

APPROVED

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
December 13, 2021**

Mr. David Hennessey calling the meeting to order at approximately 7:00 p.m.

PLEDGE OF ALLEGIANCE

Mr. McNamara called roll.

PRESENT ROLL CALL: David Hennessey – Present
Peter McNamara – Present
Jim Bergeron – Present
Joseph Passamonte – Present
Alternate David Wing – Present
Alternate Jeff Caira- Present
Planning/Zoning Administrator Jenn Beauregard – Present
Recording Secretary Jill Atkinson – Present

ABSENT: Matthew Hopkinson
Alternate John Westwood

Mr. McNamara acted as secretary for this meeting in the absence of Mr. Hopkinson.

MINUTES:

Mr. Hennessey appointed Mr. Wing to vote on the minutes.

November 16, 2021

MOTION: (Passamonte/Wing) To approve the November 8, 2021 meeting minutes as written.

(5-0-0) The motion carried.

COURT ORDERED REMAND

CASE ZO2021-00001-CR

GENDRON, Patrick & Kim – 579 Bridge Street – Map 22 Lot 8-85 (Court Ordered Remand to review only the hardship criterion as directed by the Housing Appeals Board’s decision order dated September 16, 2021) Seeking a Variance to Article III, Section 307-7, Article IV, Section 307-16B, and Article V, Section 307-18 of the Zoning Ordinance to permit a Workforce Housing Development in the B-5 Zone. *12/9/2021 Applicant has requested to be continued to the January 10, 2022 meeting. This case will not be heard on December 12, 2021**

Mr. Hennessey noted that the Gendrons have once again requested an extension to prepare for the hardship criteria and it will presumably be before the board in January.

NOTICE OF PUBLIC HEARING

Mr. Hennessey noted there would be a public hearing regarding two changes to the zoning regulations. The public hearing will be held December 20 at 7:00 regarding changing table of dimensional requirements and allowing accessory dwelling units to be allowed by means of a conditional use permit from the zoning administrator, Ms. Beauregard, rather than a special exception obtained by the zoning board. Mr. Hennessey noted the second is pertinent to the board as the state changed state regulation three years ago regarding accessory dwellings and the board has had an increasing number of requests

The public hearing notice can be found at:

https://www.pelhamweb.com/sites/g/files/vyhlif4856/f/news/skm_c284e21120912380.pdf

REQUEST FOR REHEARING

CASE ZO2021-00024

BOUTWELL, Nathan – 1406 Mammoth Road – Map 1 Lot 5-127-1 – Seeking a Variance concerning Article: III, Section: 307-12 Table 1 & Article: V, Section: 307-18 of the Zoning Ordinance to permit industrial uses to be allowed on a lot of approximately 1.7 acres in size and to allow a building to be used for industrial uses to be constructed 15’ from the side lot line where a minimum of 2 acres is required and a minimum front building setback of 3X the height of a building or a minimum of 40’ is required and a minimum of 2X the height or 30’ for a side/rear setback as required for industrial uses & to permit uses allowed in the Industrial District to be allowed on the property known as Map 1 Lot 5-127-1 which is located in the Residential District. RSA 677:2 Motion for Rehearing requested by Charlene Armstrong & Kevin Edwards, 1394 Mammoth Road, Paul Gagnon, 103 Dutton Road, Mark & Russell Hilbert, 1 Industrial Drive, Unit 4, Anne Holden, 1363 Mammoth Road, Edward & David T. Lynch, 1329 Mammoth Road, James Niemaszuk, 102 Old Bridge Street, and Joan & Dana LaTour, 1412 Mammoth Road.

Mr. Hennessey explained this was based on a letter from the abutters and statutory interested parties requesting the board to rehear the variance request.

Mr. Hennessey appointed Mr. Wing to vote on the request for rehearing.

Mr. Hennessey confirmed that the board members had read the letter requesting the rehearing. He explained this is a yay or nay vote. In the past it has been taken on whether there is any new information in the letter given to the board on the case that if it had been known at the original hearing, it might have changed the vote.

Mr. Passamonte believes there is. He explained that he asked Ms. Beauregard to pull up aerial photos that showed work done in 2014 that at the site walk, Mr. Passamonte was led to believe happened prior. He said there are a lot of differences from what he understood at the site walk to now. He feels there is enough information for rehearing for more clarification.

Mr. Bergeron said he read all the reasons for the board to consider an appeal and had a few questions for the board. He noted they mentioned whether or not shoreland protection had been in effect at the time and if it was the duty of the board to recognize that. He explained that he had asked early on in his position on the board what the board’s place was on state permits. He believed he was told the board has no place with state permits. They were part of the process, but the board could not put it in front of the request as the application for state permits would come across secondly. He asked Mr. Hennessey to reaffirm that requesting state permits from an applicant was part of the board’s place as he understands it’s not.

Mr. Hennessey questioned when the berm was done. His impression is it was done prior to the institution of shoreland protection but the letter insinuates it was done much more recently. Mr. Hennessey said he is not sure who is right or wrong, but it is new information for him. The second point of interest Mr. Hennessey had from the letter is the board is always weighing a variance regarding protecting the right of the original homeowner versus the general population. Mr. Hennessey weighed in favor of the general population that any salt run off would be contained by the berm, but the letter is saying no. He said he heard that at site walk but thought it was a reasonable assumption although he is not sure that is true now. Mr. Hennessey believes there is new information or information in a different spin than was presented at the site walk and original hearing.

Mr. Bergeron said his question was regarding whether or not the board is responsible to see if permits are in place and the answer he received two years ago was no. Mr. Hennessey confirmed. Mr. Bergeron explained that he wants people to understand that the board can't ask for that upfront. Any misuse of the permitting process would be discovered later on, perhaps in planning. Mr. Bergeron said the second item he believed may carry some purpose to the potential for a rehearing was whether or not the zoning board is the proper place for setting limitations on the use. He questioned if the board grants variance for industrial zoning, does that mean all uses listed under industrial zoning would be allowed and the planning board couldn't condition the uses.

Mr. Hennessey noted he likes having three board members with planning board experience and explained there are significant differences between the two boards. The zoning board cannot make many stipulations. The planning board is allowed and encouraged to make negotiations. The zoning board is limited in what they can do as for with conditions. The planning board can make judgement calls in what they ask. He explained that in regard to Mr. Bergeron's question, it came in front of the board as a change to industrial use, period, and that's what was voted on. Mr. Bergeron explained that he appreciated and respects Mr. Hennessey's perspective and how he words his perspective. He said the answer helps with regard to restrictions being addressed in a site plan review process.

Mr. McNamara picked up on the point that the board doesn't have enforcement authority. Violation of local codes is the responsibility of zoning or code enforcement and at the state level, it's the responsibility of the state. He believes a decision to go back on that basis would be erroneous. In regard to the misstatements of fact referred to in points two and three of the letter, he said there are sometimes differences in what is first presented and what is seen in a site walk further testimony. He feels that in this case, there were a lot of questions before site walk that were answered at site walk and the further hearing. He thought the board had a lot of information. Mr. McNamara said he is not opposed to a rehearing but is not sure it's necessary.

Mr. Wing said he echoed Mr. McNamara. He is not particularly opposed to a rehearing. In regard to the DES, he didn't think it was the board's jurisdiction to investigate those matters. He feels if there was a violation, it should have been brought to the planning board or the state office for investigation. In regard to points two and three, areas of misstatements, Mr. Wing thought the board went over the case deliberately and discussed it thoroughly. He said the wording might not have been the right ones chosen but is not sure it would have affected his decision.

Mr. Cairra said it was a disadvantage to him having not been at the site walk and he doesn't have much to say.

There were no further comments or questions from the board.

ROLL CALL VOTE:

Mr. Wing - no

Mr. McNamara - no
Mr. Bergeron – no
Mr. Passamonte - yes
Mr. Hennessey - yes

(2-3-0) The motion was rejected.

THE REQUEST FOR REHEARING WAS TURNED DOWN.

Mr. Hennessey asked the board to hang onto their packet information regarding the Gendron case for the next meeting.

Mr. Hennessey noted the board would be taking all the special exception cases first and then hear the request for the zoning variance.

HEARINGS:

CASE ZO2021-00033

SOUSA, Jose – 25 Hearthstone Rad – Map 14 Lot 3-36 – Seeking a Special Exception to Article XII, Section 307-74 of the Zoning Ordinance to permit an existing unpermitted Accessory Dwelling Unit located within the basement to remain and to bring it into compliance.

Mr. McNamara read the list of abutters aloud. There was no one whose name was not called that is an abutter or has a statutory interest in the case.

Mr. Sousa was not presented. Mr. Hennessey continued the case. Date specified to January 10.

CASE ZO2021-00034

NICKERSON, Gail – 84 Dutton Road – Map 36 Lot 10-368 – Seeking a Special Exception to Article XII, Section 307-74 of the Zoning Ordinance to permit construction of an Accessory Dwelling Unit attached to a single-family home.

Mr. Hennessey noted that he had Ms. Beauregard check and that although he lives fairly close, he is not within 200 feet and doesn't feel the need to recuse.

Mr. McNamara read the list of abutters aloud. There was no one whose name was not called that is an abutter or has a statutory interest in the case.

Gail Nickerson explained that she is acting as an agent for her brother, Walter L Nickerson, who owns the family home on 84 Dutton. Her mother has life estate on the property. When her father passed away a few years, they moved her mother into one area in the house, which is about 912 square feet. They are requesting this be a legal and conforming Accessory Dwelling Unit and then come back and request a kitchen can be put on the other side so her daughter can live with her mom and have her own space.

Mr. Beauregard said they have a state approved septic design for a two-bedroom house with a one-bedroom ADU. Everything else has been reviewed by the building inspector and meets the criteria.

Mr. Hennessey explained for those watching that granting the special exception would allow them to rent, at market rent, on the open market as long as they live there.

There were no questions or comments from the board.

No one from the public came forward to speak or with questions.

Mr. Hennessey appointed Mr. Caira to vote on this case.

CASE #ZO2021-00034

ROLL CALL VOTE:

Mr. Caira – yes
Mr. McNamara – yes
Mr. Passamonte – yes
Mr. Bergeron – yes
Mr. Hennessey - yes

(5-0-0) The motion carried.

SPECIAL EXCEPTION GRANTED

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

Mr. Hennessey added there is a proposal to change the zoning regulations to allow the special exceptions for ADUs to be handled administratively, instead of in front of the board.

CASE ZO2021-00036

LE, Tien M. & Chau Bao – 18 Hayden Road – Map 8 Lot 9-85 – Seeking a Special Exception to Article XII, Section 307-74 of the Zoning Ordinance to permit construction of a 1-bedroom Accessory

Mr. McNamara read the list of abutters aloud. There was no one whose name was not called that is an abutter or has a statutory interest in the case.

Chau Bao apologized for being late.

Dan Flores, SMC Engineering, said they were here to add a one-bedroom Accessory Dwelling Unit to the basement of an existing three-bedroom home. He explained they submitted the application with an approved septic design for the proposed use, included a floor plan and a letter describing how each criteria has been met.

Ms. Beauregard said they did a good job answering the questions in the attached letter. The septic design is for a three-bedroom with a one-bedroom ADU. Mr. Soucy reviewed plans. They don't exceed 1,000 square feet and they've met all the criteria.

There were no comments or questions from the board.

No one from the public came forward with comments or questions.

Mr. Wing was appointed to vote on this case.

Mr. Hennessey noted the board looks at the packets and this was one of the better ones coming in. It was very professional.

CASE #ZO2021-00036

ROLL CALL VOTE:

Mr. Passamonte – yes
Mr. Bergeron – yes
Mr. McNamara – yes
Mr. Wing – yes
Mr. Hennessey - yes

CASE ZO2021-00035

MARCHAND, Paul – 8 Mammoth Road – Map 39 Lot 6-176 – Seeking a Variance to Article III, Section 307-8C & Article V, Section 307-18R of the Zoning Ordinance to permit construction of a new convenience store to replace the existing convenience store, to relocate the new store within the existing lot, and to increase the footprint of the store.

Mr. Hennessey appointed Mr. Caira to vote on this case.

Mr. McNamara read the list of abutters aloud. There was no one whose name was not called that is an abutter or has a statutory interest in the case.

Mr. Hennessey confirmed all the board members were familiar with this location.

Shane Gendron, Herbert Associates, came forward representing Paul Marchand. He explained there is an existing two-acre parcel housing Ray's Stateline, which has been there since 1958 and has served as a store. It is in a rural zone and not an allowed use. Mr. Marchand would like to build a new store on the existing site. He explained the existing store sits near the property lines and the parking is not clear. Mr. Gendron posted photos of the existing building, which were also in the board's packet. He explained there are two existing entrances and not a lot of dedicated parking on the site. With the proposed store, they pulled back further so the new store would sit to the rear of the existing store, creating a 24' travel way with parking on either side of the travel way creating a clear pattern to the travel way. They have added landscaping to the site plan. Mr. Gendron posted a picture of the elevation of the building. They believe it would enhance the building and think it would be an enhancement to the town, creating positive tax revenue positive, and be a positive for Mr. Marchand and his business.

Mr. Gendron read the five criteria into the record. He added it's a big enhancement and is the first thing you see entering Pelham from Dracut. The new store has a nice, colonial look and they believe it would be a good addition.

Mr. Hennessey noted he has sat out there many weekends with the VFW. He said the safety question is paramount, along with the parking issue.

McNamara asked how much bigger the new building would be. Mr. Gendron said approximately 2,000 square feet. In reply to how much further from the road it would be, Mr. Gendron said roughly about 40 feet further back.

Mr. Wing asked if there would be a second floor on the new building. Mr. Gendron said there would not be. He explained that around back there is a walkout for deliveries and described it as an under garage on back.

Hennessey asked Ms. Beauregard if the project is of regional significance. She said that is up to board but doesn't see how it would be. Mr. Hennessey agreed but said he has been asking for properties close to the line. The abutters in Dracut have been notified. Mr. Hennessey doesn't believe it has to go to the regional planning commission or Dracut planning board.

Mr. Caira asked how many parking spots are with the original building. Mr. Gendron said probably about 14 spaces, with some dedicated spaces to the north and south and then an area in front of store where people just pull up and park along the curb, but not real clear parking. He said the new site plan gives a clean, marked parking lot. Mr. Gendron explained the planning board might say to add or remove parking but in front of zoning, they are just talking about the use. Mr. Caira also noted the new building is set back quite a bit more.

There were no further questions from the board. Mr. Gendron had nothing to add since there were no questions.

No one from the public came forward with questions or comments.

Case #ZO2021-00035

ROLL CALL VOTE:

Mr. Passamonte - 5 yesses; final vote yes

Mr. Bergeron – 5 yesses; final vote yes

Mr. Caira - 5 yesses; final vote yes

Mr. McNamara – 5 yesses; final vote yes

Mr. Hennessey – 5 yesses; final vote yes

(5-0-0) The motion carried.

VARIANCE GRANTED

Mr. Hennessey noted the 30-day right of appeal.

Mr. Hennessey explained they had a request from the new chair of the master plan who had asked to address the board tonight, but he didn't realize this meeting would be that quick. They have asked to address the board for approximately a half hour and look for input from the board. Ms. Beauregard said there are no applicants for the January agenda as of yet but there is time left. Mr. Hennessey said he will allow them to come to the January meeting assuming there is not a huge January agenda. He said he thinks it's important to have the opportunity to weigh in. He said he responds yes conditionally depending on the length of the January meeting.

Mr. Hennessey wished everyone a Merry Christmas and Happy Holidays. He expressed his appreciation as they have not had to skip any hearings or meetings and have been consistent in preparations and he appreciates all the efforts of the board.

DATE SPECIFIED CASE(S) – January 10, 2022

CASE ZO2021-00033 – Map 14 Lot 3-36 - SOUSA, Jose – 25 Hearthstone Rad

ADJOURMENT

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

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

The meeting was adjourned at approximately 7:50 p.m.

Respectfully submitted,
Jill M. Atkinson
Recording Secretary