

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
May 11, 2020

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

PLEDGE OF ALLEGIANCE

Mr. Kearney welcomed the new members to the Board.

Mr. McNamara was appointed acting Secretary. He then called roll.

PRESENT: Bill Kearney, David Hennessey (via electronic communication), Peter McNamara, Matthew Hopkinson (via electronic communication), Jim Bergeron, Alternate John Westwood, Alternate David Wing (via electronic communication), Alternate Jeff Ciara, Planning/Zoning Administrator Jennifer Beauregard

ABSENT: Alternate Karen Plumley

Mr. Kearney explained the Board's role and hearing process.

ELECTION OF OFFICERS

Mr. Hennessey nominated Mr. Kearney as Chairman. Mr. McNamara seconded. There were no other nominations made.

MOTION (Hennessey/McNamara) To appoint Bill Kearney as Chairman.

ROLL CALL Mr. Kearney – Yes
VOTE: Mr. Hennessey – Yes
Mr. McNamara – Yes
Mr. Hopkinson – Yes
Mr. Bergeron - Yes
(5-0-0) The motion carried.

Mr. McNamara nominated Mr. Hennessey as Vice Chairman. Mr. Kearney seconded. There were no other nominations made. Mr. Hennessey stated he would accept the nomination.

MOTION (McNamara/Kearney) To appoint Dave Hennessey as Vice Chairman.

ROLL CALL Mr. Kearney – Yes
VOTE: Mr. Hennessey – Yes
Mr. McNamara – Yes
Mr. Hopkinson – Yes
Mr. Bergeron - Yes
(5-0-0) The motion carried.

Mr. McNamara nominated Mr. Hopkinson as Secretary. Mr. Hennessey seconded. There were no other nominations made. Mr. Hopkinson stated he would accept the nomination.

MOTION (McNamara/Hennessey) To appoint Matthew Hopkinson as Secretary.

ROLL CALL Mr. Kearney – Yes
VOTE: Mr. Hennessey – Yes
Mr. McNamara – Yes
Mr. Hopkinson – Yes
Mr. Bergeron - Yes
(5-0-0) The motion carried.

CONTINUED HEARING(S)

Case #ZO2020-00008

Map 30 Lot 11-142

SCOTT, Kimberly - 120 West Shore Drive - Seeking a Variance concerning Article III Section 307-8-C & 307-12, Table 1 of the Zoning Ordinance to permit the applicant/owner to move and make improvements to a pre-existing non-conforming lot by moving and replacing the house, septic system and well into conforming setbacks

Mr. Hennessey recused himself. Mr. Westwood was appointed to vote. Mr. Kearney asked Mr. Bergeron if he had reviewed previous meeting minutes in relation to the case. Mr. Bergeron replied he had researched the meeting minutes and visited the site. He was comfortable with the case. Mr. Kearney asked Mr. Bergeron to be a voting member regarding the case.

Mr. Kearney summarized the previous meeting, during which they read the abutter's list, listened to testimony from the applicant and several abutters and abutter representatives. During that previous meeting there was information provided to the Board (late in the meeting) from an abutter's attorney; the Board opted to continue the case to the next meeting. He reminded the Board it was their responsibility to determine if the applicant satisfies the five variance criteria.

Representing the applicant was Mr. Vernon Dingman of V.W. Dingman Consulting. He provided the Board with large scaled plans to review. He asked if the Board wanted him to go back over the responses to the five variance criteria. Mr. Kearney felt it would be appropriate to do so because of the length of time since the previous meeting. Mr. Dingman read aloud the responses to the criteria as submitted with the application. He added there was a pre-existing non-conforming situation; their proposal was to bring the entire lot into a conforming environment for the building setbacks as well as health and safety and well/water quality etc. Mr. Dingman informed they had all Department of Environmental Services ('DES') permits in hand as well as Shoreland and Subsurface/Septic approval in hand.

PUBLIC INPUT

Mr. Kearney opened the hearing to public input (both present on site as well as via electronic communication).

Attorney Laura Dodge of McLane, Middleton came forward as representation of Richard Hanlon (Trust) the record owner of 120 West Shore Drive. She spoke in support of the application and hoped the Board understood their job was to rule on the variance application by applying the five criteria. She pointed out the material submitted in objection by an abutter related solely to a civil matter that was not in the

jurisdiction of the Board. She added the allegations made (in that material) were simply allegations; there has not been a civil lawsuit filed. She felt the submission was done to 'derail' the Board from doing their job. She stated she was available to answer any questions the Board may have. Attorney Dodge reiterated any civil matter was not in the Board's jurisdiction.

Ms. Linda O'Connell came forward as the representative for Constance Pozniak of 116 West Shore Drive. She reminded the Board of materials submitted during the previous meeting and mentioned she submitted additional information (electronically) earlier in the day. She stated Ms. Pozniak opposed the variance because it does not provide for her rights of access across the (applicant's) property to her cabin and the shore. Ms. O'Connell noted the (arbor vitae shrub) plantings would prohibit Ms. Pozniak from accessing her property. She believed the plan could have been drawn to acknowledge the right-of-way and Ms. Pozniak's property rights, but the applicant chose not to do so. In Ms. O'Connell's and Ms. Pozniak's opinion the applicant did not meet the criteria set forth by the Statute and Pelham Zoning Ordinance. She said it was not in the public interest to assist one public citizen and prevent another from accessing their property. Ms. O'Connell noted one of the criteria related to the diminution of property value; denying access creates two issues, one being the access to the property and the other is access to the shore. She said the petitioner carried the burden of proof before the Board. She told the Board the title examiner John Troy was present. He had examined the titles of 116 and 120 West Shore Drive and could provide a presentation on the title and the right-of-way since the applicant seemed to deny its existence.

Mr. Kearney understood the issue. However, he informed the Board had to maintain their ability to control what they could; the right-of-way was out of their purview. He understood the case about diminished value but didn't feel it was for the Board to listen to someone speak to it as it wasn't within their purview. Ms. O'Connell told the Board the right-of-way existed since 1951 as the family (of Ms. Pozniak) had used it to access their property. She noted they also had a deeded right-of-way.

Ms. Constance Pozniak, 116 West Shore Drive (via electronic communication) stated the proposed plans were going to be very detrimental to her property and her access to use her camp and get to the lake. She objected to the way the plans were set out that would deny her access to her property. She commented her attorney spoke better than she did but stated if the variance were approved it would cause irreparable harm to her and to her property. She didn't feel it was fair. She preferred her attorney take over any further discussions as she was uncomfortable speaking in public.

The Board was informed 'Joe R' had called in to the meeting; however, he didn't respond when called to speak.

Mr. James MacGuire, 124 West Shore Drive told the Board he moved into the neighborhood in September 2019 and was neither for, nor against the proposal, although felt the existing house at 120 West Shore Drive was an eyesore. He believed a new structure would be great for the neighborhood and suggested it might help to give a new driveway/access. As the abutting neighbor, he felt a new house would increase the property values of all the houses in the area.

Mr. McNamara understood there was a dispute between an abutter and the applicant regarding a deeded right-of-way, boundary lines and the area of the property/encroachments as was raised in the filing of the abutter's counsel. He felt it was immaterial whether or not the Board agreed with those things because the Board didn't have jurisdiction to decide those matters. It had to be decided either between the parties or in a civil matter with a court of competent jurisdiction. He explained it was the Board's job to judge the five criteria on the basis of testimony, but also based on the material submitted by the applicant. He believed it would be ripe for appeal if the Board denied the variance based on the fact, they thought there were contested issues of fact regarding lot boundaries, rights-of-way, deed restrictions, etc. He reiterated his belief that the Board couldn't base a judgement on the submitted conflicts.

Mr. Kearney agreed that the Board could only control the five criteria.

Mr. Hopkinson agreed the Board was only voting on the criteria and things such as deeded rights-of-way, easements, etc. were out of their jurisdiction.

Mr. Kearney opened discussion back up to allow an abutter to speak a second time.

Mr. MacGuire understood the whole property was subdivided a few years back and questioned how the applicant's property was subdivided if there was a right-of-way and knowing the potential for 120 West Shore Drive to be torn down and rebuilt. He felt if there were issues, they should have been discussed at the time of the subdivision. Mr. Kearney said it was a good question; however, it was beyond the Board's purview.

Mr. McNamara reviewed the criteria. He noted the proposal was for a residential home on a small (non-conforming) lot. Given the facts the Board is basing their decision on, he said it didn't harm the neighborhood; it improved it. He said it would be a 'hard sell' to say it was contrary to public interest. Mr. Kearney noted the improvements would move it (the structure) further from the pond and having an improved septic system and well, versus drinking pond water. He saw these were improvements for the whole neighborhood. In relation to the spirit of the ordinance, Mr. McNamara believed the proposal was an improvement to a residential area and property. The Board heard abutter testimony that the existing was run down and an 'eye sore'. For substantial justice he didn't think there was harm to the general public in granting the variance as there were improvements to the property and the structure was being pulled away from the water. There will be a new well and septic. All of which he felt would improve the value of surrounding properties based on what was submitted by the applicant. Mr. McNamara spoke to unnecessary hardship and didn't feel there was a fair and substantial relationship for the general public purposes of the ordinance and specific application to that property. He reiterated the proposal would improve the positioning of the new house on the lot, which would be pulled away (from the pond) and meet setback requirements. He believed the proposed use was reasonable.

Mr. Westwood stated the criteria was clear and believed the proposal would be better for the neighborhood. He didn't feel it would hurt the property value in any way. He said there was a 'negative' with the family that owned the (abutting) property. Mr. McNamara stated if the applicant and abutter cannot resolve the situation, a court will do so. He said if the Board made a decision based on certain assumptions of the land that turned out not to be so, then any variance granted would either be vacated or sent back to the Board for a 'new look' in accordance with the ruling by the court.

Mr. Bergeron stated he researched the case as best as he could and agreed with Mr. McNamara's comments regarding the criteria. He said in the past (approximately 25 years ago) he was a sitting member on a similar case that was contested in court. He said after that, he could rest assured they were making a good decision (with the present case).

Mr. Kearney asked for a roll call vote of the five variance criteria and the member's final vote.

Case #ZO2020-00008 Mr. Kearney – Yes to all five criteria; final vote Yes
ROLL CALL VOTE: Mr. McNamara – Yes to all five criteria; final vote Yes
 Mr. Hopkinson – Yes to all five criteria; final vote Yes
 Mr. Bergeron – Yes to all five criteria; final vote Yes
 Mr. Westwood – Yes to all five criteria; final vote Yes
 (5-0-0) The motion carried.

VARIANCE GRANTED

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

HEARING(S)

Mr. Hennessey will resume as a voting member of the Board.

CASE #ZO2020-00009**Map 39 Lot 1-83**

WILSON, Brian - 41 McGrath Road - Seeking a Variance concerning Article III Sections 307-8-C & 307-12, Table 1 to permit the construction of new 30ftx36ft garage to replace an existing 24ftx24ft garage on a non-conforming lot and less than 30ft from lot line

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.

Mr. Brian Wilson came forward to discuss his request for variance. He purchased his house nineteen years ago and would like to replace the existing garage (24ftx24ft) by building a new structure (30ftx36ft). He then read aloud the responses to the variance criteria as submitted with his application.

Mr. McNamara confirmed the proposed garage was larger than the existing. Mr. Wilson answered yes. He said it would be nice to have more space in the garage to park cars and have a work bench. Mr. McNamara understood Mr. Wilson didn't reside on the lot containing the garage. Mr. Wilson replied he lived across the street; the structure was similar to a detached garage on a back lot. Mr. McNamara inquired if there were any plans to install plumbing, septic or anything else. Mr. Wilson replied if he could afford to do so, he might like to include a bathroom. Mr. McNamara asked if the new structure would meet any of the side setbacks. Mr. Wilson replied the lot was on the corner; the only setback not met was the side setback. He believed the new structure would be approximately 15ft-20ft and described the location (using the displayed plan). Mr. McNamara understood the existing building didn't meet the 30ft. setback. Mr. Wilson was unsure and said he would have to measure the distance. Mr. McNamara commented it was already a non-conforming lot and the proposal would make it 'more' non-conforming. Mr. Wilson replied it was an expansion. Mr. McNamara saw that the proposed expansion wasn't violating the rear setback. Mr. Wilson stated that was correct. Mr. McNamara also saw the front setback (on McGrath Road) wasn't being changed; the structure would be moved closer to the McGrath Road corner. He wanted to know how close the new structure would be to the line. Mr. Wilson replied the expanded should be close to 15ft-20ft.

Mr. Hennessey asked if the lake could be viewed from the current garage. Mr. Wilson answered yes. Mr. Hennessey asked for the height of the existing garage. Mr. Wilson replied it was 20ft. Mr. Hennessey then asked for the height of the proposed garage. Mr. Wilson replied the new garage would also be 20ft; he wouldn't go any higher than the existing structure. Mr. Hennessey asked that it be stipulated. Mr. Wilson replied he had it written down.

Mr. Bergeron noticed the survey submitted to the Board didn't have a lot of detail. The survey was done in 2012 by Patriot Land Surveying. Mr. Wilson explained he had the survey done so if he wanted to expand, he would have the information to do so. Due to the lack of specificity on the plan, Mr. Bergeron asked for the location of the septic system. Mr. Wilson explained it was in two lots; the holding tank was in the front lot and was pumped to the rear of the other lot. Mr. Bergeron understood the tank was in one lot and the pressure feed crossed the road and went to the effluent disposal area ('EDA') behind the garage. Mr. Wilson stated that was correct. Mr. Bergeron stated he held licenses in New Hampshire and had understanding of disposal areas. He reviewed the files in Town Hall and found a recorded septic system that showed an approximate location of the leach field but not an as built. He noticed the existing garage was up against

the toe of the slope for the existing leach field. He explained the Department of Environmental Services ('DES') had regulations for setbacks to septic systems and went on to summarize the requirements. Mr. Bergeron saw there was a new garage (within the last 10 years) on an abutting lot (to the north). In looking at the plan, if a new garage with a 30ft. setback was superimposed onto it, it would cut through the existing septic system. Mr. Wilson replied his neighbor's garage is 32ft.x30ft., which would be the same width as the proposed garage. He said his neighbor's garage is set further to the road than his would be.

Mr. Bergeron stated the applicant's property was within the jurisdiction of the Shore Land Protection Act. Mr. Wilson knew it was close to the lake. Mr. Bergeron noted it was within 250ft. of the shore land protection area, which was very highly regulated and only allow expansions up to 14% more on an existing non-conforming lot. He wasn't sure of being comfortable to act on the request due to the lack of specificity of the plan and possible problem with the dimensions and septic system setbacks. He heard mention of including a possible water system within the building. He noted if that were done a lot of ground area would be eliminated that might be needed for (septic) expansion. Mr. Wilson replied he would tie it into the existing system. Mr. Bergeron said the State would only let a tie-in (increased loading) based on the existing design criteria. He asked the Board if they wanted to consider moving the location of the garage to increase the sight distance on the corner of the road. He noted he visited the site but had not taken any measurements. He inquired if the Board could request better specificity be included on the drawings before proceeding with a vote. Mr. Kearney replied if the applicant couldn't come up with the specific dimensions needed to make an informed decision to vote in the affirmative, they could allow the applicant to: 1) withdraw without prejudice, 2) continue the case or, 3) deny the application.

Mr. Hennessey was concerned with the status of Shore Land Protection and wanted to know if the application fell under it. Ms. Beauregard told the Board she reviewed the plan but didn't believe the applicant had gone to Shore Land. She explained each building permit included a question that asked if they were within the limits of Shore Land and if so, to contact Shore Land directly. She said the Town can't require them to get their State permits, but they would need to as there were fines for not doing so. Mr. Hennessey heard the applicant suggest they may want to include a bathroom; however, with the lack of any bathroom on the plans asked if the Board would be concerned with the septic. Mr. Kearney replied they were not. Ms. Beauregard noted septic loading is based on the number of bedrooms and not the number of bathrooms.

Mr. Kearney asked how far the existing garage was located from the north/south property line. Mr. Wilson replied it was approximately 12ft. He said the map submitted was accurate and could be measured. Mr. Kearney then asked for the distance of the existing garage from the east/west property line. Mr. Wilson believed it between 15ft-20ft. Mr. Kearney asked if the proposed garage would be 12ft. closer. Mr. Wilson replied the proposed garage would be 12ft. closer to the east/west McGrath Road. When measured in the field, he said he should be able to get about the length of a car and a half when pulling into the proposed garage.

Mr. Kearney opened the hearing to public input (both present on site as well as via electronic communication). No one stepped forward or spoke up electronically. Cable Coordinator Jim Greenwood indicated there had been an 'iPhone' caller, but they were unable to identify the individual because they didn't respond to messaging. Mr. Kearney indicated if the caller called back, they would have an opportunity to speak.

Mr. McNamara agreed with Mr. Bergeron's point that the plan and applicant's responses didn't contain specificity. He heard the request for an expansion and understood why; however, if the Board is going to vote, he felt they needed more information on precisely where the structure will be located and if it will compromise the septic. He was not averse to continuing the case rather than voting on it.

Mr. Kearney understood the applicant had a current non-conforming lot with a non-conforming building that has one setback not achieved. The request is to have two setbacks not achieved which expands on the non-conformity of the lot. This made it challenging for him to grant a variance. At this time, Mr. Kearney said he would not look favorable on the variance because of the information brought to the Board. In his opinion, he would allow the applicant to withdraw without prejudice to be able to come back at a later meeting with more specific information.

Mr. Wilson understood the Board would like to know the setback from the northwest side of McGrath and the setback to the leach field in the back of the lot. Mr. Kearney said they would like to know the setbacks for both the north/south and east/west. He wanted to know the current and proposed setbacks as well as the setback to the leach field. Mr. McNamara pointed out if the applicant withdrew, he would have to renotify abutters (at an expense) when coming back to the Board; however, if the case were continued, they wouldn't have to do so.

Ms. Beauregard said continuing the case would be appropriate if the Board was just looking for setbacks and not asking for a full survey.

Mr. Bergeron stated he would have difficulty without having specificity. He understood it wasn't for the Board to advise applicants, but the proposal would require a full review from Shore Land Protection. He said he couldn't move on the plan because he saw an issue with the building reaching the toe of the slope. He saw a potential problem. He suggested the Board possibly review the site and the possible sight distance. He added sideline setbacks were established for organization and view. As the plan stood, Mr. Bergeron said he couldn't support it.

Mr. Kearney asked Mr. Wilson if he would like to continue his case to a later meeting to allow for submission of additional information. Mr. Wilson answered yes.

The case was date specified to June 8, 2020.

CASE #ZO2020-00010

Map 24 Lot 12-203-4

CASAZZA, James S. - 19 Mulberry Lane - Seeking a Special Exception to Article XII, Section 307-74 of the Zoning Ordinance to permit an attached 700SF Accessory Dwelling Unit

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.

Mr. James Casazza came forward to discuss his requested special exception to build an accessory dwelling unit for his mother. The unit will be 700SF. They are using the existing garage and will build a three-car garage in front of the unit.

Mr. Kearney asked if all criteria had been met for the accessory dwelling unit. Ms. Beauregard answered in the affirmative.

The Board had no further questions.

Case #ZO2020-00010	Mr. Kearney – Yes
ROLL CALL VOTE:	Mr. Hennessy - Yes
	Mr. McNamara – Yes
	Mr. Hopkinson – Yes
	Mr. Bergeron – Yes

(5-0-0) The motion carried.

SPECIAL EXCEPTION GRANTED

DATE SPECIFIED CASE(S) – June 8, 2020

CASE #ZO2020-00009 - Map 39 Lot 1-83 - WILSON, Brian - 41 McGrath Road

MEETING MINUTES

MOTION (McNamara/Hopkinson) To approve the March 9, 2020 meeting minutes as amended.

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

ADJOURNMENT

MOTION (McNamara/Hopkinson) To adjourn the meeting.

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

The meeting was adjourned at approximately 8:23pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary