

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
September 9, 2019

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

Secretary Diane Chubb called roll:

PRESENT: Bill Kearney, Svetlana Paliy, Diane Chubb, David Hennessey, Alternate Matthew Hopkinson, Alternate John Westwood, Planning/Zoning Administrator Jennifer Beauregard

ABSENT: Peter McNamara, Alternate Deb Ryan, Alternate Richard Rancourt, Alternate Heather Patterson

PLEDGE OF ALLEGIANCE

CONTINUED HEARING(S)

Case #ZO2019-00018

Map 30 Lot 11-102

McARTHUR, Joseph H & Johnna & Joseph Q – 61 Dutton Road - Seeking a Variance concerning Article III, Section 307-7, 307-12 & Table 1, 30713, 307-14 of the Zoning Ordinance to permit the existing 10 acre +/- lot to be subdivided into three building lots. The existing home will retain 1 acre of land with 200' of frontage, the lot to the east will have 200' of frontage with about 7 acres of land and the third (middle) lot would have approx. 100' of frontage with 2.2 acres of land.

Seeking a Variance concerning Article II, Definitions, #10 Frontage of the Zoning Ordinance to permit the driveway for the two new building lots to be shared and accessed from a common driveway, to be constructed on the middle lot where there is about 100' of frontage.

Seeking a Variance concerning Article VII, Section 307-39 to permit a Wetland Conservation District crossing to access the building portion of the rear lot.

Mr. Hennessey recused himself as he was an abutter. Mr. Hopkinson and Mr. Westwood were appointed to vote.

Mr. Joseph Maynard of Benchmark Engineering came forward to represent the applicant.

The Board began the hearing by reading aloud a letter received from the Conservation Commission dated September 2, 2019. The commission heard the case and conducted a site walk. It was their feeling that the allowance of a second home would violate the Town's Wetland Conservation District ('WCD') regulations. Allowing such would also require a stream crossing, violate frontage requirements and require a shared driveway. The Commission saw no reason to grant exceptions to those regulations which would only negatively impact the seasonal stream and WCD. The Commission voted 4-0 to recommend denial of the proposal.

Mr. Maynard summarized the request contained in the application to construct three houses on the proposed 10-acre parcel with two lots sharing a driveway. He said there would be a wetland crossing to get to the rear of the lot. At the previous meeting the Zoning Board asked the applicant to meet with the Conservation Commission. He said the Commission felt because variances were being requested that the proposal wasn't a valid request. He explained to the Commission there were other things the applicant could do with the property, such as plat a road and develop a conventional subdivision, or to develop as two duplex lots. He noted to do the alternatives they would still need to cross the wetland in the same location as the proposed; the wetland impact remains the same whether or not they receive a variance. Mr. Maynard told the Board he had his wetland scientist (of Blue Moon Environmental) review the parcel and provide their findings (letter provided to Commission during their site walk). He read aloud the letter submitted by his wetland scientist that described their findings. In conclusion the wetland scientist didn't find anything of concern regarding the proposed crossing with respect to wetland impacts, wetland functions and values and/or wildlife habitat. Because of the Commission's concerns he spoke the scientist at length about the crossing; they didn't understand why there were such concerns because it would be a minor crossing to get to the usable land on the lot and the applicant was going above/beyond the applicant was going above and beyond the requirements. The proposal shows a 36inch pipe and culvert being sized bigger than what would be required.

Mr. Maynard reiterated that the lot could be developed differently; however, the crossing would remain the same. He stated the applicant was looking to subdivide into three lots and that's how they would like to proceed.

Mr. Kearney believed when the wetland scientist reviewed the lot (in August) was a dry time. Mr. Maynard believed there had been a rainstorm near the time the scientist was on site. He heard during the site walk that it had recently rained. During the scientist's visit water wasn't flowing; however, there were some puddles that accumulated within the low spots of the wetland. The scientist wasn't concerned with the crossing because it was minor in size. Mr. Kearney asked if the scientist's opinion would remain the same in the spring when there was more flow. Mr. Maynard answered yes. He explained when they submit to the Department of Environmental Service ('DES') the size is required to handle a fifty-year storm event, which in this case would be a 15inch culvert. He told the Board they were proposing a larger culvert to connect both sides of the wetland with a natural bottom.

Ms. Chubb questioned who would maintain the culvert. Mr. Maynard replied the property owner would maintain the culvert. Ms. Chubb was concerned with flooding issues if they didn't maintain it. Mr. Maynard replied the typical minimum standard in Pelham (for a subdivision street) is a 15inch pipe to allow for flushing and cleaning. In this case, they've proposed an oversized opening two-fold over the ordinance. He explained if the pipe became clogged it would back up on the uphill side of the property and start encroaching the buildable areas.

Mr. Kearney confirmed the responses to the variance criteria had been read into the record. Mr. Maynard replied he read them aloud during the previous meeting.

Mr. Westwood recalled the Board wanting the lot reviewed by the eco group. Mr. Maynard stated the plan was brought to the Conservation Commission for review; they also conducted a site walk. (The Commission's opinion letter was previously read aloud by Ms. Chubb). Mr. Westwood wanted to know the result of such. Mr. Maynard stated the Commission was against the proposal because they would cross the WCD to get to the usable land. The Commission voted 4-0 against the proposal because Zoning relief would be needed. He explained if the lot was developed in a conventional manner (directly through Planning Board) it would be a two-lot subdivision with duplexes still requiring a WCD crossing. Mr. Westwood spoke about the road, which would be maintained by the owner. He wondered if it would turn into something unmanageable and hurt Pelham. Mr. Maynard replied he wasn't concerned in this location.

He noted the culvert was more than twice the requirement for the location (3ft.x2ft). He reiterated if the culvert were to become clogged it would back up onto the owner's property.

Mr. Hopkinson inquired if there was any other way to subdivide the lot with the same number of lots without encroaching into the wetland. Mr. Maynard replied if they left it with one house, they wouldn't have to cross the wetland; however, it was a sizeable piece of property. There wasn't another way to subdivide the land without encroaching. He stated they would have to cross the wetland and noted the proposal showed the crossing at the narrowest/most practical location with minimal impact. He added there was a sizable chunk of land on the other side of the crossing.

Ms. Paliy wanted to know if the applicant's 10-acres gave them an automatic right to a 10-acre subdivision. Mr. Maynard answered no; he believed a conservation subdivision excluded land under powerlines. They had approximately 5.5-acres of usable land. Ms. Beauregard pointed out the requirement of having fifteen acres for a conservation subdivision. Ms. Paliy asked if the five acres were contiguous. Mr. Maynard answered yes. Ms. Paliy wanted to know how many contiguous acres the parcel contained. Mr. Maynard spoke about the requirements for a duplex; the rear portion of the parcel contained approximately 92,000 contiguous square feet of uplands (over two acres)(outside of wetlands and power lines). The front area of the parcel contained approximately 5.5 total upland acres. Mr. Maynard showed the Board a sketch of the duplex configuration, which would still require a wetland crossing.

PUBLIC INPUT

Ms. Chubb read aloud a letter submitted from Robert and Tracy Gamble, 31 Clark Circle. The letter summarized their concerns about the builder crossing over and disturbing conservation wetlands. They indicated the Town informed them fifteen years ago that they could put an addition onto their home because it would interfere with the wetland buffer zone. They felt the same ruling should be in place for the applicant and not pardoned. The letter indicated concern for how water flow and quality would be impacted to their residence and questioned how the wetlands would be impacted. They asked that the Board give serious consideration to the applicant's request to protect the wetlands and wildlife in the area.

No one from the public came forward to speak.

Mr. Kearney stated his concern was beyond the development of the two lots and the crossing and what effects there would be to the WCD. Mr. Hopkinson shared the same concerns regarding the long-term impacts. He understood the crossing would be in the most minimal portion of the seasonal stream. He voiced concern regarding the functionality of the proposed driveway in its current configuration (roughly 600ft).

Mr. Westwood stated his loyalty as a voting member was to the people residing in Town and doing the right thing. He said the proposal was interesting regarding the environmental components. The items he found compelling were the road, powerlines, wetlands and access. He understood the rain hadn't affected the area but noted that situation could change quickly. He worried about who would be responsible in the future.

Mr. Hopkinson added the Conservation Commission was strongly against the proposal. He understood they purchased the abutting twenty-six acres.

Ms. Chubb had concerns about a number of items. She noted the applicant was looking at the property in the present, whereas the Conservation Commission understood what the property looked like during other parts of the year, particularly in the spring. Given their knowledge of the area she was more inclined to keep the commission's concerns in mind because they had seen the area with higher water levels than what was reflected in the past month. She was concerned with the actual water flow during the wet season. Ms. Chubb heard Mr. Maynard indicate water would back up onto the owner's property in the event the culvert

became clogged. This concerned her because if the water backed up onto the lot it could also back up and possibly run off onto the abutter's (Gamble) lot on Clark Circle. She saw the initial information from the applicant indicating there would be an average wetland impact of 2,200SF; however, the Conservation Commission spoke about a 900SF impact at the crossing and a 3,000SF impact of WCD. Considering the importance of the WCD, she felt those impacts would be a lot. She recalled hearing testimony about the significance of the waterway being discussed because it ran all the way toward the Hannaford Plaza. She couldn't ignore the commission's strong feelings against the proposal.

The Board then discussed the variance criteria.

1. Variance not contrary to the public interest:

Ms. Paliy stated each time a wetland was crossed it dealt with the public. She pointed out the driveway and wetland crossing were substantial, and the Conservation Commission was against the proposal.

Ms. Chubb noted the applicant was asking for a variance to go 3,000SF into the WCD and have a 900SF wetland impact.

Mr. Hopkinson agreed with the previous comments. He felt wetland impacts were contrary to the public's best interest.

Mr. Westwood believed there were too many 'ifs' with the proposal that could go wrong. He didn't feel that everything being proposed was safe for Pelham and the people wouldn't want those things. He reiterated that the wetland (impact) and road could be a problem.

Mr. Kearney commented he was having difficulty saying yes to the request; however, proposal two (duplex) could be done. He felt there would be an impact to the public.

2. Spirit of the Ordinance:

Ms. Paliy didn't feel the 'spirit' was observed. She would rather see the proposal as a duplex or a conservation subdivision so the area in the back wouldn't be disturbed at all. She noted the wetlands were a border to conservation land; the proposal would destroy a habitat. She reiterated her preference to see something built on the front of the lot. She didn't feel the spirit was being observed by the way the plan was designed.

Ms. Chubb felt her comments from 'public interest' held for this criterion. She reiterated her feeling that the particular wetland on the lot shouldn't be bothered. Mr. Hopkinson agreed. He said the spirit of the ordinance was to protect the wetlands, especially the wetlands recently purchased by the Town. Mr. Westwood also agreed with Ms. Chubb.

Mr. Kearney felt the spirit was being observed, although not to a level he would like. He believed the mitigating opportunity with the oversized culvert was a plus.

3. Substantial Justice:

Ms. Paliy stated she would be willing to re-look at a proposal that didn't cross the wetland. She didn't feel justice was done through the manner the proposal was currently laid out. Ms. Chubb agreed; she would look at a different proposal, such as two lots built on the front portion. She was really bothered by the crossing.

Mr. Hopkinson understood it was a seasonal stream. He was borderline whether or not substantial justice had been done.

Mr. Westwood felt the overall plan was well thought out and didn't hurt anyone but left the Town on the line for a possible future disaster. He said he wanted the applicant to get what they want, but on the other hand didn't want the Town to suffer because of it.

Mr. Kearney didn't feel substantial justice had been done.

4. Values of surrounding properties are not diminished:

Ms. Paliy said this criterion was difficult given that the parcel was pretty big and had power lines running across it. In terms of water flow, she believed the Conservation Commission laid out an argument that there could be flooding around the area. She noted this was the hardest criterion for her to answer. Ms. Chubb agreed although she was unsure it was specifically financial. She pointed out the Conservation Commission had recently advocated for purchasing the large piece abutting the applicant for the reason of 'protection'. She believed by allowing the proposal to disturb the wetlands they would be undoing some of what the commission was seeking to do by purchasing the abutting property. For this reason, she felt the value of abutting properties would be diminished in terms of the impact.

Mr. Hopkinson didn't feel values would be diminished one way or another.

Mr. Westwood didn't feel the power lines would have an effect but was still hung up on the environmental aspects.

Mr. Kearney didn't feel there was an immediate diminution of values but felt there was a potential for such in the future.

5. Unnecessary Hardship:

Ms. Chubb felt there was a hardship if the applicant wanted to develop that (rear) portion of the property; however, she felt there were alternatives for developing the front property. She felt the initial proposal of two single-family homes with no crossing allowed for development and was a good compromise.

Mr. Hopkinson didn't feel there was unnecessary hardship. He said there wasn't enough road frontage to have the three proposed lots. He said the road frontage was never there for three lots and therefore didn't feel it created an unnecessary hardship.

Mr. Hopkinson didn't believe the proposal would maintain integrity. He discussed the proposed houses and noted his concern in the event of a wet spring. He said he would like to hear more from the environmentalists. He said he was against this criterion.

Ms. Paliy noted there were two parts to the hardship, the first being frontage the other being wetlands. She said since they were voting on both pieces, she could overlook the frontage, but could not overlook the gigantic driveway, wetlands and flooding.

Mr. Kearney believed the power lines created a big hardship by cutting the 10-acre parcel in half. Ms. Chubb commented if the request was solely for the frontage and didn't deal with the wetland crossing, she wouldn't have as much problem with the frontage issue and granting a variance for that part. She noted the middle parcel wasn't on a main road and not impacting the neighbors and conformed more to the use of the land. Ms. Chubb stated her entire problem came down to the wetland crossing.

Mr. Kearney noted a motion was made and carried over from a previous meeting that stipulated all buildings will be single-family.

BALLOT VOTE

Mr. Kearney – voted yes on three criteria; voted no on two criteria

#ZO2019-00018: Ms. Paliy – voted yes on one criterion; voted no on four criteria
Ms. Chubb – voted yes on one criterion; voted no on four criteria
Mr. Hopkinson - voted yes on one criterion; voted no on four criteria
Mr. Westwood – voted no on all criteria

(0-5-0) The motion failed.

VARIANCE DENIED

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

Mr. Hennessey returned to the Board.

HEARING(S)

Case #ZO2019-00019

Map 22 Lot 8-31

C & T BEAUREGARD LAND HOLDINGS LLC - 91 Main Street - Seeking a Variance concerning Article III, Section 307-12 of the Zoning Ordinance to permit the removal of existing 30ft. x 40ft. metal and canvas building and construct a new 34ft x 84ft. metal building on an undersized lot

Mr. Hopkinson was appointed to vote.

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.

Tim Beauregard and Chad Beauregard came forward to discuss the requested Variance. Mr. T. Beauregard stated they were seeking a variance to build on an undersized lot. Mr. C. Beauregard read the responses to the criteria aloud (as was submitted with their application).

Mr. Kearney inquired why they were seeking to remove the existing structure. Mr. T. Beauregard replied they had heated the building over two winters and it wasn't retaining heat. He said since they were going to tear it down, they wanted to construct the right building that was more energy efficient. Mr. Kearney asked what kinds of things were happening in the building. Mr. T. Beauregard replied the building would be for general use such as to clean their vehicles, light mechanical repairs and house their tow truck.

Mr. Hennessey asked how many vehicles/pieces of equipment were currently on their lot and exposed to traffic on Route 38 and Atwood Road. Mr. C. Beauregard was unsure about the number of vehicles but assured Mr. Hennessey they were within the display area granted to them. He said their approval wasn't set based on a number of vehicles, they were given a border area to house vehicles. Mr. Hennessey asked if he was referring to the Planning Board site plan approval. Mr. C. Beauregard answered yes. Mr. Hennessey stated he had voted for the original variance but was disappointed and stunned to see the density on the lot. He recognized that the Zoning Board didn't do site plans but was disappointed to see the number of pieces of equipment in various conditions (with rust and manner of display). He said just about every inch of the lot was covered with equipment. Mr. C. Beauregard replied that wasn't correct. He noted approximately 70% of the front of the lot could have a display; the remainder of the lot couldn't. He told the Board they had worked hard to get there and tried to display the equipment in the neatest fashion possible. Mr. Hennessey replied he wasn't trying to stop a good and thriving business in Pelham, he was just surprised to see the density. He questioned if the density number of vehicles and equipment on the corners of Route 38 and Atwood Road could be reduced if the variance was granted.

Mr. C. Beauregard replied it wouldn't help them. Mr. T. Beauregard stated the variance wouldn't change their display areas. He said it would probably change the amount of equipment they had in the back of the

lot because some of it would be inside the building. He reiterated that the display areas would remain as they currently were.

Mr. Kearney wanted to know what was currently happening in the covered area, specifically if repairs, refurbishing etc. were being performed. Mr. T. Beauregard said that was correct. Mr. Kearney asked if they were also doing fluid changes. Mr. T. Beauregard answered yes. He said they were doing fluid changes, washing and general maintenance. Mr. Kearney wanted to know if the new building would have things that the current building didn't have for energy efficiency. Mr. C. Beauregard commented the new building would be weatherproof and keep things protected against the elements. Mr. T. Beauregard stated the current building was weatherproof; however, it wasn't energy efficient. He explained the new building was prefabricated/modular structure. Mr. Kearney asked for the height of the current building. Mr. T. Beauregard replied twenty-one feet; the new building will be twenty-two feet in height.

Mr. Hennessey wanted to know if the applicant would have to go to the Planning Board for site plan review if the Zoning Board granted the variance. Ms. Beauregard answered yes.

Ms. Paliy questioned if the existing building had some type of floor for drainage. Mr. T. Beauregard answered no; it had reprocessed asphalt. Ms. Paliy heard the applicant stated they were draining fluids and questioned what procedure they followed to do so. Mr. C. Beauregard replied they didn't drain fluids daily and when they did the fluids are disposed of properly. When they have enough waste oil it's picked up by someone who burns it.

PUBLIC INPUT

Mr. Al Demers, 109 Main Street told the Board he abuts the applicant's property. He stated the applicant cut all the trees and took every square inch of the property without caring for the wildlife. He said they had so many vehicles on the property all they did now was work on them. The vehicles come in not running and have old gas. He said he's recovering from lung cancer and now smells diesel fuel in his yard from the applicant's trying to get the vehicles to run. The vehicles idle from 15 minutes to a half hour. Mr. Demers told the Board he wasn't informed when the current garage went in. According to the meeting in 2016 (with Town boards) there wasn't supposed to be work done on the premises. He informed the Board the applicant was working on trucks night and day. He also didn't know if they were trying to run a towing company, but felt the activity was out of hand. He commented when the 18-wheeler was coming to the applicant's lot there's approximately 100ft. to Route 38; the road gets blocked. He said the neighbors had to listen to those trucks accessing the lot. Also, the tow truck comes to the site at all hours of the day and night; he's seen vehicle headlights working on trucks at 3am. Mr. Demers stated the applicant wasn't supposed to be working on the trucks. He said he allowed the applicant's variance for them to sell things on-line only because the applicants had full-time jobs and would have the business 'on the side'. He reiterated they weren't supposed to be working on vehicles. Mr. Demers spoke about the storm drains located on Atwood Road/Route 38 and another on Route 38 that drained into Beaver Brook. He was concerned about the drainage from the applicant pressure washing vehicles (and the drainage). In the winter snow is removed and piled over the drains. Mr. Demers told the Board none of those activities were supposed to be happening. He said he didn't know the applicant was going to sell giant trucks online and recalled the applicants explaining (in 2016) they wanted to sell things online because they had full-time jobs. Since the applicant has been at the location Mr. Demers indicated he had several rats run through his yard and in his house; his neighbors also had them. He believed they were coming from the applicant's vehicles being cleaned out since during his residence (for the past twenty-five years) never had a rat.

Mr. Demers pointed out car lots have a certain number of cars they can have on the lot. He didn't know why the applicant didn't have a set number of vehicles they could have on their lot. He's been in Town for twenty-five years and felt the neighbors were being pushed aside.

Mr. Ken Pinkham, 115 Main Street told the Board similar to Mr. Demers he also had a problem with rats. He finds them dead in his yard and in the winter saw them running through the snow based on the tracks left behind. He told the Board he had a problem with the noise.

Mr. Kearney asked the applicant if they would like to address the concerns raised about working hours, working on vehicles etc. Mr. T. Beauregard replied the hours of operation were from 7am until 9pm/10pm Monday through Saturday and had reduced hours on Sunday until about 5pm. He noted they seldom went to the location later than 6pm. He told the Board their 1999 tow truck didn't have a backup signal (beeper); it was manufactured before those signals were put on tow trucks. He said the beeping noise the neighbors heard wasn't from their tow truck. With regard to rats, Mr. T. Beauregard couldn't fathom how their business would attract rats or bring them to the neighborhood. Mr. C. Beauregard added they didn't have garbage trucks or store garbage.

In response to the comment regarding diesel smell, Mr. C. Beauregard noted they were located on a commercial road and a lot of passing trucks were diesel and would give out a smell no different than those on their yard. Mr. T. Beauregard said there were also other businesses on the same road that had diesel trucks; the smell may be coming from them.

Mr. C. Beauregard told the Board in 2016 they were allowed to do what they are currently doing. He said they didn't know where the trends would take them. They initially told the Board part of their business would be online, but not 100%, which was the reason the Town allotted a display area. They were doing everything the Town had asked. There was one case they went over their display area; however, they quickly readjusted and followed all the rules that were set.

Mr. Kearney wanted to know if they had a mechanic on site. Mr. C. Beauregard answered yes; for small repairs. Mr. T. Beauregard said in 2016 they mentioned they would be doing light duty repairs, not bigger work such as changing motors.

Mr. Hennessey asked if any restrictions were placed on the variance granted in 2016. Ms. Beauregard answered no; there was discussion about the number of vehicles and if repair work would be done but no stipulations placed on the variance. Mr. Hennessey questioned if the Planning Board included time restrictions. Ms. Beauregard replied they may have; she would need to look at the Planning Board's records. She noted the Planning Board didn't include a stipulation for the number of vehicles, only where they could be displayed.

Ms. Paliy commented those things weren't the Zoning Board's purview, it was the Planning Board. Mr. Hennessey respectfully disagreed. He said the presentation in 2016 was significantly different from what they were currently seeing on the site. He stated he didn't want to stop a thriving business in Pelham; however, he felt it was very unusual to have a business that dealt with vehicles and equipment without having restrictions on hours as well as what was allowed to be displayed on two major roads (Atwood/Main). He was astonished that the Planning Board didn't impose restrictions on such because he felt it cried for it. Mr. Hennessey said he was tempted to request a joint site walk with the Planning Board. He pointed out there was no car dealership on Route 38 that had the percentage of vehicles on their site that the applicant's site had. He believed both boards should have a discussion as to what is appropriate.

Ms. Paliy believed the issue was with the Planning Board's decision. She said the Zoning Board could disagree with the Planning Board but couldn't tell them what to do. She didn't know the procedure of how the Zoning Board would give them their opinion.

Mr. Hennessey pointed out under the variance criteria for public interest, the 2016 presentation indicated the business would be limited and mostly online. He said the picture of the business was different from the current reality; the applicant stated they had expanded the lot. Mr. Hennessey spoke about the criteria

regarding diminution of property values and reiterated the presentation from 2016 would have far less of an impact on property values than what was currently at the location. Now the applicant was requesting to double the current size of the structure from a canvas building to a permanent metal structure. He suggested the request called for a further look at the site and believed the abutter's presentation should be taken seriously. He said the Zoning Board should consult together with the Planning Board. Mr. Hennessey believed the request represented a substantial expansion of what was presented to them in 2016.

Mr. Kearney agreed with Ms. Paliy that the submitted application was in front of the Board and also believed Mr. Hennessey's point needed consideration. He said he agreed that the business had changed and felt the Board had an opportunity to review possible restrictions for such. He stated he was pro-business and wanted to ensure the applicant continued to thrive while also being a good neighbor. Mr. C. Beauregard appreciated the statements. He clarified that they had not increased the usage of what they set out to do; they have increased the amount of business they were doing. He pointed out they haven't crossed the lines of what they were told to do. Mr. Hennessey noted the requested building was twice the size of the current building, which represented an expansion of business. Mr. C. Beauregard explained the current structure was a metal frame with canvas. They've already replaced the canvas once and it needed replacement again because it wasn't weather tight.

Ms. Paliy stated she wouldn't have a problem if the building was the same size and being replaced within the same footprint. She pointed out in 2016 when the original variance was granted the lot across the street also wasn't as developed as it was now. She noted there had been a Zoning change and now the whole area was commercial and looked like it. Ms. Paliy agreed that the applicant's lot was small and reiterated she had no problem with the applicant replacing the existing building with a building of the same size. However, since the business didn't have a number placed (for the number of vehicles) the request would be a further expansion, which she felt was a little problematic. Ms. Paliy was curious what the area businesses were allowed so the Board could remain consistent. She understood that the proposal would be reviewed by the Planning Board (if variance was granted). She said the Zoning Board wasn't changing something that wasn't voted on; the area was becoming commercial as it was voted to be. She didn't know how to deal with the issue of rats.

Mr. Hennessey heard the neighbor's testimony regarding rats and believed there was an issue. He suggested the Town's Health Officer investigate. Mr. Hennessey wanted to know who imposed the 'showing' area. Ms. Beauregard answered yes. She said the Planning Board imposed the 'display area'. Mr. Hennessey felt the Zoning Board needed to consult with the Planning Board. He said presumably the 'showing area' was a percentage of the open space of the lot after deducting the space of the buildings. With the request to double the size of one of the major buildings he felt they had to consult with the Planning Board under the same basis; will the applicant keep the same showing area ratio or be allowed to have an even denser use of the property. Ms. Beauregard didn't know if the Planning Board could attend a site walk until the application was in front of them. She asked if the Zoning Board would like to request a joint hearing. Mr. Hennessey wanted to know how the Planning Board derived the size of the showing area. He wanted to know if the showing area would be restricted if the variance was approved.

Ms. Chubb reviewed the meeting minutes from 2016 and saw testimony was given that stated 90%-95% of the business would be done online. The applicant indicated the business and lot would be used as more of a storage facility than retail and no repair work would be done on site. She heard the applicant state during the current hearing they were doing repairs and refurbishing, which was one reason for requesting a bigger building. She questioned why the applicant would want a bigger building, other than to bring in more equipment to be refurbished and/or repaired and possibly spend more time on site. She wanted to know if there would be additional restrictions for those things as well. She said if the applicant was doing well and expanding it sounded like they had enough business for repairs and other things.

Mr. Hennessey commented that the Board had discussed hours of operation and more recently when discussing the building on Fletcher Drive because of the residential people in the area. He understood this applicant was in a commercial area, but the described hours beginning at 7am and ending at 9pm for six days per week was an extremely long period of time. He couldn't recall granting a variance with those kinds of hours. He felt that was a lot. Mr. Kearney agreed.

Mr. Kearney hoped the applicant's business had changed in a positive way from 2016. He said with the expansion of business it may encourage additional repairs. The building size lead him to believe the business would continue to turn into something it wasn't in 2016, which may need potential restrictions; however, that wasn't for the Zoning Board. Mr. Kearney believed the Zoning Board should work hand-in-hand with the Planning Board to make sure they do the right thing for Pelham and its citizens as well as continue the growth of the business.

Mr. Hennessey made a motion to conduct a site walk to look at the business and to send a letter to the Planning Board for advice and consultation and inviting them if they wish to come. He said given the expansion of the business he would like their thoughts. He stated the Zoning Board has imposed hours of use when granting variances but couldn't impose a site plan. He believed they should in this case.

Mr. C. Beauregard agreed the newer building would be larger. He explained the majority of the structure would be behind an existing fence where there were no restrictions. He agreed with Ms. Paliy that the lot across the street had become more visible because that business had cleared their trees. He had a picture of the proposed building and noted aesthetically it would be better looking than the existing building.

Ms. Chubb seconded Mr. Hennessey's motion. The motion on the table was to conduct a site walk and ask for the Planning Board to consult. Ms. Beauregard didn't know if the Planning Board could weigh in until they had jurisdiction of the plan. She asked if they wanted to consider holding a joint hearing. Mr. Hennessey replied he would love to hold a joint meeting. Ms. Beauregard offered to speak to the Planning Board Chairman regarding such and work with the applicant through the process. Mr. Kearney agreed; he was pro-business but felt the applicant's business model had changed.

Mr. Hennessey explained in the past Pelham had led the State by conducting joint meetings with the Planning Board for the benefit of businesspeople and abutters. It's sometimes confusing for the applicant and public to attend several meetings with different boards. By having a joint meeting all boards are present. He informed the applicant he wasn't against them and felt the case 'cried' for a joint hearing. Mr. Kearney agreed.

Mr. Hennessey withdrew his previous motion for a site walk. He then made a motion to request a joint meeting with the Planning Board.

MOTION: (Hennessey/Chubb) To request of the Planning Board to conduct a joint hearing regarding the application.

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

The case was date specified to Thursday, October 17, 2019.

It was noted abutters would be notified if the Planning Board schedules a joint hearing; otherwise, the case will be heard Thursday, October 17, 2019.

McVEY, MATTHEW & KRISTIN - 7 Bowman Lane – Seeking a Special Exception concerning Article XII, Section 307-74 of the Zoning Ordinance to modify existing finished basement area into an Accessory Dwelling Unit

Mr. Westwood was appointed to vote.

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. Kearney explained the review process for Special Exception applications.

Kristin and Matthew McVey came forward to discuss their request. Ms. McVey told the Board they currently have a finished basement in the home they purchased. They would like to have the basement certified for occupancy by her parents as an accessory dwelling unit.

Ms. Beauregard told the Board she was missing the State approved septic design. Everything else has been reviewed by the Building Inspector. She suggested the Board add an approval stipulation that no permit be issued until the State approved septic design has been received. Ms. McVey noted they were waiting for the final proposal from their septic company.

MOTION: (Hennessey/Chubb) If approved, the variance will be subject to (Planning Department's) receipt of the State approved septic design.

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

BALLOT VOTE Mr. Kearney – Yes with stipulation
#ZO2019-00020: Ms. Paliy – Yes with stipulation
Ms. Chubb – Yes with stipulation
Mr. Hennessey - Yes with stipulation
Mr. Westwood – Yes

(5-0-0) The motion carried.

SPECIAL EXCEPTION APPROVED

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

DATE SPECIFIED CASE(S)

Case #ZO2019-00019 - Map 22 Lot 8-31 - C & T BEAUREGARD LAND HOLDINGS LLC - 91 Main Street

MINUTES REVIEW

August 12, 2019

MOTION (Hennessey/Paliy) To approve the meeting minutes of August 12, 2019 as amended.

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

ADJOURNMENT

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

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

The meeting was adjourned at approximately 8:56pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary