

**APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT
December 11, 2023**

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Chairman David Wing called the meeting to order at approximately 7:01 pm.

PLEDGE OF ALLEGIANCE

Mr. Wing read the opening line of a letter from Mr. John Westwood which informed the Board that he must resign as a Board Member of the Zoning Board of Adjustment. He stated that Mr. Westwood's insight and input will be missed and that the Board wishes him well.

ROLL CALL

PRESENT ROLL CALL: David Wing
Danielle Masse-Quinn
Ken Stanvick
Matthew Welch
Alternate Shaun Hamilton
Alternate Nicole Pigeon
Planning Director/Zoning Administrator Jennifer Beauregard

ABSENT: Recording Secretary Cassidy Pollard

Mr. Wing appointed Ms. Pigeon to vote for the approval of minutes.

MINUTES

November 13, 2023

MOTION: (Stanvick/Pigeon) To approve the November 13, 2023, meeting minutes as amended.

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

REQUEST FOR RE-HEARING

ZO2023-00016

Map 31 Lot 11-20

PAGE, Andrea & BILAPKA Bruce – 37 Woekel Circle – APPEAL OF AN ADMINISTRATIVE DECISION concerning: Article III, Section 307-8, Article VII, Section(s) 307-38, 307-41, & Article VIII-I, Section 307-48-1-1 of the Zoning Ordinance and the Administrative Decision made by the Selectmen, & the Town Attorney regarding the reversal of the decision made by the Superior Court Docket #226-2023-CV-00182 to deny the Well Radius Waiver, which led to the approval of an individual sewage disposal system, NHDES Work #202000255. Approval for construction #eCA2023062223 on 6/22/2023.

Mr. Wing appointed Mr. Hamilton to vote on this case since he voted in the initial decision.

Mr. Wing explained to the public that this is only a discussion amongst the Board and that they would either agree to rehear the case or not. He stated that the reasons the Board would rehear the case would be that some new information had come to light that would change their decision or if they felt that their initial decision needed strengthening.

Ms. Pigeon stated that the initial decision of the Selectmen was to deny the waiver and that when that turned into a lawsuit, they decided to settle the lawsuit. She stated that in her opinion the administrative decision was to reject the waiver and that entering into the agreement for the lawsuit was more of a legal decision. She explained that she didn't see this as something the Board would change because even if they did go back on that decision, it would then go back to a lawsuit, and they would be back at square one. She stated that she doesn't understand the Zoning issue but believes that the decision that they are contesting is a legal decision not Zoning, as the Zoning decision that was made was to deny the waiver.

Ms. Masse-Quinn stated that she would be in favor of rehearing the case and that her only reason for doing so would be because they did not have the correct 30 days of appeal. She explained that she thinks that the Board made a decision to deny the case before they had the 30-day right of appeal dates confirmed just as they did on the appeal of the Health Officer Case.

Mr. Stanvick stated that his position is to not rehear the case based upon the evidence presented as this is a Board of Health decision as opposed to a Zoning issue.

Mr. Welch stated that he is opposed to rehearing the case as he believes that the outcome of the settlement agreement is binding beyond the Boards powers and that the Board doesn't have the authority to override it. He explained that the applicants have stated that they're not trying to overturn the mutual settlement agreement but that they are seeking to overturn the decision to enter it. He stated that he feels that that it's a distinction without a difference and that the end result would be the same and that it's not within the powers of the Board.

Mr. Hamilton stated that he would also agree to not rehear this case under those same circumstances.

Mr. Wing concurred with most of the Board and stated that he would vote to not rehear the case. He stated that it is a yes to rehear and a no to not rehear the case.

Case# ZO2023-00016

ROLL CALL VOTE

Mr. Hamilton – “NO”
Mr. Stanvick – “NO”
Ms. Masse-Quinn – “YES”
Mr. Welch – “NO”
Mr. Wing – “NO”

VOTE: (1-4-0) Case will not be reheard.

CONTINUED HEARINGS

PAGE, ZO2023-00015**Map 31 Lot 11-20**

& BILAPKA Bruce – 37 Woekel Circle – APPEAL OF AN ADMINISTRATIVE DECISION concerning: Article III, Section 307-8, Article VII, Section(s) 307-38, 307-41, & Article VIII-I, Section 307-48-1-1 of the Zoning Ordinance and the Administrative Decision made by the (Alternate) Health Officer regarding the approval of an individual sewage disposal system, NHDES Work #202000255. Approval for construction #eCA2023062223 on 6/22/2023.

Mr. Wing stated that this case was moved from last month to this month as there were only four Board Members present. He explained that with all Zoning cases and appeals you need a majority of three to reach a conclusion and with there only being four members there was a possibility of a two-two tie so the case was continued. He explained to the Board that the first question that they need to address is whether or not they have the jurisdiction to hear the case. He stated that if they do decide that they have jurisdiction then they would move on to either accept the appeal or deny it.

Mr. Wing appointed Mr. Hamilton to vote on this case.

DISCUSSION

Mr. Hamilton stated that he doesn't feel that the Board has jurisdiction to hear this appeal or to overturn a court judgment.

Mr. Welch agreed with Mr. Hamilton. He stated that the Health Officers decision to approve the ISDS was a directive of the mutual settlement agreement ordered by the judge and that he doesn't feel that the Board has the right to go against that.

Mr. Stanvick agreed and stated that he doesn't believe that it's within the scope of the Zoning Regulations as it is a Health Regulation.

Ms. Masse-Quinn stated that she feels that the Board does have jurisdiction over this case because it is under Chapter 295 it's in accordance with RSA 147 and Chapter 295 can't govern on its own. She explained that RSA 147 is a Health Ordinance and the Health Officer by way of RSA 147 can actually revert back to State and Local Regulations such as the Local Land Use Regulations and Subdivision Regulations. She stated that the reason that she is in favor of believing that the Board has jurisdiction is that when looking at Mr. Goves letter he had stated that he did test pit testing in July 2019. She explained that that was also disclosed to the Board of Selectmen at their November 1, 2022 meeting in the minutes where Ms. Corbett asked if there was a wetlands assessment and Mr. Carideo stated that there was one done in July of 2019. She stated that when you look at Mr. Gove's letter you can see that he didn't sign the letter which would have shown that he acknowledged doing test pits on July 18, 2019, and that he stated there are no area wetlands. She explained that when you look at the information and at the septic system notes that were submitted to the Health Officer that Mr. Gove's notes aren't on note number two. She stated that they're utilizing test pits performed by Robert Balquist of Meisner Brem Corp from 2016 which are five years overdue. She explained that that is not Mr. Gove's work but that his notes are reflected on

the plan stating that there are no wetlands on the property which should have been caught by the Health Officer. She explained that the property is non-conforming and that it was disclosed to the Board of Selectmen at their meeting that they were planning to put an addition on to this seasonal cottage and then move the cottage. She stated that this would be taking a non-conforming lot and making it more non-conforming which, in her opinion, doesn't qualify under Chapter 295. She explained that Chapter 295 has a minimum of one acre, not non-conforming. She stated that she does feel that the Board has jurisdiction because if the health Officer would have said to the applicant that they didn't belong there under Chapter 295 and that they actually belong in front of the Board of Adjustment for their variances because it is a seasonal cottage, a non-conforming lot, and that there are errors on the system notes that utilized outdated test pits and saying that there are no wetlands. She explained that the discrepancy on this has been the wetlands as one party is saying there's wetlands and the other party is saying there's not. She stated that it is her opinion that the Health Officer did make an error and it should have been caught. She explained that she does believe the Board has jurisdiction over this case because it is brought in by RSA 147, and when looking at Chapter 295:16 it states that whatever is the stricter rule, which would be their local regulations, shall be applied which reverts back to the local land use and subdivision regulations.

Ms. Pigeon stated that she agreed with certain points and that the technicality of it is that it shouldn't have gone to the Health Officer to seek a variance and that it should've gone to this Board. She explained that the fact that the Selectmen decided to accept the waiver was based on the fact that the waiver had already been requested two years prior and the Health Officer had already agreed on that. She stated that in her opinion that there is definitely an issue as to whether this Board would have had the same determination and without taking it back and doing the work on it, she believes that they'll never know. She explained that the Board should do their due diligence and know whether that decision was valid other than letting the Health Officer just sign off on it without any more work on it. She stated that the Board has heard enough information to think that the decision was not researched properly and believes that the Board should do their due diligence and look at it to satisfy if this Board would have made the same decision.

Mr. Wing stated that he didn't believe that the applicant had requested a variance yet and asked Ms. Beauregard if that was the case. Ms. Beauregard stated that they hadn't at this time. Mr. Wing asked if they've even suggested that they're going to fabricate or redo a home. Ms. Beauregard stated that they had not applied for any type of building permit or for a variance. Ms. Masse-Quinn added that they are going to be putting on an addition to the season cottage as well as moving the cottage according to the Board of Selectmen minutes as well as the septic notes that the Board received. Mr. Wing replied that that would then have to be a variance and that the Board of Selectmen didn't approve that, and their decision was only in regard to the septic. Ms. Masse-Quinn stated that that is part of the whole process, and they disclosed that they're going to add onto a seasonal cottage and then move the seasonal cottage on a non-conforming lot where you can't make it more non-conforming without a variance. She explained that it automatically should've been known that they don't belong there under Chapter 295 but that they belong in front of the Board of Adjustment for a variance request. Ms. Beauregard stated that at the time they requested a building permit they would be instructed to come in front of this Board for a variance. Mr. Stanvick stated that he would like the Board to refocus as they're talking about a specific request which is the septic system and not about hypothetically when or if they are going to apply

for additional relief. He explained that they're talking about a specific incident and that he would certainly expect that they would come before the Board in the future for a variance request if they should choose to expand or relocate. Mr. Wing agreed with Mr. Stanvick and refocused the discussion and stated that he does believe that this is a Health Decision and with Mr. Welch's opinion is that that's what is mandated in the court settlement agreement and if there were to be a change to the property in the future then a variance would have to be requested. He stated that his vote would be that this is not within this Boards jurisdiction, that it is a health decision and is what was agreed upon.

Ms. Masse-Quinn asked what the Board should do about the septic notes that were submitted to the Health Officer and NHDES, which do not show Mr. Gove's information on it, saying that he did the test pits. She explained that in order for this to get approval they would need to have at least Mr. Gove's information on it and not Meisner Brem's from 2016 which when you refer to the 2016 plan it shows wetlands which is a discrepancy that the Health Officer should have caught. Mr. Wing stated that he appreciated Ms. Masse-Quinn's opinion, but he doesn't know whether they have to address the plan or if they've ever addressed notes on a plan. Ms. Masse-Quinn states that there is an error and that she believes that they should hear it because she believes that they do have jurisdiction under RSA 147 where a Health Officer can bring in the Local Regulations. Mr. Welch stated that all the items the Board is focusing on can and will be addressed should there be a variance applied for on the property. He explained that the mutual settlement agreement specifically states that he shall grant the approval and that's where he thinks their hands are tied. Ms. Masse-Quinn stated that the question was whether the Board has jurisdiction. Ms. Pigeon stated that there is a distance from the septic to the well that is not within their Zoning and asked if there was any way it could be remedied. Mr. Wing replied that some of the members stated that their opinions were that the waiver was granted by the Town and agreed in a mutual settlement with regards to the distance and that the Court has accepted this settlement agreement and he doesn't see how the Zoning Board of Adjustment of the Town of Pelham would have the authority to overturn it. He stated that he understands but he doesn't know how a Zoning Board can overturn the Superior Court. Ms. Pigeon asked if the result of the Superior Courts agreement is that the septic is to built exactly how it is now. Mr. Wing replied that he believed the settlement agreement stated that it shall be installed in accordance to the agreed upon plan from Hayner- Swanson. Ms. Masse-Quinn asked Mr. Wing if the Board should hear from the applicant's counsel as it is a continued hearing. Mr. Wing stated that it wasn't his intention to opening it up to public input. Mr. Stanvick stated that they've heard testimony from October and September and that they'd be rehashing old ground and that they need to move on. He explained that they made some decisions and that there's an error being pointed out. He stated that this case will come before them should they decide to move, expand, or relocate, but presently he has to focus on the information that is in front of him. He explained that they should make a motion to deny the rehearing and move on with it as they've gone back and forth with this for a long time. He explained that other than the revelation that just came up with the information that was used to determine whether it was a wetland or not it's still the same old argument.

MOTION: (Stanvick/Hamilton) To deny the appeal due to lack of jurisdiction.

Case #ZO2023-00015

ROLL CALL VOTE

Mr. Hamilton – "YES"

Mr. Stanvick – “YES”
Ms. Masse-Quinn “NO”
Mr. Welch – “ YES”
Mr. Wing- “YES”

VOTE: (4-1-0) Appeal DENIED.

Mr. Wing stated that there is a 30-day right of appeal.

Ms. Laura Gandia of Devine Millimet representing the applicant approached the Board. She stated that she did file a motion for rehearing which hasn't been ruled on. Mr. Wing stated that the Planning Department has it and that they did not hear it tonight because there was not an outcome of the original case so there was no need to rehear it. She stated that it is still pending and wanted the record to be clean so she doesn't mind withdrawing that based on the Board's decision tonight. She explained that the Board is forcing them to file another motion to rehear on the case that she already filed the motion to rehear. She stated that the request for rehearing that was not put on the agenda was based on the decision that they first denied the case for her clients. She explained that the Zoning Board denied the case and she filed the motion for rehearing based on that denial. She stated that the Zoning Board subsequently retracted that decision and entered into another decision continuing the case until last month when it was heard. She explained that now the motion for rehearing is still pending and pursuant to State Statue the Board needs to act upon that. She stated that the Board chose not to put it on the agenda but that it is still a properly filed motion that's now in front of the Board and should have been on the agenda. She explained that she wouldn't mind withdrawing it but that something needs to be done with it. She stated that she can withdraw it but it's still within the Board's purview to rule on it. She explained that she believes that the reason why the Board isn't ruling on it is because they issued a decision denying the case then retracted the decision and continues it and just denied it again. She stated that she is going to be forced to file another rehearing with the Board based on the denial that was made tonight. Ms. Beauregard added that the initial denial was not done correctly and at that time she made the motion for appeal. She stated that due to that and due to subsequent advice that the Board has received they retracted their initial decision as it was invalid because it was made after the case had been closed. She explained that because that happened they continued the case to clean it up. She stated that the decision had already gone out of the Planning Department which is why her clients got a retracted decision and that this Board didn't go ahead and make an additional decision. She explained that the request for rehearing came in the middle of that confusion and based on additional advice the Board received they can't put a rehearing on the agenda for a case that hadn't formally had a decision yet. She stated that the cleanest thing to do would be to withdraw and resubmit based on the actual decision tonight. Ms. Gandia stated that she wanted the Board to understand that she is still preserving her right to appeal the decision that was made tonight before formally withdrawing the request for rehearing. Ms. Gandia withdrew the request for rehearing for the original Case #ZO2023-00015 that was heard tonight.

HEARINGS

ZO2023-00018
Map 29 Lot 7-117

Salon 38, LLC – 135 Bridge Street – Seeking a Variance concerning: Article III, Section 307-12 Table 1 of the Zoning Ordinance to permit a proposed building to be constructed 48' from the front lot line, 38'/40' from the Northerly side line and 59' from the Southerly lot line where a minimum front setback of 40' or 3X the building height and a minimum side setback of 30' or 2X the building height is required in the Business District.

And

An additional Variance concerning: Article VII, Section 307-39, 307-40 & 307- 41 of the Zoning Ordinance to permit a proposed building and septic tanks to be constructed within the 50' WCD (Wetlands Conservation District), and to allow the effluent disposal area to be located within the 75' setback to hydric A soil where these uses are not allowed within 50' and/or 75' of a wetland that has a WCD setback.

Ms. Masse-Quinn 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.

Ms. Masse- Quinn recused herself from this case.

Mr. Wing appointed Ms. Pigeon and Mr. Hamilton to vote for this case.

Mr. Joe Maynard of Benchmark LLC approached the Board with Ms. Julie Michaud owner of Salon 38. He explained that the piece of property that they're talking about is 135 Bridge Street which is west of the Bank property. He stated that the lot is in the business zone and was previously utilized as a gas station. He explained that the property still has remnants of that there and that there's a building, paved areas, concrete pads still in existence. He stated that there is also an old foundation of a house down next to the brook and that there's a sign on the property that's actually in the state right away and would be moved as part of this. He explained that the lot itself is 2.06 acres in size and that it has 200 feet of frontage on Route 38. He stated that the lot is also encumbered with a number of easements. He explained that to the north of the lot there is a 35-foot-wide access easement that goes to the bank property and that it actually goes straight back and turns and goes along the lot line down toward Beaver Brook that's at the back of this. He stated that that land there could be nothing put there, not a building or any type of structure associated with it. He stated that the property also has a drainage easement that's on the side of the lot and that the drainage easement provides drainage flows from route 38 towards Beaver Brook at the rear of the lot. He explained that the property is also encumbered with shoreline protection from the brook itself with a 50-foot shoreline setback, 150-foot woodland set back and then ultimately the 250-foot shoreline setback associated with the property which actually comes almost all the way out onto Route 38. He stated that the property has some wetlands which have been mapped by a wetland scientist. You stated that the wetlands at the lower portion are primarily floodplain areas that are low to the groundwater with established vegetation. He explained that there is a finger that comes up behind the existing improvements that looks like some sort of a ditch that was dug as part of the gas station property. He stated that this finger picks up the sheet flow of runoff of the existing gas station lot and is actually contiguous to the larger wetland that is at the rear of the property so it will have a 50-foot WCD setback associated with it. He explained that the last thing that's an encumbrance on this lot what is the yellow line shown on the plan that bisects the area behind the proposed building. He stated that that's the limit of the 100-year flood by elevation based upon the FEMA studies that are out there which is behind the proposed and

existing improvements. Mr. Wing asked who determines the 100 year floodplain. Mr. Maynard replied that is FEMA and that they did a study of the whole Beaver Brook area and it's by elevation in that section. Mr. Maynard explained that they bring elevation to the property by using GPS and that the GPS puts it within a couple hundredths of elevation that's based upon those maps. Mr. Wing asked when those maps were done. Mr. Maynard stated that it was 2013 or 2015 that the map was done for that area that established elevation through there.

Mr. Maynard stated that the lot was previously used as a gas station and that the tanks were pulled from the lot about 20 years ago. He explained that there are a number of monitoring wells that are on the property that have been continuously tested ever quarter for the past 20 years. He stated that the testing shows that the levels of any of the remnants from the gas station are below safe drinking standards. He explained that there are still a few more years of testing that will get done on those wells but that in general the level seemed to be below the threshold that the State has issued for that. Mr. Hamilton asked where Mr. Maynard got the dates for the tanks being pulled. Mr. Maynard replied that Ms. Michaud explained to him that the State does studies typically for a 20 year time frame from when the tanks are pulled from the lot and they are tested for that 20-year period. He explained that they are within a couple of years of finalizing the testing of those wells. Mr. Hamilton stated that he moved to Pelham in 2005 and in 2010 it was still operating as a gas station, so he doesn't know where the 20 years came from. Ms. Michaud added that she doesn't know if they were removed quite 20 years ago but that there's 20 years of testing with only some years left. Mr. Hamilton stated that the testing had been monitored for 20 years. Ms. Michaud stated that she spoke personally with the property manager that was on site when everything was removed from the State and that he's the one who had given her the documentation showing that.

Mr. Stanvick asked if they could confirm that the tanks were removed and what the method of removal was. Mr. Maynard stated that that was done prior to his client purchasing the lot but that he can call the State and get that information from them as to when they were removed and how they were disposed of. Mr. Hamilton stated that it was an oil company based out of Rhode Island that owned and maintained it as a gas station. He explained that he knew this because at one point he was looking to take over that gas station.

Mr. Maynard explained that what they're trying to do with this property would be to raze those existing structures that are still there and construct a new building that is roughly 4000 square feet. He stated that the slope of the lot drops away from behind the building and ultimately there would be some form of a walkout basement associated with the foundation under the structure so that storage and utilities could be used in that portion of it. He explained that they would be drilling a new well and that they'd be redoing the parking lot period. He's stated that when looking at the property now for impervious surfaces outside of the easement areas, there are about 9000 square feet of pavement, sheds, concrete, and those kinds of improvements and that this proposal is seeking to increase it about 2,000 square feet. He stated that the variance requests that they are asking for is primarily to Article III Section 307:12, table 1 which is the Table of Dimensional Requirements. He explained that when looking at the dimensional requirements they are looking to construct the building 48 feet from the front lot line 40 feet from the northerly lot line and 59 feet from the southerly lot line. He stated that in the zoning ordinance it is required that three times the height of the structure as the front set back and that two times the height of the structure in a

side set back. He explained that they're looking at about 28 feet for the height of the structure from the front grade.

Mr. Stanvick asked if this proposal was a new use. Mr. Maynard replied that it is a new use and a new building. Mr. Stanvick asked if the property currently had a septic system. Mr. Maynard replied that there is something there now which is an older stone and pipe system. He stated that he found plans that say it's behind the building and that he found other plans that say it's on the right side of the building but that he can't really say where it is without digging up the lot. Mr. Stanvick asked if there was an indication that the system was ever used. Mr. Maynard replied that the system was probably in use for the gas station.

Mr. Welch asked if the building was going to be a two story or single-story building. Mr. Maynard replied that the building they are looking to do is about 32 feet in depth so on a 12 pitch on the roof, then 16 with a 10-foot ceiling height that's associated with it then put a floor system in the middle of it and it's at 28 feet on the street side of it. Mr. Welch stated that it would be a two-story building. Mr. Maynard stated that there is a plan for the second story to be more of a loft or an office for his client, but it wouldn't be across the footprint of the whole building, just one small section.

Mr. Maynard explained that the second request that they have is relief for the work within the WCD. He stated that because of the grades of the lot they'd be looking to put the septic tanks on the left side of the structure which would be within the 50-foot setback. He explained that the tanks are a sealed unit and therefore there would be no exfiltration or infiltration associated with them. He stated that they would go into a septic system area that would go between the limits of the WCD ditch area that he spoke about and the street itself. He explained that the ditch according to the Wetland Scientist is mostly a hydric B soil, but in the center of it there are some areas due to routing water in that direction that fall under the Hydric A criteria. He stated that the septic system is supposed to be 75 feet from the Hydric A soil that is in the center of that swale and that they ultimately end up being about 55 or 60 feet from it. Mr. Stanvick asked if they had been before the Conservation Commission with this request. Mr. Maynard stated that they hadn't yet. Mr. Stanvick suggested that they go before the Conservation Commission for their recommendations and opinion on this matter.

Mr. Maynard stated that they are trying to minimize both impacts to the WCD, stay out of the floodplain and keep their work up close to the Route 38 area where all the existing improvements are. He explained that there are no proposed wetlands to be filled in and that all the work is outside of the 100-year floodplain. He stated that there are a couple of Planning Board waivers that they'll be asking for when they finally get to that. He explained that the primary waiver deals with the setback of parking to the edge of the right of way that is supposed to be a 20-foot setback which is zero right now. He stated that they are looking to maintain that zero-foot setback from the Planning Board.

Mr. Maynard read the five criteria of a variance into the record.

Ms. Pigeon asked if the 28-foot height of the building equates to two stories. Mr. Maynard explained that if the building is 32 feet deep and 32 feet wide with a 12-pitch roof it would give a

16-foot height. He stated that a 10-foot ceiling in the commercial space on the main level with a floor system so that she can get an office in the peak of the roof, but it wouldn't be two full levels and a roof. He explained that any use of the upper area would be in the roof for an office and a room for her employees to have lunch.

Mr. Hamilton asked if the salon would be the only business on the property. Mr. Maynard stated that they are proposing a 4,000 square foot building with his client's space being about 3,000 square feet which would leave about 1,000 square feet to allow potential for her to grow in the future or to sublet that area for some purpose.

Ms. Pigeon asked if there is a special regulation on the septic for a beauty salon. Mr. Maynard replied that the State of New Hampshire just governs by how many gallons per day that are associated with that type of use. He stated that it is broken down per seat per employee and that he calculated it out at roughly 650 gallons per day for her space. Ms. Pigeon asked if the products used warranted any special type of system. Mr. Maynard replied that the State of New Hampshire makes them file what they call an underground injection control permit or a UIC Permit which his client provides them with a list of the products that they use and the chemicals that are associated with them. He stated that the purpose of that for a hair salon is so that if there's an issue with an abutter for some reason they know where the source is coming from and it's a typical requirement of any salon or type of business like that.

Mr. Stanvick asked for clarification on if there was an existing septic system on the property and if Mr. Maynard knew where it was specifically. Mr. Maynard stated that he didn't. Mr. Stanvick stated that Mr. Maynard couldn't find any approvals for the existing system and if that system by definition was there illegally. Mr. Maynard replied no it wasn't because the State of New Hampshire didn't start governing regulatory requirements for septic systems until about 1970. He stated that the law went into effect in the late 1960s and if that septic existed prior to 1967 then there wouldn't be an approval on it. Mr. Stanvick asked if Mr. Maynard had any information that would make that to be the case. Mr. Maynard stated that he didn't and that there isn't even anyone around to ask from prior. Mr. Stanvick stated that they didn't know if the septic system was installed legally or not legally installed as they don't have any evidence to support it. Mr. Maynard stated that prior to 1967 there was no requirement. Mr. Stanvick asked if he knew when that gas station was put in. Mr. Maynard stated that he didn't know when it was originally constructed. Mr. Wing added that he believes their intent is to replace the septic. Mr. Stanvick stated that he understands that they're going to replace it but his question is was it legal or illegal when it was put in. Mr. Maynard stated that if it was prior to 1967 and if it was replaced in kind prior to 2010 then there would be no records of it. He explained that the State of New Hampshire used to have what they called the in kind replacement rule which is if a septic system was in failure even on a commercial use, then someone could come in and rebuild that system in the same size, shape, and location. Mr. Stanvick replied that they've been unable to determine when that septic system that was there was put in and that they're just assuming that if it was before a certain date that it's good and that they don't need to worry about it. Mr. Maynard replied that he wasn't worried about it because he's putting in a new septic system. Mr. Stanvick asked if when they put the new septic system in if they were going to take the old system and all of its associated materials if you can find it and remove and dispose of them properly. Mr. Maynard stated that what happens when a septic system stops being used which is what the case is for this system is that the bacteria keeps

digesting until there is nothing left. He explained that the material on a system like this which is probably a stone and pipe type of design so is just an aggregate and even if they hit that system it would just be sand and stone being excavated out. He stated that the sand and stone at this point in time, after six months to a year of not being in used would be back to natural aggregate material with no contamination in it.

Ms. Pigeon stated that there is essentially no other place on the property that they could put the septic that wouldn't impact the wetland. Mr. Maynard stated that because of the finger and the way that it bisects the lot it just encompasses so much of the area of the property that it doesn't leave him any real room to put a replacement. He stated that the because the site has a slight grade in the northerly direction which is the direction that the water is flowing, there are some basins that exist underneath the driveway that go to the bank and because this is going to have an small increase in impervious surface over what's there now, they will need to do a drainage measure to offset that. He explained that there is no drainage measure in place now and that the water just sheet flows out of the property and just discharges to the street drainage system which then ends up in Beaver Brook. He stated that on the north side of the building there will be an underground drainage system. He explained that he is looking to take the impervious surface associated with the building and take that water and send it into an underground infiltration system, which will be a reduction in impervious coverage. He stated that the underground infiltration system will do two things, it will recharge the ground water by infiltrating the roof run off and it will also be detaining the flows that come off the roof of the structure. He explained that with these underground systems there is an inlet and outlet associated with them and on the outlet side they will use a ware of some kind to hold the water within that system so that it can decrease the flow before it goes to the brook.

Mr. Stanvick asked if the applicant was looking to be permitted to have a building within the WCD and septic tanks within the WCD. Mr. Maynard replied that that was correct.

Mr. Welch asked if it would be possible to do the septic out in front of the building under the parking lot. Mr. Maynard replied that the issue is that he needs to put a well on the property to service it and because it's over 750 gallons per day the radius of the well goes from 75 to 100 feet. He explained that when you look at the radius that's associated with the well it goes just barely into the right of way which would mean that the septic would now be in the well radius and that whenever possible he tries to not do that. Mr. Welch stated that he was wondering if it's the lesser of the two evils to have everything in the well radius or having everything in the WCD. Mr. Maynard replied that the center of Town is extremely well drained sands so whether the septic is here of there it's porous, quick, and rapid so it's getting there at the same measure whether it's where he is proposing it or if he was to slide the well downstream. He stated that from a lender's standpoint for his client when they'd start getting mortgages associated with a waiver to a well under the States regulations, the banks start to get a little uneasy about that side of things so it's much cleaner if he tries to meet as many roles as he can. Mr. Welch stated that the well radius appears to overlap onto the bank property and that the banks septic disposal area looks awful close to the lot line. Mr. Maynard replied that it does and that the bank made a comment about that recently and he took a look at their as-built plan and has to slide the well about 7 feet south to stay out of their area. He stated that he could put it anywhere along the back of the building and that it would go in before the building is in.

Mr. Wing stated that the height of the building is 28 feet which would mean an 84 foot setback and asked if there are other 28 foot structures in the area that would be comparable. Mr. Maynard stated that the bank next door is probably higher than that and then Chunky's is in the 24-26 foot range because of the flat top roof. Mr. Wing asked if 24 feet from the end of the parking spot to the road is sufficient. Mr. Maynard replied that 24 feet is typically what the drive aisle is for two way traffic and if it was to go to the Town's Ordinance 20 feet would be okay for one way traffic. He stated that the pavement from the bank kind of goes straight across the front of the property so they would create a landscape island to keep people from going straight across and force people to do the turn to go out, but that 24 feet is more than adequate for a typical commercial development driveway.

Mr. Hamilton asked if the applicant should go in front of the Conservation Commission before they look at deciding on a variance. Mr. Wing. Stated that it was a fair suggestion and that he would like to open it for discussion before they make any motion.

Mr. Wing opened the floor to the public. No one came forward that was in opposition to this proposal.

Ms. Danielle Masse-Quinn of 9 Meadow Lane approached the Board. She stated that she is speaking as a resident as opposed to a board member. She explained that this business has been in Town for a very long time and anything that goes there is going to be better than what is existing there now. She stated that there are a lot of items for the Planning Board and if it does make it to them then Conservation will be involved.

Mr. Wing closed the floor to the public.

Ms. Pigeon stated that with the building being in the WCD there are other building right beside them that are also within it so it wouldn't make sense to say that they couldn't be in the WCD when there are other buildings in it too. She explained that the other issue of height wouldn't be an issue if it was just a building because they would be within the distances we require. She stated that if they had a flat top roof they wouldn't be in front of the Board and that her only concern at this point is the septic system being close to the wetland.

Mr. Welch stated that he has a strong opinion in favor of this proposal as he feels it is a well thought out plan and that what is currently there is an eyesore with a mystery septic. Mr. Stanvick added that the mystery septic offers no consequences by being there as it's been there for so long. Mr. Welch stated that if somebody else were to buy the property and want to use the building that's there, there is nothing to stop that currently.

Mr. Stanvick stated that he doesn't have an opinion one way or another at this point in time as he hasn't heard enough information to be able to draw that type of conclusion.

MOTION: (Stanvick/Pigeon) That the applicant appear before the Conservation Commission to solicit their input.

ROLL CALL VOTE

Ms. Pigeon – “FOR”
Mr. Hamilton- “FOR”
Mr. Welch - “FOR”
Mr. Stanvick- “FOR”
Mr. Wing- “FOR”

VOTE: (5-0-0) Motion passed.

Mr. Wing asked Ms. Beauregard to reach out to the Chair of the Conservation Commission to see if they can get the applicant onto Wednesdays agenda.

Ms. Michaud asked Mr. Wing why they would like them to go in front of the Conservation Commission. Mr. Wing replied that it helps provide this Board with information. Mr. Stanvick added that with cases involving wetlands the Zoning Board will often seek the opinion of the Conservation Commission. Mr. Wing stated that they’ve invited their opinion and have made recommendations regarding how close applicants can get to the wetlands and certain trade off that might be made regarding issues like that and explained that this Board is not bound by their input like the Planning Board is. Ms. Beauregard stated that the Planning Board will want them to weigh in on this anyway so going to them now may stop her from having to go to them again.

CASE DATE SPECIFIED TO JANUARY 8TH, 2024

ZO2023-00019

Map 33 Lot 1-34

MORSE, Jayson (Applicant), BRUCE, Gail (Owner) – 232 A & B Mammoth Road – Seeking a Variance concerning: Article III, Section 307-12 Table 1 of the Zoning Ordinance to permit a garage addition, with living space above, to the left side of an existing duplex, proposed to be 9’ from the left side property line, where 15’ is required.

Ms. Masse-Quinn rejoined the Board. She 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. Jason Morse of 66B South Road in Londonderry, NH, and his mother-in-law Gail Bruce of 232A Mammoth Road in Pelham, NH approached the Board. Mr. Morris stated that they are looking to put an addition onto the duplex that Ms. Bruce resides in. He explained that the side she occupies has a two-car garage with three bedrooms and two bathrooms and that the other side of the duplex is currently a two bedroom with one bathroom. He stated that they are looking to put a 24 foot wide addition onto that other side of the duplex to add an extra bedroom which will fully utilize the septic system. He explained that the septic system is rated for a six bedroom home and that the house is currently five bedrooms so they would like to maximize that. He stated that they would like to be closer to family as they just a daughter three weeks ago. He explained that they are looking to put a two car garage addition on with the master bedroom and bathroom to mimic what her side looks like. He stated that he passed out the architectural plans that break down what they intend to do with the space. He explained that they are infringing on the 15 foot setback and are asking for a variance for a nine foot setback. He stated that they have spoken to the abutter directly next to the property and they are on board with it.

Mr. Morse read the five criteria for a variance into the record.

Ms. Pigeon asked if it was accepted knowledge that encroaching within a setback doesn't affect the neighboring property value because she is thinking that in some cases it might. Mr. Wing replied that getting closer may affect it but the trade off is that perhaps it becomes a more aesthetically pleasing home which could increase the neighbors property value. Ms. Pigeon asked if the applicant knew how close they are now and how close they would be. Mr. Morris stated that the neighbor's driveway is on that side of the property and in between the driveway and the property line there is a canvas carport so there is still substantial distance between both dwellings.

Ms. Masse-Quinn asked if there were other properties on the road that looked similar. Mr. Wing stated that there are one or two where the applicant is in particular that look similar in construction.

Mr. Stanvick asked what is unique about the property that if the variance wasn't granted would cause undue hardship. He stated that the two reasons listed are more of a convenience than of uniqueness of the property. Ms. Bruce added that her daughter was raised in Pelham, she went to Pelham schools and daycare and even worked at Hannaford's. She stated that she had been a Pelham resident for quite some time and that when they got engaged and then married, they couldn't find a home in Pelham as they couldn't afford it and had to move elsewhere. She explained that after having her own daughter, that her daughter would love to move back to Pelham and this would give her the opportunity to come back to Pelham that she could afford. Ms. Pigeon stated that Mr. Stanvick is asking how they could redirect the building on the property to not encroach on the setback. Ms. Bruce stated that they wanted to keep it aesthetically pleasing and mirror what is on her side. She explained that they could build up but that they don't need all that space and would like to keep it all on one floor to keep the symmetry with her side. Mr. Wing stated that the applicants are suggesting that the hardship is not necessarily with the land but it is with the dwelling on it and in trying to match the existing dwelling they would rather extend northward rather than back or up. Mr. Stanvick stated that it's not a special hardship as a consequence of the property it's a self imposed hardship of an aesthetic standpoint. Mr. Wing stated that it is a hardship of the dwelling which is on the property. Mr. Stanvick asked if they could build up and if they've looked at the cost of that or if they could reduce the size of the footprint they're discussing. Mr. Morse stated that behind the house is a hill that goes up, levels off a bit then goes up again for about 450 feet. He explained that because of the hill building behind the house wouldn't be possible. He stated that building up is that the house wouldn't be symmetrical or aesthetically pleasing. Mr. Stanvick stated that that's subjective and he doesn't see what the unique requirements based upon the land itself are. He explained that he understands their personal desire to want to be close but asked what they could do so that a variance wouldn't be required. Ms. Masse-Quinn stated that she is leaning towards the affordability aspect of it. She explained that they are restricted in the back as it is granite but the affordability aspect of it is a big thing right now even on the planning end of it. Mr. Stanvick stated that he hasn't seen any prices in terms of the alternative and that the courts have ruled that there are alternatives and that you should be able to talk about those. Ms. Masse-Quinn explained that on the Planning Board they have what's called ADU's to help with situations like this, for parents to be next to their children and grandchildren. She stated that the affordability catches her ear because of the workforce housing statue where we're trying to do our fair share, the duplex part of it could also be contributed to the fair share too. Mr. Stanvick stated that he doesn't know the definition of affordability at this point in time

and that he doesn't know what the cost would be to forget about the aesthetics piece of it to go up or if it's necessary to have that footprint. He asked if they could take so much off of the footprint so that a variance wouldn't be required.

Mr. Hamilton asked how close they are now. Mr. Morse stated that they're 24 feet shy of what they're asking for. He explained that in the plans the addition will be 24 feet wide by 36 feet deep and there is a small triangle on the back corner of the addition that would be encroaching on the setback. Mr. Stanvick asked what the square footage of that triangle was. Mr. Morse stated that he didn't know off the top of his head. Mr. Stanvick stated that he was trying to find a compromise as to where they wouldn't need a variance. Ms. Masse-Quinn stated that the whole point of coming in front of this Board to get a variance is because it's just not really making the feet. Mr. Wing stated that on the last page of the packet you can see that it's just a small wedge of the addition that's within the setback. Ms. Made-Quinn stated that it's a tiny sliver is the reason why they're there for a variance. Mr. Hamilton and Ms. Masse-Quinn stated that there were no issues from any abutters. Ms. Bruce stated that the land runs at an angle so to keep everything straight when the land runs at angle is where the small triangle happens because they're working off the angle of the land. Ms. Masse-Quinn added that pretty much all the duplexes over there are on an angle or they just drop down.

Ms. Pigeon asked if the house didn't already have a garage on it and if that was the addition. Ms. Bruce stated that the addition would be the two car garage and the corner of it because of the way the land goes up would be in the setback.

Mr. Welch explained that when looking at this lot along with the lot to the south and the north are all shifted over to the north lot line so he is guessing that the builder had to have done that for a reason. He stated that he guesses that it was granite, ledge, elevation problems and that seems like it could be a hardship and necessitate why the house is there and where the addition needs to go. Ms. Beauregard added that what they're talking about now is more along the lines of what Mr. Stanvick was asking about, what makes the land unique and different from the other land around it. Mr. Stanvick asked what makes the land unique. Ms. Beauregard stated that they're saying that what makes it unique is the angle of the land based on the way the house is situated in it and the back of the lot goes up a steep slope into what is likely ledge. Mr. Welch added that it's the angle of the lot to Mammoth Road that has them shoehorned in on the side.

Mr. Stanvick stated that the spirit of the ordinance as he understands it is the condition called crowding and if they start to allow variances like this then it can result in a situation where you've decreased the purpose of the zoning ordinance which is to keep things separated. Ms. Pigeon explained that the applicant had stated that on the side where they intend to do the addition is the driveway and it is not close to the house. Mr. Wing stated that the purpose of zoning is to manage density and that what Mr. Stanvick is referring to is called cumulative effect but as there are other duplexes in the area already and this is already a duplex so they're not necessarily increasing the density by adding a bedroom. Mr. Stanvick replied that they're explaining the footprint and requiring a variance. Mr. Wing stated that he was thinking of density in terms of percentages but that you could look at density in terms of square footage also. Mr. Hamilton added that in the grand scheme of things the only reason they need the variance is for the tiny wedge in the back corner which he doesn't feel outweighs the benefits of the addition and the benefits are numerous in terms

of affordability, being close to family and being back in the town that she grew up in. He asked if there was any expandability for the septic because he sees that the home office and believes it may become a fourth bedroom. Mr. Morse explained that the existing septic is rated for six bedrooms and that his wife works from home four out of five days a week and it will be a home office for her. He explained that one bedroom will be a playroom, the second bedroom would be his daughter's nursery and then once the second child is born it would be the third bedroom. He stated there would be a bedroom for each kid, their master bedroom, and a home office.

Mr. Wing appointed Ms. Pigeon to vote on the case.

Mr. Stanvick asked how many square feet would need to be removed from the footprint to be back within the setback to remove the necessity of a variance. Mr. Hamilton stated that it would be roughly 20 square feet and explained that the benefits of putting them into compliance doesn't outweigh the benefits of the footprint they have. Ms. Pigeon stated that he has nine feet and is really only asking for six feet for that little bit of the back corner. Mr. Morse stated that they are asking for six but they only need five and that they are only asking for six in case the foundation guys aren't as exact as his surveyors and they make a mistake. Mr. Stanvick stated that six feet is the difference between asking for a variance and not needing one and that six feet seems like something that could be accommodated. Mr. Wing stated that they would slice right through the garage and they would have to get rid of the whole garage door and lose a garage spot. Mr. Stanvick asked what the necessity of having a garage is. Ms. Pigeon replied New England winters. Mr. Hamilton stated that he's not crowding his neighbors with this request. Mr. Stanvick replied that he is if he is asking for a variance as that's crowding as defined by the courts. Mr. Welch rebutted that asking for a variance isn't a reason to deny a variance and needing a variance isn't a reason to deny it. Mr. Stanvick asked what other reasonable accommodations could be made in lieu of a variance. Mr. Hamilton stated that it's a very minuscule piece and in his opinion they should leave it the way it is and just grant them the variance. Mr. Wing interjected stating that they are to vote on the application as it is presented to them and that they don't have the opportunity to negotiate with the applicant. Mr. Stanvick stated that he was just trying to understand what alternatives have been explored to prevent the use of a variance. Mr. Morse stated that they haven't explored any other options as the outcome of this meeting would determine whether or not they started to investigate other options. He explained that one option could be to cut the corner in the back of the building or to shrink the garage space as putting a second story on one side of the duplex would seem out of place to him.

Mr. Wing opened the floor to the public. No one came forward that was in favor or in opposition to this proposal.

DISCUSSION

1 & 2. The variance will not be contrary to the public interest because; and the spirit of the ordinance is observed because:

Mr. Hamilton stated that he agreed that it would not be contrary to the public interest.

Mr. Welch stated that he agreed that it would not be contrary to the public interest. He explained that the setback waiver is pretty minimal and it's not the entire length or width of the set back and

it is just a small triangular piece. He stated that altering the building to accommodate the setback wouldn't be the just outcome as they'd be compromising on the quality and the aesthetic of the new addition by having it be oddly shaped which would be more harmful to the house and to the surrounding properties versus allowing a five foot infringement to the setback.

Mr. Stanvick stated that he would agree and he would say yes.

Mr. Wing stated that he would say yes as well as he doesn't see that there's a threat to public health safety or welfare.

Ms. Masse-Quinn agreed that the variance is not contrary to the public interest, it is in line with the character of the neighborhood and doesn't threaten the public health or safety.

Ms. Pigeon agreed that the variance would not be contrary to the public interest as it is not the whole building that is that close.

Mr. Wing stated that the spirit of the ordinance has never really been defined and that the spirit of zoning is to manage density but that he believes that the spirit is being observed.

Mr. Stanvick, Mr. Welch, and Mr. Hamilton all concurred.

3. Substantial justice is done because:

Mr. Wing stated that this means is there any loss to the individual that is not outweighed by a gain to the public.

Mr. Hamilton stated that he believes substantial justice is done.

Mr. Welch agreed that substantial justice would be done by approving this because the alternative being to chunk off the corner of that building or shrink it down to a one car garage is too much of a compromise to the individual.

Mr. Stanvick, Ms. Masse-Quinn, and Ms. Pigeon all agreed that substantial justice would be done.

Mr. Wing concurred and stated that he believes that substantial justice is both done from a building perspective and although it's not controlled by the Zoning Board, a family perspective as well.

4. The values of surrounding properties are not diminished because:

Ms. Pigeon stated that she would've liked to see a letter from the neighbors saying that they agree with it and that they did have their chance to be here so she would say that the values of the surrounding properties would not be diminished and that improvements probably will improve the whole neighborhood.

Ms. Masse-Quinn stated that would not be finished and if anything it would help the surrounding properties. Mr. Wing agreed.

Mr. Stanvick, Mr. Welch, and Mr. Hamilton stated yes that the values of the surrounding properties would not be diminished.

5. Owing to special conditions of the property that distinguishes it from other properties in the area, denial of the variance would result in unnecessary hardship because:

A. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because?

B. If the criteria in subparagraph A above are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Mr. Hamilton stated that he believed the proposed use is a reasonable one.

Mr. Welch agreed that the proposed use is reasonable and that the hardship is the way that this lot was built and laid out due to elevation changes.

Mr. Stanvick agreed.

Ms. Masse-Quinn stated that she would agree especially with the lay of the land.

Ms. Pigeon stated that she agreed because of the slope.

CASE# ZO2023-00019

ROLL CALL VOTE

Mr. Stanvick– 5 yesses, final vote “YES”

Mr. Welch – 5 yesses, final vote “YES”

Ms. Masse-Quinn– 5 yesses, final vote “YES”

Mr. Wing– 5 yesses, final vote “YES”

Ms. Pigeon– 5 yesses, final vote “YES”

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

Variance was **GRANTED**.

Mr. Wing reminded the applicant that there is a 30-day right to appeal.

DATE SPECIFIED CASE(S) – January 8, 2024

Case #ZO2023-00018 – Map 29 Lot 7-117 – Salon 38, LLC – 135 Bridge Street

ADJOURNMENT

MOTION: (Stanvick/Welch) To adjourn the meeting.

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

The meeting was adjourned at approximately 8:51pm

Respectfully submitted,
Cassidy Pollard
Recording Secretary