign be two-sided. Mr. McNamara believed it was indicated in the materials. Mr. Gowan simply wanted to have the record clear.

Mr. McNamara was concerned that the rationale provided in the responses to the variance criteria were fairly general in nature and could apply to almost any development off Sherburne Road, or within the Town. He wanted to know what was specific to the location of the property that makes a hardship so the sign could be located there. Mr. Coco said even with the current sign in place the road (leading to the project) was difficult to locate and easily missed. He found the trees covering the corner impaired the ability to see the road. He told the Board that he explained to the project owner that real estate agents didn't usually request variances, but he was 'cornered' into doing so. He noted that he approached 8-9 homeowners about locating a sign on their property; all but one turned him down. He said other projects wanting to locate a sign would face a similar challenge.

Ms. Ouellette discussed the term for the sign. He felt it may be a stretch for approximately 63 homes to be sold in a year and a half. He asked if there was a certain number of homes Mr. Coco would like to sell before removing the sign versus having a timeframe. Mr. Coco said his original suggestion was to have a minimum of ten homes sold in a year, which was not the absorption rate anticipated. He reiterated they had sold one home and had contracts to build three more. He said although he would love the Board to base the variance on sales, he warned them against doing so in the event the economy made it difficult to complete the project. He suggested having a variance stipulation to remove the sign in three years, or when thirty homes were sold, whichever came first.

Mr. Ouellette understood when a project was under construction signs were allowed. Mr. Gowan said that was correct; signs were allowed on the property of the project. His interpretation was the Town's Zoning didn't allow off premises advertising. He said there was sort of a 'loop hole' in the instance of open house sales when someone is present. In this case the proposed sign was completely removed from the property being developed and would be located on a separate property, making a variance the appropriate relief to seek. He had no opinion regarding granting a variance for a length of time.

Ms. Paliy asked if people were having a hard time finding the street, or the development. When passing the sign at the end of Spaulding Hill Road she has a hard time reading the whole thing. Mr. Coco said people simply commented that they couldn't find it. He said it was possibly an issue with GPS, but knew there was a visibility problem because of the number of trees. Initially they used open house signs, but because they had a lack of response they increased the size of the sign. The larger sign provided them with improved results, therefore the variance request was for the larger sign. Ms. Paliy felt the proposed sign was more like an advertising sign, not a directional sign based on the amount of information it contained. She questioned if the street sign was visible, or if trees needed to be cut back for visibility.

Mr. Robert Lindsey, 4 Spaulding Hill Road told the Board he came to the meeting to hear the discussion; the proposed sign would not be on his property. He commented that Spaulding Hill Road was difficult to find because of the vegetation. The street sign was located across the street on a utility pole. He felt the street itself could be marked better.

Ms. Paliy asked Mr. Gowan if there was any way to resolve the situation such as through installing an appropriate street sign. Mr. Gowan replied that type of question could be better answered by the Road Agent. He knew that the State had recently changed standard for road signs. He suggested it may be reasonable to assume, if the applicant were willing to order the street sign (through the Highway Department for approximately \$40-\$50) that the Highway Department would install the new sign. He said doing so may help, but may not resolve the situation. He noted that the topography and vehicle speed were also factors. Ms. Paliy was trying to resolve the situation through the ordinance or the Department of Transportation, without setting a precedent.

Mr. McNamara felt the testimony pointed out specific facts for the location, made the request reasonable with a condition of a time limit and/or a set number of sales, whichever came first.

Ms. Paliy asked if anyone in the audience had additional questions/comments. No one came forward.

Ms. Paliy knew the street sign was difficult to see. She said the situation may be a public issue for the Department of Transportation to resolve. She felt the proposed sign was more of an advertisement in nature, not a directional sign. Mr. McNamara said having the State involved would take time and there was no guarantee that they would do anything except to install another sign. He noted the development was recent and people didn't know where it was located. He was hesitant to say that the applicant didn't meet the variance criteria. He felt the request was seemingly harmless as long as the Board included a limitation. He said if the time limit passed, the applicant could come back in front of the Board. He said they wouldn't be granting a permanent sign to advertise. Ms. Paliy said she would be more comfortable if the sign was a true directional sign not a full advertisement.

Mr. Ouellette understood that the sign would act as a directional sign, advertisement and marketing tool. He said Mr. Coco didn't deny that fact. The applicant was trying to get customers pointed in the right direction to go to an open house. He said the problem was people couldn't find the street and there was a limit to the number of advertising signs. The proposed sign would give people direction and show who the realtor was. Mr. Ouellette wanted to stipulate if Coco & Early were no longer the realtor, the approval for a sign would go away. Mr. McNamara stated if the Board granted a variance for the sign, it would run with the land. Mr. Ouellette said if the Board made a motion for the variance to go away if the realtor was no longer involved because it was a business use. Mr. McNamara believed if Coco & Early went away, the business use would remain because the project would be ongoing. Mr. Ouellette felt if that was the situation, any new realtor should come in front of the Board for their own variance. Mr. McNamara disagreed; he said the variance ran with the land, not the individual. Mr. Ouellette believed the variance would run with the business. Ms. Paliy said the Board could make a stipulation, but once a variance was granted it remained with the land. Mr. Ouellette understood a variance ran with the land, but he also recalled the Board making motions and stipulations in the past where the variance went away as soon as it was vacated.

Mr. LaFrance believed the Board should act on the information in front of them and address whether or not they would grant the sign. Ms. Paliy wanted the Board to discuss what type of limitation they could place and if the variance was granted if the property could have a similar sign in the future. Mr. McNamara said if the Board put a time limit or a percentage of occupancy, when it was reached the variance would expire and if the applicant wanted to renew they could come back and make that request.

Mr. Ouellette questioned if the applicant would have to come back in front of the Board if a stipulation was included (with an approval) for a specific company, or a time limit. Mr. McNamara said if the time limit expired, the variance would expire with it. Mr. Ouellette said that was the point he was trying to resolve, since it was something the Board had done in the past. Mr. Gowan said the Board could grant a variance and include conditions. He felt it was appropriate to put a limitation of time. Ms. Paliy recalled being told during training if a board granted a variance for a business use it would revert back to residential once the business was no longer there. However, she felt this was a different situation; the variance would run with the land. Mr. McNamara said the Board could still include a time limit.

Mr. McNamara made the following motion: *If the variance is approved, it will be conditioned such that for a period of two years or an occupancy rate of 30 homes, whichever comes first.*

**MOTION:** (McNamara/Ouellette) Variance condition to expire after a period of two (2) years or an occupancy rate of thirty (30) homes, whichever comes first. (\*motion amended see below)

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

Mr. Ouellette questioned if there should be an additional stipulation that the variance would expire if Coco & Early were no longer the realtor. Mr. McNamara felt the motion was 'cleaner' in the manner it was approved. He confirmed that Mr. Coco understood if the variance terms expired, he would be welcome to come back in front of the Board to request a continuance of the variance. Mr. Coco was hopeful that the absorption rate would be ten homes per year, which would put them at three years. He asked that the Board consider amending their motion to three years.

**MOTION:** (Ouellette/McNamara) Amend the motion for the Variance (*as approved above*) to be conditioned to expire after a period of three (3) years or an occupancy rate of thirty (30) homes, whichever comes first.

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

**BALLOT VOTE** Ms. Paliy – 1) No, 2) Yes, 3) Yes, 4) Yes, 5a) Yes, 5b) No  
**#ZO2014-00017:** Mr. LaFrance – Yes to all criteria  
 Mr. McNamara – Yes to all criteria –with conditions contained in motion  
 Ms. Culbert – Yes to all criteria  
 Mr. Ouellette – Yes to all criteria – with motion to carry 3 years or 30 home sales

**VOTE:** (4-1-0) The motion carried. Ms. Paliy voted no.

## **VARIANCE GRANTED**

Mr. Gowan said he would accompany the person erecting the sign to ensure it was off the State's property and in a safe location.

Mr. Hennessey returned.

**MINUTES REVIEW****July 7, 2014:****MOTION:** (McNamara/LaFrance) To approve the July 7, 2014 Board of Adjustment portion of the joint meeting minutes (with Planning Board) as written.**VOTE:** (5-0-0) The motion carried.

Mr. Gowan noted at the time of the meeting he didn't believe he was an abutter, but had since learned he was a direct abutter. This fact wouldn't change the outcome of the meeting. Notion made in the July 7, 2014 minutes to clarify.

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**July 14, 2014:****MOTION:** (McNamara/Paliy) To approve the July 14, 2014 meeting minutes as written.**VOTE:** (5-0-0) The motion carried.**DISCUSSION****Board of Adjustment By-Laws**

The Board reviewed the final draft of the By-Laws, which incorporated Attorney John Ratigan's changes.

There was a discussion about the language reading *'The alternates may be seated with the Board, whether or not they are appointed to vote, and may participate in Board discussions during the public hearing portion of the meeting, at the discretion of the Chair, but not after the public hearing has closed for Board deliberations.'* The Board decided through a (3-2) vote to leave the language as written.

In the section listing the general rules (page 4), it was agreed through a (5-0) vote to indicate *'The hearing on the case shall be declared closed at the discretion of the Chair.'* Also the a,b,c....order was reorganized.

Amendment to General Rules (page 5) – *It is the policy of the Board that petitioners for a variance shall present, in writing, their responses to the zoning criteria into the record including their reasons that warrant the variance be granted.*

Under Application/Appeals, sentence deleted from #1 *'All applications shall be submitted with a reasonable and accurate plot plan showing the proposed use.'*

Under Application/Appeals, case citation deleted from #6.

It was agreed to add language under Public Notice #1(b) amended to read – *'in accordance with State Statute'*

**MOTION:** (LaFrance/McNamara) To accept the Board of Adjustment Rules of Procedure & By-Laws as amended.**VOTE:** (5-0-0) The motion carried.

**ADJOURNMENT**

**MOTION:** (Paliy/LaFrance) To adjourn the meeting.

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

The meeting was adjourned at approximately 8:38 pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary