

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
May 13, 2019

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

Secretary Diane Chubb called roll:

PRESENT: Bill Kearney, Diane Chubb, David Hennessey, Svetlana Paliy, Peter McNamara, Alternate Richard Rancourt, Alternate Matthew Hopkinson, Planner/Zoning Administrator Jennifer Beauregard

ABSENT: Alternate Deb Ryan, Alternate Heather Patterson, Alternate John Westwood

PLEDGE OF ALLEGIANCE

ELECTION OF OFFICERS

Mr. McNamara nominated Bill Kearney to serve a second term as Chair. Ms. Paliy nominated Diane Chubb. Both nominees accepted.

Hand Vote – Bill Kearney – three raised their hands.
Diane Chubb – two raised their hands.

Bill Kearney was elected Chair.

Ms. Chubb nominated Svetlana Paliy for Vice Chair. Mr. McNamara seconded the nomination.

Hand Vote – Svetlana Paliy – four raised their hands.

Mr. McNamara nominated Diane Chubb for Secretary. Ms. Paliy seconded the nomination.

Hand Vote - Diane Chubb – four raised their hands.

Mr. Kearney welcomed the new Alternate members. He informed Alternates would participate as members through all the public hearing process; however, when a matter is brought back to the Board just the five voting members will actively participate in that discussion.

HEARING(S)

Case #ZO2019-00006

Map 15 Lot 8-241

PRUDHOMME, Matthew - 221 Hobbs Road - Seeking a Variance from Article VII, Sections 307-39 & 307-41B to permit construction of an addition to the existing home to within 38ft of the edge of

wetlands where 50ft. is the required wetlands conservation district setback for a structure from the edge of wet.

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 was Joseph Maynard of Benchmark Engineering. He stated that the lot contained approximately 1.62 acres with frontage along Hobbs Road. An extensive amount of one side of the boundary follows Golden Brook. The lot received Planning Board approval some time around 1970. Currently the property is developed with an existing ranch-style house of about 1,000SF in size. The site has an on-site well and septic system; the existing septic system appears to be within the well radius. Mr. Maynard noted a previous Variance was granted (Case #ZO2016-00032). It had a 1400SF addition with a portion being over an existing deck that was already with the Wetland Conservation District ('WCD') setback (1100SF was proposed outside of the deck). Overall, because of the wetland setbacks associated with the WCD buffer, there is approximately 10,000SF of usable land outside of the WCD. Mr. Maynard indicated there was an area behind the home they had been saving for a potential septic system. As part of the new addition the new septic would be installed. He explained when his client purchased the lot there were some records plans and plot plans that show the wetlands in a completely different location overall. When reviewing to today's standards, wetlands are delineated completely differently than anything that was done in 1970.

Mr. Maynard said two years ago his client wanted the approved addition and spent a lot of time conducting site walks and coming to the Board. Ultimately when the pricing came in for the addition it wasn't feasible for the owner to construct. He informed the addition granted by Variance two years ago was never constructed. With the new proposal they are showing a smaller addition to the rear of the house with approximately 150SF being in the WCD, whereas the previous plan showed over 1,000SF in the WCD. Mr. Maynard told the Board his client understood the previous Variance would be replaced with the proposed Variance; they weren't trying to do both. They were simply requesting the ability to put a modest addition on the house.

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

Mr. McNamara stated the proposal appeared to be a lot less intrusive on the WCD than the prior Variance. Mr. Maynard replied that was correct. He left the old Variance on the plan so it could be plainly seen what had been approved and what was being requested. Mr. McNamara questioned if the owner (at the time of the prior Variance approval) do anything after the approval was granted. Mr. Maynard answered no. Mr. McNamara saw the previous Variance was approved January 9, 2017. He inquired if after two years the Variance was no longer valid. Ms. Beauregard answered yes (it was no longer valid). Mr. McNamara confirmed the old Variance was no longer valid. Ms. Beauregard stated that was correct.

Mr. Hennessey asked if a new wetland mapping was done in the last few months. Mr. Maynard answered no; it was done in 2016. He said they also did elevation for flooding so any proposed addition (two years ago) showed as being in a flood plain. Mr. Hennessey questioned if some of the land was partially in a flood plain. Mr. Maynard commented that the land itself was probably in the flood plain, but the building and structure area was not. Mr. Hennessey reviewed the flood plain by elevation and saw the proposed septic system looked very close and wanted to know if the septic design was approved by the State. Mr. Maynard answered no; they delineated an area for it. They conducted test pits to show the area was suitable for it. Mr. Hennessey stated a Variance would be conditioned upon obtaining State approval. Mr. Maynard answered yes.

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

Mr. Kearney personally felt the proposal was fantastic as it was less obtrusive and saw all positive things with the building portion.

Mr. Hennessey made a stipulation that any Variance approval would be subject to State approval of the septic system.

MOTION (Hennessey/McNamara) Stipulation that any Variance approval is subject to State approval of the septic system.

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

Ballot slips were handed to voting members. Ms. Paliy commented that during the time the Board is making a decision, members shouldn't be consulting with other people. Mr. Hennessey replied he was not consulting, he was showing (new members the voting process).

BALLOT VOTE Mr. Kearney – Yes to all criteria
#ZO2019-00006: Ms. Chubb – Yes to all criteria
 Mr. Hennessey – Yes to
 Ms. Paliy – 1) Yes, 2) No, 3) No, 4) Yes, 5) No – not without a site walk
 Mr. McNamara – Yes to all criteria – with stipulation in motion

(4-1-0) Variance granted. Ms. Paliy voted no.

VARIANCE GRANTED

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

Case #ZO2019-00008

Map 21 Lot 3-101

GODBYR, Fred (Godbyr Family Revocable Trust) - 22 Tenney Road - Seeking a Variance from Article VII, Sections 307-39, 307-40 & 307-41 to permit construction of a new single-family ranch-style dwelling where the home will be approximately 14ft from a wetland on the northwest side of the property and the building will be approximately 40ft. from the wetlands on the southeast side of the home along with construction of a driveway approximately 7ft. from the edge of a wetland where 50ft. is the required Wetland Conservation District setback for a structure or driveway from the edge of the wetlands. Rear yard area, well and septic remain as originally approved (Case #2008-2391)

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.

Mr. Joseph Maynard of Benchmark Engineering came forward to represent the applicant and review the Variance request. He explained in the past from the previous Variance there were two lots that had been combined. His report indicated it was a five-acre parcel. He corrected that information and told the Board it was actually a seven(+) acre parcel zoned residential. Mr. Maynard stated the lot had a Variance that went back 2008 to build a new home partially in the Wetland Conservation District ('WCD'). The lot was also granted to have 12ft. (setback) on each side of the home and a rear-yard area and well within the WCD. In addition, some of the septic system was in the WCD; at the time (of the previous Variance) the setback was 75ft. and now it's ruled by hydric soil determination. There were four conditions attached to the previous Variance approval. Mr. Maynard stated the property is mostly wet; the upland area near Tenney Road is approximately 20,000SF, of which only 2,800SF is outside of the WCD buffer. There are uplands to the rear of the site approximately 600ft. back.

Mr. Maynard commented that the Variance was granted in 2008 and what the current owner would like to build and what was approved are not the same thing. The original plan proposed a footprint (house box) of approximately 26ftx40ft. That previous Variance gave permission for a house, yard area and disturbance to approximately 12ft. on each side of the property. When the WCD impacts are scaled, he came up with approximately 5,000SF of disturbance on the original plan. In reviewing the applicant's proposal, Mr. Maynard told the Board they would like to build a ranch-style house. He noted that the proposed footprint would be bigger than the original because a ranch has one-level living space and the previous was multi-story.

Mr. Maynard reviewed the original plan (from the 2008 Variance) and explained why he didn't think it could have been built. He saw the following: 1) Grading reduced to the bare minimum, 2) area where the driveway comes into the house (footprint 26ft.x40ft – of which 20ft. is garage), 3) driveway grade showed approximately 7%; however, if the driveway design standards were followed the actual grading would be at almost 20%, 4) cross slope of driveway had a pitched slope that would need guardrail/protection, and 5) driveway has no turnaround and has an odd orientation. He commented that a pretty plan had been drawn (in 2008) but it didn't make a lot of sense. The lot itself lends itself to some sort of a garage-under on either the right or left side.

Mr. Maynard told the Board when he reviewed the lot, he began by putting a function value on the wetlands. The wetland to the north was created mostly from a cross culvert on Tenney Road, therefore there should be some sort of drainage way from that side. When doing the proposal, he looked to keep the house so the garage would work on the right side of the lot. He believed the lot itself was filled, but it was a lot of record that had been around for several years. Mr. Maynard spoke to the four conditions place on the original Variance. He saw there was supposed to be a conservation restriction on the rear of the property but couldn't find it had been done. He had a copy of the current owner's deed (dated September 26, 2018) that had no restriction. He said the current owner thought he was buying a building lot. During the earlier case (in the meeting) he heard the Town caught up with what the State says, that a Variance was only good for two years. He recalled the Town had indicated Variances went with the land. With this he believed the 2008 Variance was null and void.

In looking at the property, Mr. Maynard said he couldn't build what the owner wanted in the front of the lot, so he reviewed the rear of the lot and the associated impacts. This would require a 600ft. driveway through wetlands, 18,000SF of wetland impact, WCD buffer impacts, etc. He said the current plan showed approximately 9,500SF of impact. He told the Board he approached the Conservation Commission last week and understood they didn't like the proposal and submitted a letter (indicating such) to the Board for consideration.

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

Ms. Beauregard told the Board that the RSA started having a two-year expiration date for Variances beginning in 2013; she pointed out that the original Variance was from 2008 which predated that change. It was her opinion the original Variance (from 2008) ran with the land. Mr. Hennessey inquired if the original plan had ever been brought to the Planning Board for site plan review. Ms. Beauregard replied the driveway crossing was approved for a Special Permit.

Ms. Paliy asked Mr. Maynard if he had any pictures of the property. Mr. Maynard answered no.

Mr. Hennessey spoke about the driveway swales. He saw there was a drop-off from where the house was built and presumed the garage would be underneath. He asked if the swales would lead toward the back into the wetlands. Mr. Maynard stated that was correct; site runoff would sheet drain to the sides, hit the swales and follow the slope of the land to the rear of the lot. He said they weren't Alteration of Terrain

standard of 100ft. but with the limited room he was looking for treatment and create something to define the limits (for the future). Mr. Hennessey questioned if the land would be backfilled to bring the house up higher to get the garage under. In looking at the overall plan, Mr. Maynard replied the grade of the house was approximately 176ft; the top of the wall was in the range of 183ft. He said he would go approximately one foot higher to do the garage under (and 8ft. wall). Mr. Hennessey asked if the house would include a sump pump. Mr. Maynard replied he would be above the wetlands. There would be drains that discharged out to the swales. He noted the wetlands themselves were in the 174ft. range.

Mr. McNamara questioned if there were two lots or if the proposal was one lot. Mr. Maynard replied there was a voluntary lot merger done when his client purchased the lot. The lot contained approximately 7 acres. Mr. McNamara understood that the prior Variance was still in effect. Ms. Beauregard answered yes. Mr. McNamara questioned if the conservation easement was also still in effect. Ms. Beauregard replied the condition of approval would still be in effect. Mr. Hennessey said if the easement was not on record, he would assert that the (prior) Variance was not in effect. Ms. Beauregard said the conditions for approval weren't satisfied. Mr. Maynard said he researched and found a deed from the previous owner to Mr. Godbyr that lists other restrictions. There is no conservation easement shown on the deed. The only restriction on the lot is a Tenneco easement and pedestrian easement. Mr. Hennessey stood by his statement that the previous Variance wasn't valid as the conditions (of such) were not met.

Mr. Kearney asked for Ms. Beauregard's input. Ms. Beauregard said if a building permit application was submitted under the original plans, the owner would have to fulfill all requirements of the original Notice of Decision. Mr. Maynard commented that his client had no issue if the Variance was granted for the front portion of the lot if that's what it took to meet and fulfill the Board's requirements. Mr. Kearney said if the original Variance was null and void the request, they would be starting over fresh.

Ms. Paliy believed the New Hampshire courts were extremely lenient when it came to this type of situation. She said if there was a chance the original Variance was still in effect; the Board may want to take that approach with the case. Mr. Kearney said in his mind if the original Variance wasn't in effect, the applicant didn't have 'a bird in the hand'.

Ms. Chubb stated she couldn't make a decision until she had the question answered (regarding the original Variance). She needed to know if they were deciding based on the existing Variance or if they were making a new decision.

Mr. Hennessey believed the applicant was being candid and correct by stating the house cannot be built as it was previously approved with the type of lot and grading. He also felt that a two-story home would increase runoff. He said he was treating the case as a de novo application. He didn't feel the house could be built as (previously) presented because it had so many issues. Mr. Hennessey suggested the letter from the Conservation Commission be read into the record because it was pertinent and germane to the case.

PUBLIC INPUT

Ms. Karen MacKay, Conservation Commission came forward to make sure the Board understood the commission's points. She said the commission saw the reviewed and voted on the case in 2008; at that time, they were 4-1 against the plan. She said Mr. Maynard had come in front of the commission last week with a plan showing nearly double the impact of the original plan. The commission was concerned about the narrow path beside the swale and about those swales would be filled in. She suggested the Board visit the lot prior to making any decisions. She noted there were other similar lots in Town that contained large WCD areas and the owners started using the WCD for things it was not meant to be. She spoke about the comparison between the 2008 proposal and the current proposal. Ms. MacKay said she felt bad for the person who purchased the land because it was a terrible lot to build. She recalled in the previous plan there was supposed to be approximately six acres that went into the conservation easement. She stated the

commission was completely against the proposed plan, but if the Board decided to go forward with any type of plan, they still wanted the easement on the land. They didn't expect the (approval) condition to be less than what it was on the original plan. They would like to see some of the land protected.

Ms. Chubb read aloud the letter submitted from the Conservation Commission; they voted 5-0 to deny. If the Board chooses to approve the Variance request, the commission asked that the applicant be required to restrict further development of the lot as was promised in 2007. Mr. Kearney stated the Board appreciates the role and recommendations of the commission. He noted they were advisory to the Board.

Ms. Paliy made a motion to conduct a site walk. There was no second.

Mr. Gary Ross, 24 Tenney Road questioned the setback distance from his lot line to the center of the drainage easement. Mr. Maynard replied it was approximately 32ft. to the center of the swale. Mr. Ross said his original plot plan and surveying from his lot showed the wetlands of the lot coming within 12ft. of the road.

Ms. Paliy questioned how much overall dry land there was. Mr. Maynard replied in the front there was approximately 20,500SF of uplands at the front of the property of which approximately 2,800SF was out of WCD.

Ms. Kelly Ciampa, 3 Colonial Drive told the Board she had spoken the first two time a proposal came to the Board. She stated she had the Tennessee pipeline through a large portion of her backyard. She had seen the effects of the water that was now encroaching into her yard. Earlier in the day she printed a copy of the Town map (dated March 2019) and noted the shaded area of wetland encompassed a huge amount of area. The dry area looked to be landlocked. She believed locating a house in that area would do damage. Ms. Ciampa asked the Board to look at the most updated map to see where the wetlands were truly marked.

Ms. Chubb read aloud an abutter letter submitted by Paul Ciampa who was against any proposed building on the site.

Ms. Chubb believed the Board should go through the criteria but given the information in front of the Board and abutter testimony, she didn't see where the proposal would meet that criteria for an approval.

Ms. Paliy heard Mr. Maynard speak about how the approved plan couldn't be built. She said through the years she'd seen projects come in front of them that were changed in the middle of consideration. She said some plans come to them with representation of how situations would be mediated; however, problems occur once they start building. She believed with no control, problematic situations occur. Ms. Paliy said in looking at the proposal she saw a couple ways the plan might work but was concerned if they didn't find a way to mediate the existing issues there may be other difficulties. She felt she was 'between a rock and a hard place' but appreciated the applicant speaking about the conditions and be willing to mediate the situation.

Ms. Chubb commented there were a lot of houses and lots in Town that made one question how they came to be. She understood the fear of what could happen if the Board didn't include conditions. She heard Mr. Maynard indicate there was approximately 2,800SF of uplands before encroaching into the WCD. She believed anyone that wanted to put anything on the lot would have to come in front of the Board.

Mr. McNamara suggested requesting a legal opinion on whether the previous Variance was still valid or could be resuscitated if conditions were met. For purposes of clarity, he felt a lot of the argument being made by the applicant for the new Variance was based on the fact that the old Variance was unbuildable, which he didn't feel should be their focus. He said the focus should be the condition of the property as it

existed today and how it met the criteria. He stated it would ‘muddy the water’ legally if they were to vote on a new Variance if there was already an existing Variance. Ms. Chubb seconded the request.

Mr. Hennessey stated he would go along with requesting legal opinion. He read the amended Notice of Decision included in the Board’s information packet. He summarized the four conditions (attached to the prior Variance). He believed the previous Variance had been made impossible to enforce and use because the title had been transferred without any type of conservation easement (as was a condition of approval). He suggested applying the previous Variance condition to the requested Variance.

Mr. Hennessey made a motion that the four conditions of the original Variance be placed on the requested Variance. Mr. Maynard noted that the setback conditions were less than what was shown on the original Variance. Mr. Hennessey said the language (of the setback condition) would be amended per the application being considered. Mr. McNamara seconded the motion.

MOTION: (Hennessey/McNamara) Approval condition – The four conditions of the original Variance to be placed on the requested Variance. The condition regarding setback language will be amended per the language in the application being considered.

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

Mr. Hennessey asked if a new wetlands mapping had been done. Mr. Maynard replied he had done an updated septic plan approximately 18 months ago and at that time they updated the wetlands. He noted there were only minor changes; the lines were relatively the same.

MOTION: (McNamara/Chubb) To seek legal opinion on the status of the old variance; specifically (if its still active) to determine if it could still be resuscitated.

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

Mr. Hennessey didn’t think it was active because the conditions imposed at the time were not fulfilled.

MOTION: (Chubb/Paliy) To conduct a site walk.

VOTE: (4-1-0) The motion carried. Mr. Hennessey voted no.

A site walk was scheduled for June 8, 2019 beginning at 8am.

The case was date specified for June 10, 2019.

Ms. Beauregard told the Board she would ask Town Counsel to provide legal opinion prior to the next meeting.

SITE WALK – June 8, 2019 beginning at 8am.

Case #ZO2019-00008 - Map 21 Lot 3-101 - GODBYR, Fred (Godbyr Family Revocable Trust) - 22 Tenney Road

DATE SPECIFIED CASE – June 10, 2019

Case #ZO2019-00008 - Map 21 Lot 3-101 - GODBYR, Fred (Godbyr Family Revocable Trust) - 22 Tenney Road

MINUTES REVIEW

April 8, 2019

MOTION (Chubb/Hennessey) To approve the meeting minutes of April 8, 2019 as amended.

VOTE: (3-0-2) The motion carried. Mr. McNamara and Ms. Paliy abstained.

(Ms. Chubb submitted amendments to the Recording Secretary)

ADJOURNMENT

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

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

The meeting was adjourned at approximately 8:30pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary