

**APPROVED**

**TOWN OF PELHAM  
ZONING BOARD OF ADJUSTMENT MEETING  
October 26, 2020**

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

The following notice was read aloud “A Checklist To Ensure Meetings Are Compliant With The Right-to-Know Law During The State Of Emergency” (*regarding access to the meeting*)

Acting Secretary David Hennessey called roll:

PRESENT ROLL CALL:                    Bill Kearney – Present in person  
   David Hennessey – Present in person  
   Jim Bergeron – Present in person  
   Alternate David Wing – Present in person  
   Alternate Jeff Caira – Present in person  
   Planning Director Jeff Gowan– Present in person

ABSENT/NOT PARTICIPATING:    Peter McNamara  
   Matthew Hopkinson  
   Alternate John Westwood  
   Alternate Karen Plumley

**PLEDGE OF ALLEGIANCE**

Mr. Kearney explained the Board’s role and hearing procedure.

Mr. Kearney appointed Mr. Wing and Mr. Caira to vote on all cases heard.

**HEARING(S)**

**Case #ZO2020-00025**

**Map 15 Lot 8-217-3**

**FORTIER, Francis & Lise - 5 Lemere Drive – Seeking a Special Exemption concerning Article XII, Section 307-74 of the Zoning Ordinance to bring a previously unpermitted Accessory Dwelling Unit into compliance.**

Mr. Hennessey 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.

Lise and Francis Fortier joined the meeting via Zoom. Ms. Fortier informed the Board the apartment existed within the house at the time they purchased it. They would like to make the unit legal.

Mr. Gowan informed the Board that according to Zoning Administrator Jennifer Beauregard the only item previously in question was confirmation by the Building Inspector of the square footage. The Building Inspector has since confirmed the dimensions were correct; the unit is 758SF.

Mr. Kearney opened the discussion to public input. No one via telecommunication or in person requested to speak.

**Case #ZO2020-00025**

**ROLL CALL VOTE:** Mr. Kearney - Yes  
 Mr. Hennessey – Yes  
 Mr. Bergeron – Yes  
 Mr. Wing – Yes  
 Mr. Caira - Yes  
 (5-0-0) The motion carried.

**SPECIAL EXCEPTION GRANTED**

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

**CONTINUED HEARING(S)**

**Case #ZO2020-00023**

**Map 30 Lot 11-149**

**OUELLETTE, Lance & Laurie – 13 Gaston Street – Seeking a Variance concerning Article III, Sections 307-7 & 307-8,C of the Zoning Ordinance to permit the removal of a loft and roof on an existing Single-Family Home and increasing the height to accommodate a second floor consisting of 2-bedrooms and a bathroom.**

Mr. Kearney noted this was a continued case from a previous meeting. The Board had subsequently conducted a site walk.

Lance and Laure Ouellette came forward in person to discuss his variance request. Mr. Ouellette provided the Board with a brief summary of the existing conditions (structure and property) and described the request. He said during the site walk there was some talk about inadequate parking. He stated he owned (a total of) six lots; his house resided on two lots, his garage is built on and the remaining two lots are an ‘L’ shape. He brought a copy of his deeds and map. He submitted a letter to the Board (to be read aloud during public input) written by the tenant who resided in the previous home. He believed during the site walk the Board saw there were fairly new houses built in the neighborhood. He said they weren’t asking for anything out of the ordinary for the area. Mr. Ouellette displayed a photograph (and provided a copy to the Board) showing how thick his ‘L-shape’ lot (containing his garage and septic area) had been vegetated. The photo showed the view looking out the door of the structure from 13 Gaston Road. This photo showed the house that had burned down (as related to the applicant’s other variance request to be heard later in the meeting). The lot had been fully wooded at the time of purchase and was cleared in 2002 for a 2-3 bedroom septic and garage. He commented how people in the area were able to have more of a view as lots were cleared for septic systems, garages etc. He said it was not their intention to block anyone’s view; they just happened to be located at the water.

**PUBLIC INPUT**

Mr. Kearney read aloud a letter submitted by Marybeth Carvale dated October 23, 2020; she lived in the area for thirty-five years and supported the applicant’s request.

Mr. Joe O’Connell, 58 Valley Hill Road addressed the Board via Zoom. He spoke regarding the updates to the homes (in the area). He found it hard to understand why the proposal would be turned down as they would only improve and give more value to the homes and the properties around the applicant.

Mr. Don Shelton connected to the meeting via Zoom stated had no comment.

Ms. Angela Terry, 4 Andover Street and 3 Methuen Street came forward in person and told the Board she recently purchased property and would be building in the next year. She felt allowing 13 Gaston Street to build an additional story would create a hardship for her and decrease the value of her home/property. She reached out to realtors for their opinion and submitted letters to the Board to be entered into the record. Mr. Kearney read aloud the letters: 1) Ellen Grant of Keller Williams indicated a property with a water view was worth more to the average consumer than a property without a view. If a property were to lose its view the value would be decreased. Ms. Grant wrote a decrease in value for the subject property was directly related to the decreased amount and type of view lost. 2) Matthew Libby of ReMax wrote the value would be diminished, although he did not indicate a dollar figure.

Mr. John Charest of (corner property) 5 Methuen Road and 15 Campbell came forward in person and stated he was in opposition to the variance. He thanked the Board for conducting the site walk. He then read aloud a letter written by his real estate agent (Guselli Agency) that indicated the value of 5 Methuen Road was greater with the view than it would be if the view were blocked. It further indicated if the view were blocked it would have an adverse effect on the value.

Mr. Jay Bibeau, 6 Andover Street came forward in person and asked why the applicant was bringing the proposal forward at this time. Mr. Kearney stated the Board had to keep the discussion in context of what they are allowed to. He said they review the land/property in relation to the Town's ordinances, not based on the applicant's personal requests.

Mr. Kevin Crooker, 2 Andover Street came forward in person and noted he had resided in the neighborhood since 1964. He mentioned the parking issue previously discussed. He was curious why the two properties had two different tax maps and lot numbers; he gave the Board copies of such. He was concerned about the properties being overbuilt. Mr. Crooker noted 5 Andover Street (.22 acres) is a property with a two-stall garage and room above. He said 17 Campbell was .13 acres that was being requested to have a 2,000SF house and full basement. He noted 13 Gaston Street contained .08 acres. Mr. Crooker noted the property had been granted relief in the past that allowed it to be lifted and have a full cellar under. Mr. Crooker spoke about his concerns. He said the property had already been upgraded and questioned at what point it would end. He was concerned about the pond becoming polluted and felt the property was already overbuilt. He said if the three properties were added together, they would total .43 acres. He didn't see the need for more expansion of the land. He discussed the other properties in the neighborhood and pointed out they all had off-street parking.

Mr. John Patterson, 7 Gaston Street and 1 Andover Street came forward in person. He stated the applicant had additions done to the property several times; each time indicating they were not within wetland protection. He noted the applicant's property sits on the water. He questioned if the applicant received proper permitting for clearing the lot across the street (from proposed property). He said the applicant didn't contribute to plowing the private roads. Mr. Kearney asked for information pertaining to the variance. Mr. Patterson understood the applicant wanted to compare their house to a neighboring house; that house was built with a foundation bigger and higher than it was supposed to be. He added there was a covenant on that property, and it was not supposed to be built. He knew of cases where structures had to be torn down and felt the applicant's property should be reviewed. He believed allowing the applicant to add to something that was originally done negligently created a hardship (to the neighborhood). He did not feel the variance criteria were met.

Mr. Ouellette displayed and referenced a map (from Nashua Regional Planning Commission) showing lot size comparison to neighboring homes and highlighting properties that have been granted variances for some sort of enlargement of the home. He spoke about some of the cases brought forward by abutters who

had received support for their requests and didn't understand why they were now speaking against his request. He addressed the question about the previous work to the house under the jurisdiction of the Department of Environmental Services. He discussed parking and told the Board he would create an easement from 13 Gaston to allow vehicles.

Mr. Bergeron confirmed the lot number being discussed. Mr. Ouellette used his cell phone to access the Assessor's data based and stated his lot is 11-149. Mr. Bergeron referenced lot 11-152 that was located behind the existing house and presently wooded. He asked if there had ever been a dwelling/building on that lot. Mr. Ouellette was not aware of any. Mr. Bergeron understood the variance request dealt with the extension because the lot didn't meet dimensional requirements. He believed there were also vested rights. He said the applicant had done a reasonably good job showing there were past actions by the Board. He was accustomed to seeing more detailed plans but recalled during the site walk hearing that the increase of the structure would be approximately 9.5ft. but was now hearing it would be 7.5ft-8ft although the before/after dimensional aspect was not shown on the plan. He also saw conflicts between the plan sheets regarding the ceiling heights.

Mr. Hennessey stated the Board has always been sensitive to blockage behind existing properties on the water and their views. He said part of the problem they had was the State saying property values should not be lowered by granting a variance. He said the general principal was if a property had view of the lake and it is taken away, they will lose value. The balancing act with the request is the applicant has an illegal house with no bedrooms; theoretically, the property is not habitable. The Town is saying to the applicant that they need two bedrooms; the property has been used as a three-bedroom. He understood the State had different definitions about what a 'bedroom' is. He had hoped there was a way to limit the height of the structure. He pointed out the Town had no height restrictions around any of its shores or lakes. The Board had tried to take it upon themselves to try to limit those heights. He was also looking to the five criteria that states values should not be diminished; however, if in this case if the abutters don't have their values diminished, the applicant's structure is uninhabitable.

Mr. Gowan told the Board he spoke with the Building Inspector who highlighted the parts of the building code that would apply to the application. He said if the applicant put a second story on the structure it would have to conform with the International Building Code.

Mr. Kearney commented base on the knowledge he had he felt the specificity of the plan was not as accurate as he would like. He didn't want to create hardship to anybody but felt it would be a challenge to vote in the affirmative. Mr. Ouellette believed the information was on the plan; page six the existing house was 19ft. 2inches from sill to the last shingle and the proposed is shown as 27ft. 1.75 inches.

Mr. Hennessey recognized that Mr. Ouellette was imposing his own height restriction of 27feet 1.75inches, which was well below what the Board had done in the past. He understood there would be blockage of some of the views; however, the applicant had an illegal house. With regard to property values, Mr. Bergeron said one might consider anyone increasing the value of their property did not necessarily render the abutting properties less valuable. He wanted to know the difference between the current and proposed heights. Mr. Ouellette stated from the sill to the peak the current height was 19ft. 2inches.

Mr. Bergeron believed the minimum height on second stories was 7ft. 6inches. He understood the overall change in elevation would need to be specified. Mr. Ouellette stated he would be at 28ft. or under. Mr. Bergeron noted the pitch of the roof made the difference in the height.

Mr. Hennessey stated the Board has struggled with heights in the past; in this case there may be several people affected. Mr. Gowan spoke about the importance of not assigning an arbitrary number.

Mr. Wing saw that the Building Inspector's notes indicate a room height shall not be less than seven feet. He also saw that the proposed plans show the second floor being at 7ft. 6inches.

Before voting the Board discussed the variance criteria.

*1. Variance not contrary to the public interest:*

Mr. Kearney felt 'public' had different meanings with every case. In this case he felt the 'public' was the neighborhood and those directly affected. He was conflicted because he understood the hardship with the property and knew something had to be done; however, he wrestled with the question of whether the request was the only plan to bring it to conformance and have a viable property/house.

Mr. Hennessey concurred and felt the Board should make a motion to allow the height to be restricted to the minimum required by the Building Inspector to meet applicable codes. He made that motion. Mr. Bergeron seconded. (*Mr. Gowan clarified the language of the motion*)

**MOTION:** (Hennessey/Bergeron) Condition of variance – second floor height to be limited to the minimum allowed by the International Building Code as interpreted by the Pelham Building Inspector.

**VOTE:**

Mr. Kearney – Yes  
 Mr. Hennessey – Yes  
 Mr. Hopkinson – Yes  
 Mr. Caira – Yes  
 Mr. Bergeron – Yes  
 (5-0-0) The motion carried.

Mr. Hennessey pointed out the Town official (Building Inspector) would be using the International Building Code to indicate the bedroom height. Mr. Bergeron said with the understanding that the bedrooms were currently being used in the basement without any fire egress, the public interest was with the applicant and the abutters. With the motion he was okay with this criterion.

Mr. Wing viewed public interest as the home needed to be to code and have proper egress. Mr. Caira agreed the home should be to code.

*2. Spirit of the Ordinance:*

Mr. Kearney believed the first two criteria went hand-in-hand. Mr. Hennessey agreed and felt the first three criteria were intertwined. Mr. Bergeron agreed that the first two criteria ran together. He didn't feel the spirit was violated by the request. Mr. Wing agreed the spirit had been observed judging by the information on the building code in comparison to the plans; effort was made to minimize the impact.

*3. Substantial Justice:*

Mr. Bergeron was unsure how this criterion weighed in with the courts. He reviewed the New Hampshire Municipal Association website and understood an expansion of height was an expansion but did not feel it was an egregious expansion. He felt the request lended itself to the justice side of the third criteria. Mr. Wing agreed substantial justice has been done. Mr. Caira also agreed.

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

Mr. Kearney stated he tries to have sensitivity in each case and felt there was a diminution of value occurring in this case if a variance was granted. Mr. Hennessey stated in the past he's spoken as an expert on property values; however, he did not claim to be an expert on water fronts. He said it was hard to argue with some of the letters produced by fellow realtors. He discussed the comments made by abutters during the site walk and heard them loud and clear. He said the Board had a case where the applicant would have essentially no value on their property unless two bedrooms are put in versus a slice of view. He said the

slice of a view was important to the people but was not sure it would pay a huge part in what a buyer would pay for the property. He felt having a livable house outweighed having a slice of view. Mr. Bergeron felt it was very subjective and hard for him to quantify and qualify. He heard testimony that the lots were heavily wooded and taller than the houses at one time. He didn't feel surrounding values would be diminished to a point of violating this section.

In attending the site walk, Mr. Wing believed two of the properties they were on would have diminished values. Mr. Cairra believed water view properties were worth more. He struggled with the criteria. He said a lot of people were losing a little view, but at least they had some.

*5. Unnecessary Hardship:*

Mr. Kearney felt the case was presented well and believed relief was needed for hardship. Mr. Hennessey spoke about his experience being a realtor and listing agent and stated he was never involved in the sale of a property with no bedrooms. He believed that was the definition of a hardship.

Mr. Bergeron said in the cases he saw that were challenged successfully the use of the property was different from that neighbors. He believed the seven other actions by the Board played into this case because the use was reasonable. By itself he felt it was acceptable and was okay with the request.

Mr. Wing agreed there was a hardship. Mr. Cairra also believed there was hardship and the applicant needed help.

Mr. Hennessey believed in in this case prong 5a and 5b were applicable which was unusual. He felt both prongs of hardship were met.

Mr. Bergeron confirmed the motion they made earlier would apply if the variance were granted. Mr. Gowan answered yes; he then confirmed/clarified the wording of the motion.

**Case #ZO2020-00023**

**ROLL CALL VOTE:** Mr. Kearney - 1) Yes, 2) Yes, 3) Yes, 4) No, 5a) Yes, 5b) Yes

Mr. Hennessey – 1) Yes, 2) Yes, 3) Yes, 4) Yes, 5a) Yes, 5b) Yes; subject to the minimum height as read into the record

Mr. Bergeron – 1) Yes (with condition the minimum height meets code), 2) Yes, 3) Yes, 4) Yes, 5a) Yes, 5b) Yes

Mr. Wing – 1) Yes, 2) Yes, 3) Yes, 4) No, 5a) Yes, 5b) Yes

Mr. Cairra - 1) Yes, 2) Yes, 3) Yes, 4) No, 5a) Yes, 5b) Yes

(2-3-0) The motion failed.

**VARIANCE DENIED**

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

**Case #ZO2020-00024**

**Map 30 Lot 11-153**

**OUELLETTE, Lance & Laurie – 17 Campbell Road – Seeking a Variance concerning Article III, Sections 307-7, 307-8, C & D to permit the reconstruction of a 2-bedroom Single-Family Home on a**

**pre-existing non-conforming lot after a fire that deemed the home a loss and non-livable and to permit the addition of a second floor.**

Mr. Kearney commented the case was continued from a previous meeting and the abutters were previously read aloud.

Lance and Laure Ouellette came forward in person to discuss his variance request. Mr. Ouellette spoke about the request. Due to a fire they had a total loss of the home (one year ago) and were seeking to rebuild in the exact existing footprint with the request to go up to a second floor for more livable space and larger rooms. None of the existing setbacks will be impeded, although when the insurance company was reviewing the property it was noticed that one of the foundation walls was 'kicked' in. He said they would like to push the wall back out and will not exceed the foundation or side setback.

**PUBLIC INPUT**

Mr. Kearney read aloud a letter submitted by Kristin Clement who rented 17 Campbell Road. She spoke in favor of the applicant's request as it would allow for a safer home.

Ms. Linda Costa of 20 Campbell Road came forward in person. Stated she wanted a house in that location. She wished her house had a cellar. She asked if there was a law against having bedrooms in a cellar. Mr. Hennessey answered no if they had a good egress and height. Ms. Costa said the applicant should consider putting bedrooms in the cellar instead of going up higher. She pointed out the complex (neighborhood) had ten acres with twenty-nine houses including the road. She noted the applicant's lot was the smallest. She wanted to see a house on the lot but suggested it be smaller than proposed.

Mr. Ray Gladu, 9 Campbell Road came forward in person and told the Board he had no problem with the applicant replacing the building damaged by fire with a one-story, two-bedroom and one-bath structure. He said the lot was too small (less than 60ft.x100ft.) to support a two-story structure. He understood the plans included a full basement, which the old building did not have. He said the proposal was a three-floor building. He questioned the septic and wanted to know if it could support more people. He pointed out the property was within 250ft. of the pond. Mr. Gladu commented his view of the pond would be blocked by a two-story building and would decrease the value of the properties behind it on Andover Street. He said if the variance were not granted there would be no hardship because the property has always been a rental; rebuilding a one-story would allow the owner to rent it as it has been for years.

Mr. John Patterson, 7 Gaston Street and 1 Andover Street came forward in person. He stated the property was a rental and did not feel there was any hardship to make the structure bigger given it was the smallest lot in the neighborhood. He noted by granting a basement the house would nearly double the square footage. He asked the Board to consider drainage stipulations given there were existing problems that had always been an issue. Mr. Patterson told the Board the question regarding height should be from grade, not from sill because a sill could be raised. He felt the applicant deserved to have another house put on the lot and ended by saying no one had an issue with having the same building that was previously there.

Mr. Kevin Crooker, 2 Andover Street came forward in person. He was not in favor of the proposed large house on the small lot due to the over-building of the property (as was stated in the previous case). He was not against the structure previously there and allowing a full basement would provide relief. He reiterated it was a small lot and the previous structure was sized for that reason; the proposed 2,000SF structure was too big. He said his opinions were nothing personal against his neighbor, he wanted to see the area stay decent as he would be retiring in the area. He had no objection to a new house on top of a full basement but felt it was asking a lot of relief to have a 2,000SF house.

Mr. Ouellette felt a 2,000SF house on any lot was a small house by today's standards. He spoke about regular dimensions of a bedroom and closet. He said it was unfortunate the structure had a fire and said it might have been caused from having so much stuff congested into a small space. The old house had 3/4 basement that was utilized. Being familiar with the Board he said he did everything he could to shrink the proposed height down. He pointed out the footprint would not be increased. He spoke about view and noted the reason people had it was because he took out trees and modified his septic system and built a garage. He said all the lots were pretty wooded.

Mr. Bergeron asked for clarification of the dimensions for the poured foundation. Mr. Ouellette replied his calculation came out to approximately 912SF. Mr. Bergeron said the Board would be running into the same discussion (as the previous case) regarding the height. He didn't know if it would be better to square the foundation out and hold an existing single-level dwelling or to take the application literally. Mr. Hennessey said they had to deal with the application in front of them. Mr. Kearney noted the applicant could go smaller but could not go larger. Mr. Ouellette discussed how he came about with his variance request and noted the footprint was not changing. He requested the expansion to be able to have more room and stop the clutter. Mr. Bergeron said the issue of height weighed heavily on the abutter's minds. He believed there was precedent in the Supreme Court (for the section of relief) indicating that people can put back what they previously had. Mr. Kearney said the non-conformance of the lot comes into play. Mr. Bergeron inquired if the applicant would have the opportunity to come back if the variance was struck down. Mr. Kearney believed if the variance is leaning toward denial the applicant requested the replacement (of a single floor) with a basement be approved. Through previous discussion with Ms. Beauregard the Board would be able to consider doing so since it was less than the submitted variance request. Mr. Gowan agreed with this. He said an applicant could amend their plan 'down' to ask for less Zoning relief (without additional abutter notification) and the Board would be able to consider the request. Mr. Hennessey added the Board could not make the decision to change, it was up to the applicant to do so.

Mr. Hennessey addressed the abutter's comments regarding keeping the structure small because it was a rental unit. He said under State law the Board could not consider the kind of ownership. He mentioned having difficulty with calculating the gross living area above ground (not including the basement) and wanted to know the footage. Mr. Ouellette replied it would be just over 1,800SF. He pointed out the new house would have a set of stairs going into the basement; the previous house didn't have this. That set of stairs takes up a significant portion of the first floor.

Mr. Kearney inquired if the application package included a reference to a plan for a single-story. He said it would only come into play if the Board was to deny the variance request with the second floor; the applicant would need to inform the Board (prior to their vote) that they would like the Board to consider a different plan. Mr. Gowan spoke about the procedure to do so if the applicant were to make the request.

Mr. Hennessey noted the request in the previous case failed 3-2 on the basis of diminution of value on the abutters because of blocked views versus hardship. In this case, he said there was more hardship given the structure had burned and was not livable, but they still had the same issue of diminution of value.

Mr. Bergeron said with every case being reviewed on its own merit, he looked at lot 11-152 that has had no structure on it since it became a lot. Mr. Kearney saw it was a wooded lot with no structure. Mr. Bergeron spoke about the discussion during the site walk where the applicant was asked what the difference in height would be for the proposed structure and the existing garage. He recalled the response being that the proposed structure would be 24 inches higher than the existing (garage) building. He said that height would not exceed the height of the existing trees. He said the case became easier for him to look at when he saw the natural setting.

Mr. Ouellette stated the Board could stipulate a height restriction as was done in the previous case that minimum codes would have to be met.

Mr. Kearney inquired if the submitted plan did not reflect the minimum height requirements. Mr. Ouellette replied it does. Mr. Kearney believed if there was a motion for minimum heights the plans as submitted would not be the same on the second floor. Mr. Ouellette replied he used the room height of 7ft.6in. which was common. Mr. Bergeron saw on another plan sheet (#8) the ceiling height was shown as 8ft.

Mr. Kearney asked the Board to review the variance criteria.

*1. Variance not contrary to the public interest:*

Mr. Kearney felt the public interest may be impeded with a view issue. Mr. Hennessey spoke about the value of the community. He suggested a 980SF property does not raise the level of values in that area as a new 'standard' construction of approximately 1,800SF but it would raise the average value of property in the neighborhood. Mr. Wing said when looking at what was previously there, the proposal is no different. Mr. Hennessey said it would still be a non-conforming use and arguable whether they were raising the bar by allowing 'like to like'; with a two-story it was clear the value would be increased. Mr. Cairra agreed it would increase the value (not by a lot) and noted the footprint was the same. Mr. Bergeron could not say the proposal would be contrary to public interest.

Mr. Ouellette noted the designer scaled the room height for 8ft. and they should be 7ft.6in. He said the overall height from peak to sill is 27ft. He said if the room height were brought down to 7ft.6in the overall height would also be brought down to 26ft.

*2. Spirit of the Ordinance:*

Mr. Kearney felt the spirit would be observed by having a single-family dwelling. The other members agreed.

*3. Substantial Justice:*

Mr. Kearney felt this criterion was close to the previous and believed substantial justice has been done. The other members agreed.

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

Mr. Kearney said he stumbles with the potential diminution of values of properties with a structure as high as the proposed. Mr. Hennessey spoke about views and 'measurable' improvements. He didn't feel there was a loss of values. Mr. Bergeron didn't feel in this application there was a good case for diminished values of surrounding properties. Mr. Kearney noted there was a slope in closer proximity to the abutters on Campbell. Mr. Wing agreed with Mr. Kearney. He said the proximity to the house on Campbell to those on Methuen Street and Andover Street would be that much closer and contribute to a more diminished value. He was unsure how much of the trees were in the line of the view. His issue was the proximity of the proposed house to the other houses in the area. Mr. Cairra believed a single-family smaller house would be better for the values of everybody. He wasn't concerned with view because it was set back. Mr. Bergeron recalled there was a tree line that kept people from seeing the view of the water.

Mr. Ouellette displayed an arial photograph of the area and the lot being discussed.

Mr. Bergeron wanted information regarding the height. Mr. Ouellette used the arial photograph and pointed to the existing garage that had a 24ft. height. The proposed structure had to meet code requirements and was at 26ft.; he proposed this to be well under the 30ft. the Board has allowed to pass in other cases.

Mr. Kearney noted there was no motion on the table regarding height requirements. Mr. Hennessey used the motion from the last case and voiced it for this case changing that it pertained to the building, not just the second floor.

**MOTION:** (Hennessey/Bergeron) Condition of variance – height throughout the building to be limited to the minimum allowed by the International Building Code as interpreted by the Pelham Building Inspector.

**VOTE:**

Mr. Kearney – Yes  
 Mr. Hennessey – Yes  
 Mr. Hopkinson – Yes  
 Mr. Caira – Yes  
 Mr. Bergeron – Yes  
 (5-0-0) The motion carried.

Mr. Bergeron confirmed the Board votes favorably to keep the heights of the ceilings at the minimum for code. He wanted to know if that motion reduced the building height by two feet. Mr. Ouellette said with the 7ft.6in requirements for the ceiling the building would be at 26ft. He said that was when the discussion at the site walk focused on the trees because they were higher than that. He was confused by the Board's discussion because the first case was about views and what people could see and could not see. He said the position of the proposed house was twenty-one feet below grade from the abutter's sill. He pointed out 7ft. was low for ceiling height. He said the reason they proposed the two-story building was for safety. He discussed the use of the house and space within. He said they weren't building it to flip it in a sale.

Mr. Kearney asked Mr. Ouellette if he wanted the Board to vote on the variance as stated or if he would like to amend the variance request to bring the structure to a single story. He said if the variance for two-story is denied the applicant would have to apply for a new variance. He added if they would like to withdraw and diminish the size to a single the Board could take care of doing so during the present meeting. For clarity, Mr. Ouellette stated the Board had the authority to stipulate a height and asked that they make a motion regarding height to be either 26ft. or 19 ft.

Mr. Kearney felt this would put the Board dangerously close to 'horse trading' if they did so. Mr. Gowan said he wrestled with the fact that the application contained a set of drawing for both a single-level house as well as drawings for a two-level house. He said because both things were in the application it might provide the Board with the ability to create the maximum height because they would be responding to the submission. He felt it would be better for the record to have the applicant be clear on which they were asking for.

The Board discussed the ceiling and structure height. Mr. Hennessey was in favor of moving forward with a 'normal' height building. He felt the trees mitigate the impact of the view and the applicant had a right to build a property closer to the market value of the surrounding properties that were being built there now and shouldn't have to be restricted to a 980SF house. He understood the lot size but pointed out the structure would be in the same footprint. Mr. Kearney felt there was still an interruption of view, even with the trees. From the submitted photographs and angles, Mr. Hennessey didn't see it. He added there were trees in line with the property.

Mr. Kearney commented there was an approved motion for minimum height which would bring the ceilings to 7ft. Given the discussion he said if the Board didn't think that was correct, they should recant the motion. The second consideration was the fact that two plans were submitted, and the applicant was willing to either of the two.

**MOTION:** (Bergeron/Wing) To recant the previous motion (Condition of variance – height throughout the building).

**VOTE:**

(5-0-0) The motion carried.

With the motion passing, Mr. Kearney understood the height of the structure would change.

*5. Unnecessary Hardship:*

Mr. Hennessey didn't see that views were being obstructed. Mr. Kearney replied from the site walk he felt there were. Mr. Bergeron believed seven precedents had been set (in the area). Mr. Kearney stated seven variances had been granted in the neighborhood; however, he didn't know the details for each. Mr. Bergeron noted the Board had been liberal with its decisions in the past. Mr. Hennessey objected to the word 'precedent' being used. He informed every case was unique and the Board doesn't cite precedence when deciding cases. Mr. Bergeron discussed a case that had a person take down their garage. Mr. Hennessey stated at a time after that case the Supreme Court upheld the Pelham Zoning Board granting variances.

Mr. Kearney believed there was hardship because the applicant's house burned down. The members agreed hardship was met.

Mr. Bergeron understood there were two possible choices submitted with the application, which to him felt like a new application. Mr. Hennessey said he didn't like the 'branching' of the application or having the Board make the decision (which building). He believed there should only be one case in front of them and asked the applicant to make a decision which plan they wanted the Board to vote on. Mr. Ouellette described his submission noting he tried to address concerns. Mr. Kearney agreed with Mr. Hennessey that the Board had the latitude with regard to the submission, but the decision was up to the applicant regarding which house proposal they wanted the Board to vote on. Mr. Hennessey noted they could put the case in abeyance until next month.

Mr. Ouellette commended the Board for rescinding the motion regarding the ceiling height limit. He said his request wasn't anything that had not been requested within the neighborhood; four of the seven variances granted (to neighbors) were expansions in height. He said he would stay with the two-floor house with 7ft.6in ceilings and a maximum height of 26ft.

Mr. Kearney told the Board they would be voting for a variance for a two-story house with 7ft.6in ceiling heights. Mr. Gowan asked if there would be a condition of approval. Mr. Ouellette offered a maximum height of 26ft. with room height maximum of 7ft.6in. He added they would not exceed the footprint but felt the motion should include the ability to correct (straighten out) the one foundation wall. Mr. Kearney confirmed that was in the plan. Mr. Ouellette answered yes. Mr. Kearney agreed (regarding the correction to the foundation).

**MOTION:** (Hennessey/Wing) Condition for Variance – Ceiling heights 7ft. 6in. all floors with a maximum structure height of 26feet.

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

Mr. Bergeron questioned if a motion was needed to correct the foundation. Mr. Kearney answered no; it was included in the plan.

**Case #ZO2020-00024**

**ROLL CALL VOTE:** Mr. Kearney – 1) Yes, 2) Yes, 3) Yes, 4) No, 5) Yes  
 Mr. Hennessey – Yes to all criteria  
 Mr. Bergeron – Yes to all criteria; with stipulation of 7ft.6in ceilings  
 Mr. Wing – 1) Yes, 2) Yes, 3) Yes, 4) No, 5) Yes  
 Mr. Caira – Yes to all criteria

(3-2-0) The motion carried

**VARIANCE GRANTED**

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

**MEETING MINUTES**

**MOTION:** (Wing/Hennessey) To approve the meeting minutes of September 14, 2020 as written.

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

**MOTION:** (Hennessey/Bergeron) To approve the site walk minutes of October 17, 2020 as amended.

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

**ADJOURNMENT**

**MOTION:** (Hennessey/Wing) To adjourn the meeting.

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

The meeting was adjourned at approximately 10:45pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary