

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
June 10, 2019

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

Acting Secretary Peter McNamara called roll:

PRESENT: Bill Kearney, David Hennessey, Svetlana Paliy, Peter McNamara,
Alternate Deb Ryan, Alternate Matthew Hopkinson, Planning Director
Jeff Gowan

ABSENT: Diane Chubb, Alternate Richard Rancourt, Alternate Heather Patterson,
Alternate John Westwood

PLEDGE OF ALLEGIANCE

CONTINUED HEARINGS

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. Ryan was appointed to vote. Mr. Kearney indicated the hearing was a continuation and the Board had recently conducted a site walk.

Representing the applicant was Mr. Joseph Maynard of Benchmark Engineering. He thanked the Board for walking the site. He said after the site walk, he spoke with an abutter and looked at some of their drainage issues. He believed those issues were historic from past subdivisions in the 1990s. However, he went back to the proposed application, and as part of the betterment he reviewed the State's Alteration of Terrain Rules who has guidelines for shoreline protection. Mr. Maynard provided the Board with a plan that identifies dripline infiltration for the proposed house to help offset some of the increased runoff for the bigger structure and infiltrate it into the ground.

Being that the Board didn't have minutes from the site walk, Ms. Paliy summarized her observations and described what she saw. She said the lot already had a well installed. There was recent fill, branches and cut trees in the middle of the lot. The soil was soggy past the filled area. She didn't feel the Board received an explanation as to why there were filled areas or newly cut pieces of trees. Ms. Paliy said they were told that the well was installed at the time the applicant purchased the property. She said something happened to produce all the new material (dirt, concrete, rocks, pieces of asphalt etc.). She felt it was an obviously wet property and someone had recently added fill. Mr. Maynard stated nothing new had come on the property since his client purchased it. He noted when the area was 'roughed' to get to the location of the well material was scraped up to level it off. He reiterated there was no new material hauled into the

property. He said the applicant had cut a path and started to clear the lot. He said the lot was probably filled but couldn't say how long it had been in that state because he didn't have the history of the lot.

Ms. Ryan asked for clarification about the material being from 'on site'. Mr. Maynard explained to make a level surface for the well truck to get on site, the lot had been shimmed and piles were made in the center.

PUBLIC INPUT

Mr. Paul Ciampa, 3 Colonial Drive asked the Board not to grant a variance for the proposed structure. He and his wife purchased their home prior to Gauthier Way and Hickory Hill being developed. Since that time over eighteen new structures had been built with new paved roads and driveways. In the past they were able to enjoy their backyard, including the area where the Tennessee Gas Pipeline transverses their property. Since the building of the structures they had become burdened by a large amount of runoff and noted their lot was at the downhill point. He calculated the runoff from an average ranch home with a roof 1,240" x 480" by the average annual rainfall of 43"; the average roof runoff is 22,000 gallons of water (not including streets or driveways) per year. Mr. Ciampa told the Board that his yard had sunk and killed native vegetation and trees. Invasive species and wetlands were growing which was now creating a problem for him. He pointed out that the Tennessee pipeline transversed his yard and asked if anyone had considered uplifting the pipeline given the amount of water that was draining. He said the pipeline would flood and create a public safety concern. His house is less than 200ft. from the pipe. Mr. Ciampa appreciated that everyone had a right to use their property, but the Town had rules for a reason. He asked the Board to obey the rules and not let the proposal create a point of contention for other properties in Town.

Mr. Hennessey said during the site walk it appeared that the culvert underneath Tenney Road wasn't operating properly and questioned if it contributed to Mr. Ciampa's problems. Mr. Ciampa answered no. He said his lot received the water that occurred naturally coming down the roadway from Hickory Hill (across the surface) and met up with the pond at the end of Gauthier Way. He said when the pipeline came back through several years ago, they didn't have to pump any water from his property. He believed if they did any work now there would be a considerable amount of water pumping. Mr. Hennessey noted if the Variance was turned down the applicant would have a right under the old Variance to build. Mr. Ciampa understood. He didn't want the proposed (non-conforming) property to be a landmark case.

Mr. Maynard told the Board that he looked at the Ciampa's issue. He discussed how drainage was handled in the 1980s-mid 1990s by collecting water in a pipe and sending it downstream; subdivisions during this time didn't do a lot for attenuation of storm water. He felt a lot of their problems were from that situation and the compound of subdivisions around them. Mr. Maynard described how water/drainage was handled in the present time through collection of storm water and following State and Town infiltration rules. He said the proposed lot had an encroachment into a Wetland Conservation District ('WCD') buffer and was doing more than what was required to mitigate runoff. He said he couldn't fix problems that had been going on for a long time because a lot of it was outside his control (offsite).

The Board then discussed the variance criteria.

1. Variance not contrary to the public interest:

Mr. McNamara was bothered by the fact that there was an existing variance on the property. He felt they were almost arguing that the old variance created the hardship that the new variance was trying to overcome. He said they had to judge the request only on its own merits. Mr. Kearney said the Board had to maintain focus on what was in front of them.

Mr. Hennessey commented they had a letter from the Conservation Commission expressing disapproval of the proposal. He noted the commission had no statutory connection to the Board, but they had always taken

their comments seriously. Under the first criteria he was putting a lot of weight on the commission's response. He said he would say no to the first criteria partly because of it.

Mr. McNamara understood the effect of the commission's opinion but didn't feel that the proposal altered the essential nature of the locality (residential use in a residential zone). He didn't know if it fell in line with the cumulative impact argument that the Supreme Court recently discussed (not adopted); if yes, the proposal would be contrary.

Ms. Paliy said the Board was looking at the request separately from the previous variance which covered a smaller percentage of the property than they were requesting with the new variance. She understood the Conservation Commission was against the proposal and there was water on the property. She said with more of the property being covered water would have to go somewhere else. She said they were looking at the lot as being residential within a residential area; however, its history showed it being a left-over lot from a subdivision. She noted it was a wet lot that was filled in; the proposal would do further harm. Ms. Paliy noted that the lot was already granted a variance that was not acted upon. She didn't feel the proposal showed how the property was intended to be used. She believed to build further would require more fill and a larger footprint and greater displacement of water. Ms. Paliy stated there was already a plan and if the applicant wanted something different, they should have a better plan.

Ms. Ryan stated she read the meeting minutes relating to the hearing. She was inclined to agree with Mr. Hennessey and Ms. Paliy about the importance of the Conservation Commission's letter. She understood there was a previous approval to build a house and to increase the size would be detrimental to the site and surrounding area.

Mr. Hennessey understood the Board was handling the request de novo. He said the Conservation Commission's stand on the proposal was swaying him to vote no on the first criteria.

Mr. Kearney felt criteria one was the crux of the case. He felt that the amount of intrusion into the WCD was making him believe that it would be contrary to the public interest.

2. *Spirit of the Ordinance:*

Mr. McNamara felt the first and second criteria were closely related, and the same arguments could be applied to both. Ms. Paliy stated the previous variance already existed and was a smaller intrusion. Ms. Ryan and Mr. Kearney agreed with the other Board members.

3. *Substantial Justice:*

Mr. Kearney felt criteria #2 and #3 went together. There were no further comments.

4. *Values of surrounding properties are not diminished:*

Mr. Hennessey saw no effect on property values despite the testimony of an abutter. He said if there was a substantial increase in water flow values would be affected, but he felt it was negligible. Mr. McNamara, Ms. Paliy and Ms. Ryan agreed. Mr. Kearney felt the proposal would have kept more water on the property which would have benefitted the abutter but had nothing to do with diminution of value.

5. *Unnecessary Hardship:*

Mr. Hennessey commented that the applicant had a variance in hand. Mr. Kearney said the applicant had an opportunity to build based on the variance granted in 2008.

BALLOT VOTE **#ZO2019-00008:**

Mr. Hennessey – 1)No, 2) No, 3) No, 4) Yes, 5) No

Mr. Kearney – 1) No, 2) No, 3) No, 4) Yes, 5) No

Mr. McNamara - 1) Yes, 2) Yes, 3) Yes, 4) Yes, 5A) & ii) No, 5B) No

Ms. Paliy – No to all criteria

Ms. Ryan – No to all criteria

(0-5-0) The motion failed.

VARIANCE DENIED

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

HEARINGS

Case #ZO2019-00009

Map 41 Lot 10-249

APPLE DOME, LLC - 16-18 Bridge Street - Seeking a Variance from Article IV, Section 307-16(A) and Article V, Section 307-18, Table 2 to permit applicant's property to be used for any commercial purpose allowed in the Business Zones (1,2,3,4 or 5)

Mr. Hopkinson was appointed to vote.

Mr. McNamara 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 Attorney David Groff. He told the Board it was an unusual case as he always thought the properties along Route 38 were zoned either commercial or industrial. As it turns out he said there was a spot zone, which turned out to be the applicant's lot. He said the tax card identifies it as industrial, the tax map identifies it as residential. He said the history of the lot was provided within the applicant's Letter of Intent. The lot has primarily been used for commercial purposes dating back to the 1950s. The applicant proposes to use it for commercial purposes in the future; it's vacant at present. Attorney Groff said the reason for the variance application was to the applicant could continue to use the lot for commercial purposes.

Attorney Groff read aloud the responses to the Variance criteria as submitted with the application.

Mr. Hennessey understood renewing the use of the lot as a car repair shop or car dealer wouldn't be allowed and asked if it was also Attorney Groff's understanding. Attorney Groff replied it wasn't allowed now under current zoning. He said they weren't requesting a variance to reinstitute a past-use of the property. He understood any commercial use would have to go to the Planning Board and be subject to the current regulations. Attorney Groff added they weren't asking that the lot be re-zoned; they believed a mistake had been made at some time in the past because the lot was used as a commercial property. He said commercial use should be encouraged on the property not residential uses. Mr. Hennessey agreed. He wanted to make sure there wasn't a dispute about not having a car dealership or repair shop. Mr. McNamara agreed and felt as long as the record was clear that any future application would have to meet current zoning and go in front of the Planning Board.

Mr. Hennessey said without pointing fingers at what happened in the past, under Simplex decision when looking up and down the road the Board would be bound by what 'is' and not what was 'on paper'. He stated it was a commercial area all but in name. Mr. McNamara agreed it was a unique set of facts.

Mr. Gowan told the Board they had done some research to find the source on what he believed was an error (on the tax map). He noted they allowed residential in the business district; however, any application in the business district would need to go to the Planning Board and be reviewed by the Zoning Administrator. He hoped to one day find where the error took place, but a variance seemed to be a reasonable way to move forward.

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

BALLOT VOTE
#ZO2019-00009: Mr. Hennessey – Yes to all criteria
Mr. Kearney – Yes to all criteria
Mr. McNamara – Yes to all criteria
Ms. Paliy – Yes to all criteria
Mr. Hopkinson – Yes to all criteria

(5-0-0) The motion carried.

VARIANCE GRANTED

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

Mr. Gowan noted that the Variance wouldn't change the Zoning map; it will just mean that the property had a Variance conferred upon it until they found where the mistake had been made. If they find the error the Zoning map could be changed.

Case #ZO2019-00010

Map 33 Lot 1-146-53

SKYVIEW ESTATES, LLC - 28 Majestic Avenue - Seeking a Special Exception from Article XII Section 307-74 to permit an Accessory Dwelling

Ms. Ryan was appointed to vote.

Mr. McNamara 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 Tom Ireland of Elkridge Construction. He explained they had a buyer for Lot 53 that would like to have their father-in-law live with them. They designed an in-law unit to meet the Town's criteria.

Mr. McNamara inquired if the application/proposal was in compliance with the criteria. Mr. Gowan replied it appeared to be. He said the Zoning Administrator didn't see anything administrative that would indicate it wasn't compliant.

Mr. Hennessey stated everyone in the area should be aware that the accessory dwelling unit under State Law could be rented on the open market as long as the owner was living on the main property.

No one from the public asked to speak.

BALLOT VOTE
#ZO2019-00010: Mr. Hennessey – Yes
Mr. Kearney – Yes
Mr. McNamara - Yes
Ms. Paliy – Yes
Ms. Ryan - Yes

(5-0-0) The motion carried.

SPECIAL EXCEPTION GRANTED

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

MINUTES REVIEW

May 13, 2019

MOTION (McNamara/Paliy) To approve the meeting minutes of May 13, 2019 as written.

VOTE: (4-0-0) The motion carried.

ADJOURNMENT

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

VOTE: (4-0-0) The motion carried.

The meeting was adjourned at approximately 8:00pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary