

**APPROVED**

**TOWN OF PELHAM  
ZONING BOARD OF ADJUSTMENT MEETING  
November 8, 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 John Westwood- Present  
Planning/Zoning Administrator Jenn Beauregard – Present  
Recording Secretary Jill Atkinson – Present

ABSENT: Matthew Hopkinson  
Alternate Jeff Caira

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

**MINUTES:**

**October 20, 2021**

**MOTION:** (Passamonte/McNamara) To approve the October 20, 2021 meeting minutes as amended.  
(5-0-0) The motion carried.

**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. \*\*\*11/2/2021 Applicant has requested to be continued to the December 13, 2021 meeting. This case will not be heard on November 8, 2021**

Mr. Hennessey mentioned that this was the first case on the agenda. As was stated at the last meeting, the case was remanded back on the hardship prompt. Mr. Hennessey stated that part of that calls for the applicant to prove financial hardship and the applicant is still working on that presentation. The applicant has requested an extension until the December meeting. Mr. Hennessey noted that because the applicant is requesting the extension, it should still be in conformance with the housing board.

**CONTINUED**

**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.**

Mr. Hennessey noted this was a continued case from last month. There are no minutes from the site walk yet. It was noted that they met on Saturday morning to look at the site and area. Mr. Hennessey said there was a lot of side discussion regarding some of the abutters. The main purpose of the site walk was to look at the general area. It was noted that a number of members of the conservation commission attended and their presence was appreciated. There were also a number of people from across the brook in Windham present.

The applicant did not have any questions or comments at this point.

Mr. Hennessey invited members of the conservation commission to speak, noting they were speaking for themselves and not for the commission.

Paul Gagnon came forward representing a few members of the conservation commission. Mr. Hennessey noted this was important considering the fact that this abuts the brook. Mr. Gagnon noted there were 4 members of the conservation commission present at the site walk and they chatted afterwards, and his comments represent the feelings of the 4 members. The conservation commission's role, as defined by state law, is to protect the natural resources of the town. He asked if the board could think of a more important natural resource than Beaver Brook. He explained that it bisects the town and flows right over the main aquifer in town. Mr. Gagnon said he would argue there is no more important natural resource than Beaver Brook. He said the state says it's a fourth order stream, the only fourth order stream in town. It gets the benefits of a 250 foot Shoreland Protection Act by state. Mr. Gagnon showed an image with the 50 foot, 150 foot, 250 lines from Beaver Brook. He explained there is only a triangular corner where the house is that isn't included in the 250 foot line. He said the state did wildlife action plan identifying the highest ranked wildlife habitat in New Hampshire and there is a region that abuts this lot. Mr. Gagnon said the members of the conservation commission struggled with why you'd zone the most important natural resource in Pelham as industrial and they don't have an answer. Their recommendation is to not do that. Mr. Gagnon suggested that if, for some reason, the board decides this should be zoned industrial, if he were the neighbor to the south, he would be on the next agenda. The neighbor to the south has three acres and doesn't need a variance. Mr. Gagnon explained the value of a prime residential acre is \$150,000 under the new appraisal and a prime industrial acre is appraised at \$222,000. As the neighbor to the south, he would be coming to the board to have his lot changed to industrial because the value would go up \$72,000 in value. Mr. Gagnon said setting those lots as industrial and with 5 contiguous acres on Beaver Brook zoned industrial, who knows what can happen. Mr. Gagnon thinks it's a slippery slope. He doesn't see why the applicant couldn't have a home occupancy with a well-defined use, not wide open like industrial, and is limited to the applicant, not forever. He realizes there is a restriction for the owner to live there and the owner doesn't live there, but Mr. Gagnon thinks that is a more reasonable variance.

There were no questions from the board for Mr. Gagnon.

No one else from conservation came forward.

No one from the public came forward to speak in favor of the proposal.

Mr. Hennessey opened it up to the public for those in opposition of this proposal. He asked them to keep it brief if they wanted to recap what was said at the last meeting.

Wendy Lundquist came forward, a resident in Windham across the brook from the proposed zoning change. She explained that in her research, in 1975 a garage approximately same size as the one being requested to be built was approved with the stipulation of it being a one man shop. This was the Pelham Front End Shop. She guesses a one man shop would be acceptable. She said she found that Mr. Boutwell bought the property where Southern NH Medical is currently, which was originally zoned residential and now changed to business. Ms. Lundquist said she sees history repeating itself with him buying this property intending to change the zoning.

Mr. Hennessey explained that where the care facility is located is now part of mixed use. The zoning has changed and is now zoned MUZD.

Ms. Lundquist said the zoning was changed so Southern NH Medical could be built. Mr. Hennessey said that was incorrect. It was a general change in zoning for the center of the town, not specifically for the applicant or any specific person.

Ms. Lundquist said Mr. Boutwell bought this property knowing it was residential with the intention of changing the zoning. She questioned why you'd buy residential property if you wanted the industrial zoning. The industrial zoning is across the street and why not purchase there. She asked if his current business is zoned industrial and would you need industrial zoning to run a welding shop. She asked if it could remain residential or change to business. She said if the board agreed to grant the variance, she had stipulations of no Sunday work, no evening work past 6, no outside lights left on, etc. and figure out what else the neighbors want. Ms. Lundquist doesn't feel a residential property should be rezoned industrial.

Charlene Armstrong, the abutter to the south came forward. She said she agrees with Ms. Lundquist and conservation that the idea of turning a residential area over to an industrial area is a dangerous road to go down. She asked the Board of Adjustment to consider asking Mr. Boutwell exactly what he wants to do with the building, which she believes he said is a welding shop. If the variance is granted, to just grant that with limitations and not make the whole thing industrial because there are at least 20 different things allowed if it's rated industrial. Ms. Armstrong finds it very scary that there is no going back if that happens.

Kevin Edwards lives to the south in the next lot. He said it's been mentioned several times that the abutter to the north has an industrial uses variance, but the application says nothing about industrial. The application says to continue to run a business that's already there, but nothing about industrial. He would like to know where the industrial part comes from.

Mr. Hennessey said the information in front of the board goes back to 1993 and was a variance on the business in a residential zone. He doesn't see as industrial variance, but a business use.

Mr. Edwards said it was a continuation of a business already there. He asked if it pertained just to the business that Mr. Latour ran.

Mr. Hennessey said he can't speak to the case but only read what the case said, and it was a variance to allow the business to continue.

Ms. Armstrong said Mr. Latour is now retired and it hasn't been a business for 15 years.

Mr. Hennessey explained that a variance runs with the property meaning that a business can take place on that parcel forever.

Ms. Beauregard explained that if it's been out of use for over a year, the use is no longer allowed and would have to go for a new variance, which Mr. Hennessey said was correct.

Mr. Edwards said the paper says to run his business. He said his point is that what Mr. Boutwell is asking for would run with the property.

Mr. Hennessey said that was as long as the new use is maintained contrary to what the underlying zoning is. He said there have been two comments about precedent. He explained that they don't have precedence as such in the zoning field and they take each application uniquely. The board does take notice of what's been done before, but each case stands on its own, unlike a court case. This case has to be taken individually. They pay attention to what was done two houses up, but this case stands on its own.

Dana Latour, 1412 Mammoth Road, an abutter to the property came forward. He feels as though you need 2 acres in an industrial zone and wants to know how much usable land there is with the brook, etc. Mr. Hennessey said he is unsure, but you actually need more than the 2 acres. Mr. Hennessey said he will let the applicant answer. Mr. Latour said it isn't a big enough lot and there is a house on it. Mr. Hennessey said part of the variance request is to allow a smaller lot.

No one else came forward in opposition or with a question on this application.

Joe Maynard spoke on behalf of Mr. Boutwell. He started with Mr. Gagnon's comments from conservation. Mr. Maynard said this property is in the shoreline protection and there are lots of rules at the state level above and beyond the town. Under shoreline protection, if over 50,000 square feet of area is disturbed there is an additional permit needed, besides a shoreline permit, for alteration of terrain and this would look at drainage, wildlife, etc. Mr. Maynard doesn't believe it will go over 50,000 square feet of disturbance. His calculations put it at 37,000 but it could hit the threshold depending on what the planning board asks for. Mr. Maynard said the wild life action plans have been evolving for the past 20 years. When you look at this piece of property, the front section is yard area up to wall that drops down. The wildlife action plan follows the brook and doesn't go up into the area that they are looking to develop. Mr. Maynard said people keep saying they are looking to rezone this property. However, they are asking to use a portion of the property with what's allowed in an industrial district in town. He said Pelham doesn't have a true heavy industrial district, just limited industrial. They are not talking paint production or chemical production, just light industrial use. Mr. Maynard pointed out that the abutter to the south is under preexisting, nonconformance and they don't need to come to board to continue to use the property in the fashion they have been or somebody else could go and do that and it's not apples to apples.

Mr. Boutwell said the abutters to the north and south and across the street are industrial use properties and the uses they have are not restricting wildlife in the wildlife corridor. He is not intending to change anything that would deter wildlife in the corridor. He said Mr. Gagnon spoke of creating home occupancy. Mr. Boutwell explained that if he were to spend \$150,000 to \$200,000 to do improvements and falls sick a year later, what would he do with the building. He will be burdened by a building that he can't use, a tax burden and will be forced to sell a property with a garage that can't be used or go bankrupt. He agrees there are some great ideas but in reality, a home occupancy will burden him. He doesn't know the future of his health and if he fell ill, he would be left with a "pink elephant" in his backyard. In regard to the discussion of rezoning, this is not rezoning.

Mr. Maynard said they talked about wildlife corridor. He explained that for those that had walked to the back of site, there was an area that looked like it had been mowed and it had been last year but not this year.

As part of any shoreline permit, the area would have to be left to be restored with natural growth and would be more of an improvement to the wildlife corridor that exists. He said Ms. Lundquist spoke of a 1975 shop, Pelham Front End, and the only one he knows of is not in the same area and is now in MUZD. He said Southern NH Medical is a different scenario and not involved in this project. Mr. Maynard said the variance for Mr. Latour granted in 1993, doesn't specifically say industrial but refers to the proximity to industrial and residential use being limited. The variance refers back to the abutting properties being industrial in nature and was used in their argument for the variance that was granted. He explained that as has been discussed, any approval will need a number of other permits, one being planning board who will put in hours of operation, lighting, landscaping, etc. Mr. Maynard believes there can be a compromise at the planning board level for hours, lighting, motion detectors for safety and security. His client has a number of businesses that he does, welding, fabrication, etc., and all fall under the industrial district. In asking for the variance, they wanted to cover what he'd be using the property for. If the planning board asks for more details about what would be stored on site, it could be discussed. He said the way the property is developed right now, Mammoth Road sheet flows off the edge of Mammoth Road and goes down the property and towards the brook. The well was contaminated due to the salting and sanding on Mammoth Road, and they had to extend the Pennichuck Water line. With the amount of salt that washes down through the site, any development that is done will need a treatment swale or detention pond to reduce the flow of the runoff or detain it and that would be worked out with the planning board. Mr. Maynard said as shown at the site walk, there is a street sweeping, landscaping company directly across the street and Industrial Drive across the street. The question of how much usable area there is, 1.7 acres is land from the edge of the brook to street, but he is unsure what is outside of the setbacks at this point. Shoreline will keep them out of the first 50 foot section and there is probably about 50,000 square feet from 50 foot line to the street of useable area. As is typical to properties along Beaver Brook, it will be a sand and gravel material, well drained type of soils.

Mr. Passamonte asked if they would consider moving the building closer to the front of Mammoth. Mr. Maynard explained the chosen location has a number of benefits. It is down in a hole behind of house, buffered to street, there are no doors to the abutter to the side. Moving the building would still need a variance. It would be a lot closer to Mr. Latour to the north. In the center of the site, it could end up with garage doors on all sides and facing the neighbors. Being on a lower grade, they would lose the ability to turn larger vehicles around. If moved to the center of the site, meeting the setbacks would put it 70 feet from the brook compared to the 110 feet as currently proposed.

Mr. Passamonte asked to confirm the back corner is 110 feet and Mr. Maynard is saying that moving it up would have shorter distance. Mr. Maynard said that if it was put in the area outside of setbacks, it would be about 70 feet from the brook. If put tight to street, it would need a variance to be close to street.

Mr. Passamonte said that was his question, moving it closer to Mammoth. Mr. Maynard asked behind the house in the same location. Mr. Passamonte showed Mr. Maynard where he was referring to on a diagram. Mr. Maynard said Mr. Latour's house is about 25 feet from the lot line and that would be a lot closer to him. It is not the most desirable location. Mr. Maynard said there used to be an unfinished foundation when the lot was purchased and Mr. Boutwell cleaned up, got rid of the foundation and regraded the area. He doesn't feel it's the best position to put it up against the street.

Mr. Passamonte asked where the leach and septic field would be if it was left as currently proposed. Mr. Maynard explained where the existing system is. He said the new structure would end up with a small system between that and the existing house. He explained what the system would be like.

Mr. Boutwell said that under the underlying residential zoning, the building can go 15 feet off the lot line. The proposal is not outside of residential zoning, and they are trying to find a balance.

Mr. Passamonte said his issue is wanting to rezone it to industrial.

Mr. Maynard and Mr. Boutwell explained they are not rezoning. They are asking to use it.

Mr. Hennessey explained it would be treated as an industrial use but not a rezoning. It is a variance to zoning laws.

Mr. Boutwell said he thinks the tension comes from the word industrial.

Mr. Passamonte said like was mentioned earlier, who's to say what the next person will do and that is his issue.

Mr. Boutwell explained the size of the land wouldn't support an industrial plant. He could see like a contractor with an excavator, truck, trailer, yard storage.

Mr. Maynard said his understanding is if another building was to go on the property or the building was to be expanded, it would have to come in front of the board again because the variance is on this specific footprint.

Mr. Hennessey said his understanding is Mr. Maynard is right about the building and the footprint having to come back subject to planning board changes on the site plan. But based on the variance request, any use allowed under the industrial zone table of uses could be accepted. A change of use would not trigger coming back to the board.

Mr. Maynard said any type of expansion of the building footprint would require it.

Mr. Hennessey said for size but not use. If the variance is granted, any use allowed under the table of uses could be put on the property subject to size limitations.

Mr. Maynard said as he read the uses the other day. Limited industrial is not a lot of things, light industrial.

Mr. Hennessey mentioned to the public that he has allowed the public participation to continue only in the case of board members having questions.

Mr. Boutwell added that given the proximity to the brook and shoreline protection, he feels that scrutiny and laws will be stricter as time goes on. He said common sense would tell you that based on where environmental standards were and are now. He doesn't think it's a fair assessment to say the property will be detrimental to the environment.

Mr. Hennessey noted that prior to the meeting, he had said David Wing is voting on the case and wanted to put it on the record.

Mr. Bergeron said in order to satisfy the concerns being heard, he wants to ask a couple of dimension questions. He asked Ms. Beauregard where the building minimum setbacks are found, which she said were on page 6. He said Mr. Maynard used the 90 foot required setbacks, the most stringent criteria. Mr. Bergeron said if you look at the comment section from the planning director, there is a minimum side yard setback request for 30 feet, not 90, which is a big difference. He said Mr. Passamonte asked if it could be slid away from the lot line, and it was answered in regard to 90 foot setbacks. Mr. Bergeron said he thought he had asked what the setback was to the abutter's building with the variance granted in 1993 at the previous meeting and asked if Mr. Maynard has checked on that. Mr. Maynard said he took a quick look, and it is

close to brook. He believes the sideline setback is within 15 feet of lot line. When he overlayed the deed and took pulse locations for houses, it was put in the 15 foot side setback.

Mr. Bergeron said he asked the planning director to give the board a copy of the earlier variance to the north being interested in the dimensional setbacks. He noted it is a smaller lot, shows an acre. He confirmed it's lot 5126 with Mr. Maynard. Mr. Maynard said he believes it's within the 15 foot setback and within 50 feet of the brook.

Mr. Hennessey added they need to keep in mind that the Shoreland Protection Act didn't apply to the property at the time.

Mr. Bergeron explained that it was adopted in 1993 but the full implementation didn't come for many years and there have been multiple revisions since. Mr. Hennessey noted Beaver Brook wasn't included until 2012.

Mr. Bergeron said the board has had difficult cases before and it's much better when shoreland protection weighs in. He knows the planning board can reject the plan. This board looks at it more from a judicial standpoint.

Mr. Hennessey explained that conservation's role is to advise the board. He understands the planning board is supposed to listen to conservation in their advisory capacity.

Mr. Bergeron said he knows the planning board has the ability to reject the plan and he is comfortable with the questions from conservation possibly being addressed at the next level. He explained when they went out, to the site and saw the associated uses, Simplex being mentioned about what surrounds the property, the size of the lot, and came to a decision that it probably could fit if polluting uses could be conditioned out. He said the planning board could deal with the major concerns coming forward from conservation if the application got approved.

Mr. Hennessey asked if there would be any affluent coming out, any waste water, or MS4 applications and Mr. Boutwell said there would be none.

There were no other questions from the board and public participation was closed.

Mr. Hennessey said he was going through each criteria to have a thorough discussion and appreciated any reasoning if voting in the negative. He went through the five criteria.

*Criteria 1 – The variance will not be contrary to public interest.*

Mr. Westwood thinks it would.

Mr. Wing said he would vote in the affirmative. He refreshed his understanding of the five criteria and saw it needs to be a marked degree of conflict and he doesn't see in this case.

Mr. McNamara mentioned for the record that he wasn't able to participate in site walk and is interested in hearing the comments. He noted he was here at the October meeting and hears the abutters' concerns and agrees with them. Mr. McNamara thinks Mr. Bergeron's point is well taken that if it were to be approved without restriction or condition, he might have a problem, but the fact that it has to go to planning and comply with shoreland protection are additional protections going into the future. The board can't base the decision on what might happen in the future. Mr. Bergeron's point is well taken that the abutters' concerns

would be addressed at the planning board. Relying on the planning board to do so, Mr. McNamara doesn't think this imperils public safety to a marked degree.

Mr. Hennessey put on the record that there has been some comment from the new housing board about people voting on a case where there was a site walk and a member wasn't there. He explained this is a more prominent location in town on the busiest street, aside from 38, and he is sure Mr. McNamara is familiar with the area.

Mr. McNamara said he knows the area and the board has had prior cases in industrial park. He is interested on the comments of those that attended regarding the surrounding properties.

Mr. Bergeron said with the issue to the north and south and the use across the street, he doesn't think it would have an adverse effect to the public interest, particularly where the planning board will have the opportunity to limit or condition the use on the property, and the DES will weigh in.

Mr. Passamonte asked if they could put a condition to the variance about being approved by shoreland protection and Mr. Hennessey said, yes. Mr. Hennessey said it doesn't have to be stated but they usually make that as a stipulation. He asked Mr. Passamonte if he wanted to make that motion.

**MOTION:** (Passamonte) that it will be subject to the shoreland protection from the state approving the plans on the project.

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

Mr. Passamonte said he will be a yes on question 1.

Mr. Hennessey said he is struggling. When he first heard the case, knowing the location, across the street from the landscaping business and a lot of commercial properties up and down Mammoth Road, and the board has granted several variances much further south for commercial endeavors, he thought it was going to be easy. He is going to vote yes, it won't be contrary to public interest, by a razor thin margin. He explained that the abutting property to the north, when the variance was granted, there was no shoreland protection in the area and he saw nothing in the record of testimony from the neighborhood across the river in Windham. He noted the board has heard from them in this case and is taking that into consideration. He noted that he felt Mr. Boutwell spoke eloquently when he said things have changed and we are much more concerned with the environment, etc. and it was reiterated by members of conservation. Mr. Hennessey thinks the board has to be more diligent thinking about this property as it stands now, than perhaps they did in 1993, when going through the criteria and thinking about how the property stands now. Mr. Hennessey said he goes back to Simplex and what does it look like as you stand on the corner of the lot and looks all around, not just what's on the map. He explained that he came into it saying slam dunk, it doesn't look residential, and he has changed mind saying it needs to be looked at more seriously.

*Criteria 2 - The spirit of the ordinance is observed.*

Mr. Passamonte left it at yes.

Mr. Bergeron agrees. He doesn't think it's violating the spirit because of the overview that is going to happen with this case.

Mr. McNamara said yes.

Mr. Wing agreed. He feels Mr. Maynard and Mr. Boutwell seem knowledgeable on the ordinance and have gone to the necessary lengths to mitigate their effect on the property and the surrounding area, if not to satisfy the criteria.

Mr. Westwood said he has to say yes. He said he doesn't quite understand the money thing, the \$220,000 for the acre.

Mr. Hennessey explained the testimony from Paul Gagnon spoke a truth, an industrial property, zoned industrial, makes it more valuable than it was a residential. Mr. Hennessey said Mr. Boutwell could see an increase in taxes to the town if it gets rezoned.

Mr. Wing stated it is not being rezoned.

Mr. Hennessey said regardless of what the zoning map showed, he came in believing it was at least commercial, perhaps industrial. He thinks the side of Mammoth Road where this property is is correctly dividing properties immediately affecting Beaver Brook from the industrial use on other side of the road but as borders are approached, they blend into each other. Mr. Hennessey feels that Mammoth Road serves as a pretty good delineation between the two types of properties, residential and/or commercial and industrial. He said he is holding off for a bit as he is still torn. It looks and tastes commercial and looks kind of okay for industrial but with the development across the river in Windham, Beaver Brook under the protection of the state. Mr. Hennessey believes Mammoth Road is a good border line.

*Criteria 3 – Substantial justice is done.*

Mr. Westwood said yes. He doesn't think they're deviating anything, and nobody is being overly hurt. He doesn't think it's being disruptive to the other neighborhood.

Mr. Wing said he would vote in favor. By looking back at his notes he believes, "there would not an outweighing by gain to the general public in this particular case.

Mr. McNamara agrees given the uses going on in area. He doesn't feel this would have an adverse impact.

Mr. Bergeron believes the same. He mentioned that Mr. Boutwell was very forthcoming and honest on the site walk about his approach to the variance request. What Mr. Boutwell does for a living can best be found under industrial zoning district and is not to the point of any toxic pollution and or creation of a hazard and Mr. Bergeron said the planning board can address that. Mr. Bergeron feels justice can be done and because Mr. Boutwell does not live in the house but owns the property, this is the only way he can ask for a shop because he doesn't live in the house. He noted that Mr. Boutwell has spent financial resources to bring Pennichuck water down. He reiterated that Mr. Maynard mentioned that in the development of the property, Mr. Boutwell will have to demonstrate that a swale will be created to prevent the sheet run off that's happening now into Beaver Brook. Mr. Bergeron, he feels we will be paying closer attention to how things are finally graded with a new MS4 person in town.

Mr. Passamonte said he is a yes for the same reasons.

Mr. Hennessey agreed with Mr. Bergeron. He feels the MS4 point was important to bring up. Mr. Hennessey thinks that seeing a swale here will improve water quality coming down to Beaver Brook. He said he is reluctantly saying yes.

*Criteria 4 – The value of surrounding properties are not diminished.*

Mr. Passamonte said, yes, they won't be diminished by this.

Mr. Bergeron said if the variance is permitted, substantial financial investment will be made on the property and that never diminished someone's surrounding property, particularly since the surrounding properties are already being used in the manner they are trying to transition this property into. He doesn't see how they will be diminished and believes it will increase the value of the property. He feels many renderings will be brought in front of the planning board by Mr. Maynard.

Mr. McNamara said he agrees, and he was going also going to comment on Mr. Gagnon's testimony that granting the variance would immediately increase the abutter's value to the south. He believes it holds true, even though it's not the voice of an expert.

Mr. Wing agreed with Mr. McNamara, Mr. Bergeron and Mr. Passamonte and feels there wouldn't be a diminution of value.

Mr. Westwood explained he lives on Ballard Road, and they have had problems and that concerns him so swales, septic and the land value kind of say it's a no, but if they are better defined, he could go as a yes.

Mr. Hennessey said he was not speaking as an expert, even though he's been in real estate for 48 years and done approximately 4,000 valuations. He said the controlling factor in the values of the property is what is across the street and Mammoth Road's traffic flow, in his layman's opinion. He said that keeps the value at a certain point. He explained that, "increasing the value of a property in the neighborhood can offset a bit the limitations of the rise in values throughout the town but less so on Mammoth because of traffic flow." Mr. Hennessey said he has a problem with the Windham properties and he drove to the area to look around. He said this really doesn't have an effect and feels the effect of the sound of the gas line compressor is probably more of an effect. He agreed the values are not diminished by the proposal.

*Criteria 5 – Unnecessary hardship.*

Mr. Hennessey said many cases come down to this. He said this criteria is cited most often as to whether or not a variance should be granted.

Mr. Westwood said no.

Mr. Wing thinks it would. He explained that as suggested, in reviewing Simplex, he saw a couple of other cases and the one in particular that caught his eye was where the other lots enjoyed the benefits sought by the applicant. He feels that while the lot to the north and south are not specifically called out as industrial, they are enjoying some of the benefits Mr. Boutwell is looking for.

Mr. McNamara agreed.

Mr. Bergeron agreed with Mr. Wing.

Mr. Passamonte said he wanted to say no but compared to the neighborhood, he is saying yes by the slimmest of margins.

Mr. Hennessey said he is saying yes, too. He explained that from hearsay, having a 2 acre, residential lot, the rule of thumb is the value is 1/3 the value of the total property. He said that given the price of homes in this town, he doesn't see a \$600,000 house being built on that lot. He doesn't think literal enforcement would not be a wise financial decision.

Mr. Bergeron said that although he hadn't considered that aspect, he thinks Mr. Hennessey said it very well, it is not the place for a \$600,000 residential home.

Mr. Hennessey noted the area can be defined narrowly or widely, but taking Mammoth Road in general, the proposed use is a reasonable one and he is voting yes.

Mr. Hennessey doesn't think B prompt is applicable. He said he was still struggling with the spirit of ordinance but would work it out as the forms are filled out.

There were no additional comments from the board.

**Case #ZO2021-00024**

**ROLL CALL VOTE:**

Mr. Passamonte - 5 yesses; final vote yes

Mr. Bergeron – 5 yesses; final vote yes

Mr. McNamara – 5 yesses; final vote yes

Mr. Wing – 5 yesses; final vote yes, subject to shoreland with restriction

Mr. Hennessey – 5 yesses, final vote yes

(5-0-0) The motion carried.

**VARIANCE GRANTED**

Mr. Hennessey noted the 30-day right of appeal, which includes the abutters.

Mr. Hennessey said that when the case goes before planning, he expects to see conservation commission as well as individual members, to attend the hearings asking for stipulations that the ZBA can't grant. He explained that he came into the hearing thinking about asking Mr. Boutwell to drop the application to make it as a general home occupation and he feels Mr. Boutwell addressed it very well before he could bring it up. Mr. Hennessey said he was drawn to idea of general home occupation because they could put lots of restrictions, as they often do. He said he was assured through comments of the board that the planning board will look very diligently on this proposal and place appropriate restrictions. Mr. Hennessey encouraged those against the proposal to attend the hearings to make sure those restrictions that they are looking for will be put in the site plan, but the ZBA doesn't have that power.

The board took a recess at approximately 8:23 and returned at approximately 8:33.

**HEARINGS**

**CASE ZO2021-00031**

**CHOATE, David & Meaghan – 1 Jefferson Avenue – Map 14 Lot 4-93 – Seeking a Special Exception to Article XII, Section 703-74 of the Zoning Ordinance to permit construction of an attached Accessory Dwelling Unit to a Single-Family Home.**

Mr. Hennessey noted that Mr. Westwood is voting on this case.

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. Hennessey noted that this is a special exception and is covered in the zoning regulations. The board has to grant or deny the special exception depending on whether all criteria is met. Mr. Hennessey asked Ms. Beauregard if it has met requirements

Ms. Beauregard explained the applicant has a four bedroom septic design with a one bedroom accessory dwelling unit. The floor plan has been submitted to the building inspector and he reviewed them and found it to be no more than 1,000 square feet. It meets all other building code requirements, and she believes they have met all the other criteria. Mr. Hennessey confirmed with Ms. Beauregard that the state has approved septic design.

Mr. Passamonte said that being new on the board he questioned why something this simple that meets all requirements would come to zoning. Mr. Hennessey said that's because that's what the zoning ordinance says. He said this might want to be addressed in the future by talking to planning about changing the zoning regulation. Mr. Bergeron said that is underway.

There were no other questions from the board.

**CASE #ZO2021-00031**

**ROLL CALL VOTE:**

Mr. McNamara – yes  
Mr. Passamonte – yes  
Mr. Bergeron – yes  
Mr. Westwood – 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 explained there was a good reason for the procedure through the zoning board. He explained that up until the last few years, accessory dwelling units could only be occupied by relative or a person with a special need, but that is no longer true. He said he was not trying to be flip in being so quick to approve. The board relies on the planning department to make sure all the criteria has been met.

**CASE ZO2021-00032**

**FARRIS, Michael – 4 Jones Road – Map 39 Lot 1-103 – Seeking a Variance to Article III, Section(s) 307-13B & 307-14 of the Zoning Ordinance to permit a lot having frontage on a private way but no frontage on a public right of way and for the newly created lot to also gain access from the private way.**

Mr. Hennessey noted this was an extension of an existing variance.

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.

Karl Dubay came forward, with Michael, the owner of the property. He explained that this was a lot that a previously granted variance for had lapsed. They had gotten approvals and permits, and everything was ready and then it lapsed. Mr. Farris was ready to build a house and went to planning and Ms. Beauregard

said it had lapsed. They lost track of time with COVID, etc. They refiled everything. Mr. Dubay said the board's package shows the approved plans, the ZBA notice of decision, the planning board approval, a state subdivision approval. They had gone to conservation to work out where a driveway would go. Mr. Dubay explained it was a residential lot with an existing house. They want to do another house on the lot, which there is room for, and it meets all other criteria except for the combined variance. He explained this is the corner of Sherburne Road and Jones Road. Sherburne is a public way and Jones is a private way. The new lot wouldn't have driveway access on Sherburne, as it's not safe. They would remove the existing driveway and put the new driveway on Jones Road. They need a variance for the peel off of the existing house and lot, which would not have frontage on Sherburne but instead on Jones Road. Because Jones Road is private, and even though it's safer, they need a variance for the driveway to be on Jones Road. Mr. Dubay said this was pretty straight forward last time. They went to planning and conservation and worked out the details.

Mr. Dubay read the criteria into the record.

Mr. Dubay said the details are on the plan set. It was approved by the planning board. They adjusted the technical design of the new driveway around the wetlands to create a bigger buffer and worked with the planning board and Mr. Gowan. They got a state subdivision approval, and all the grading is shown.

Mr. Hennessey appointed Mr. Wing to vote on this.

Mr. Wing asked if there were any restrictions placed on the previous variance. Mr. Dubay said it was approved with the condition that the existing access of Sherburne Road be discontinued and that was the only condition. This was carried forward on all the plans. He said there is an old driveway out onto Sherburne Road and they are proposing to remove that driveway and pavement and restore the transitional buffer to the wetland ditch. Mr. Dubay said there would be a restriction on the deed not to have a new driveway onto Sherburne Road.

Mr. McNamara asked if the physical conditions of the property or immediately surrounding properties changed in any significant way from when it was first approved.

Mr. Hennessey asked if they would have to go before the selectmen and Ms. Beauregard said yes. Mr. Hennessey said it was subject to selectmen and the planning board because it lapsed, which Mr. Dubay agreed and said they were refiled with planning board and would go to selectmen again for the action of the private road.

Mr. Hennessey said he was sorry that when COVID hit, the governor didn't include these types of projects in the works.

Mr. Bergeron noted there was a recommendation from the town's attorney to extend the plan. Mr. Hennessey said he disagreed with Attorney Rattigan saying he didn't see anything in the statutes or bylaws that allows a continuation. He referred to Ms. Beauregard. Ms. Beauregard said she believed they have the ability to allow an extension for however long they see fit because it's not written in the town's ordinance. Mr. Hennessey said that was news to him.

**MOTION:** (McNamara/Passamonte) To extend the approval for a period of two years.

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

Mr. Hennessey said he recognized this is a simple renewal but wanted to go through a criteria vote.

**Case #ZO2021-00032**

**ROLL CALL VOTE:** Mr. Wing – 5 yesses; final vote yes, extend approval for two years  
Mr. Hennessey – 5 yesses; final vote yes  
Mr. McNamara – 5 yesses; final vote yes, with stipulation.  
Mr. Passamonte – 5 yesses; final vote yes  
Mr. Bergeron – 5 yesses, final vote yes, two year extension from now.

(5-0-0) The motion carried.

**VARIANCE GRANTED**

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

**ADJOURMENT**

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

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

The meeting was adjourned at approximately 8:56 p.m.

Respectfully submitted,  
Jill M. Atkinson  
Recording Secretary