

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT
January 9, 2023**

Chairman Dave Hennessey called the meeting to order at approximately 7:00 pm.

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT ROLL CALL: David Hennessey
Jim Bergeron
David Wing
Jeff Caira
John Westwood
Alternate Shaun Hamilton
Alternate Ken Stanvick
Alternate Jason Goucher
Alternate Matthew Welch
Planning Director/Zoning Administrator Jennifer Beauregard
Recording Secretary Jordyn Isabelle

ABSENT: None

Mr. Hennessey welcomed Mr. Welch to the Board as an alternate member.

Mr. Hennessey informed the group and the public of the Master Plan Community Forum Event on February 22, 2023 in Sherburne Hall in Town Hall from 6pm to 8pm. He encouraged residents to participate and voice their opinions.

Mr. Hennessey read a letter from David Reidy of 6 Little Island Park withdrawing their application for Case #ZO2023-00002.

MINUTES

December 12, 2022

MOTION: (Bergeron/Westwood) To approve the December 12, 2022 meeting minutes as amended.

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

MOTION: (Wing/Bergeron) To approve the December 17, 2022 Site Walk Minutes

VOTE: (5-0-0)

OLD BUSINESS

CASE #ZO2022-00024

Map 30 Lot 11-152

THISSELL, Troy – 8 Gaston Street – Seeking a Variance concerning: Article III Section 307-7, 307-12 & 307-14 & Article V Section 307.19.A of the Zoning Ordinance to permit construction of a 24' x

24' 2-story garage on a pre-existing non—conforming lot that contains 3,274 SF where 43,560 SF is required and maintains 127' of frontage where 200' is required. The garage will also have a 3' setback from Gaston Road and a 5' setback from Campbell Road where 30' is required, and an 8' side/rear setback where 15' is required. Relief is also sought to permit the construction of a free-standing garage which is not customary, secondary, or incidental to any permitted principal use.

Mr. Hennessey informed the public and the Board that this case is a continuation of the meeting that was held on December 12th, as well as the site walk. He explained that most of the members attended the site walk to look at the building and to assess if it was going to obstruct views of the lake from the rear. Mr. Hennessey reminded the Board and the public that the abutters were read at the previous meeting. Mr. Hennessey asked the representative for the applicant, Shayne Gendron if he had anything to add before opening it up to the public.

Mr. Gendron explained that there were some dimensional questions that were asked at the last meeting about Gaston Street. He stated that somebody had asked about the right-of-way for Gaston Street. He stated that the right-of-way for Gaston Street is about 30 feet wide. Mr. Gendron explained that Gaston Street in front of this lot is about 13 feet wide from the edge of pavement to the property line. He explained that they were asking for about 10 feet of relief.

Mr. Hennessey read a letter from a potential abutter, David Duffy, who is not a not a current resident of Pelham but is in the process of closing on a home at 17 Campbell Drive. Mr. Duffy expressed several reasons as to why he wishes this variance would be denied in his letter. He stated it would be contrary to the public interest as it directly violates the 30-foot setback and side set back requirements. He stated that it would force the applicant's vehicles to be parked in the right-of-way eliminating future road repairs and the development of the true 30-foot width that the right-of-way is supposed to be. He stated that it would close off his property, the spirit of the town would be violated, and that substantial justice would not be done if allowed. Mr. Duffy stated it would diminish his property value and directly impact his ability to enjoy the openness of the current neighborhood. Mr. Duffy explained that there is no hardship that exists as there has never been a structure on this lot and has been used as is since the applicant purchased it and that it can continue to be used as a parking area without negatively affecting the right-of-way. He stated concern for the water runoff and drainage, as well as the trees and vegetation that would be removed if this request is granted.

Mr. Gendron stated that there was discussion of the setbacks of the garage at the sitewalk. He explained that the property owner who is the legal abutter for that property asked them not to push the garage any closer to his property line. Mr. Gendron stated that the gentlemen that wrote the letter tonight is not a property owner within the neighborhood as far as he knew. He stated that the current property owner was at the site walk and didn't know if he was in attendance, but he is the legal abutter and owner of the property, not somebody that signed a purchase and sales agreement. Mr. Gendron stated that the lot he is purchasing is very similar in size to this lot. He stated that Mr. Thissell would like to build a small garage to park cars out of the weather. He continued that if anything, it would push the cars further away from the road than where they are being parked currently.

Mr. Hennessey asked Ms. Beauregard if the Selectmen would want to weigh in on this case, as it is on a private road. Ms. Beauregard replied that the Selectmen have expressed interest in only weighing in on new dwellings on undeveloped lots at this time.

Mr. Hennessey opened the floor to the public.

Mr. Kevin Crooker of 2 Andover Street came forward to address the board. He asked the board if the 3-foot setback on Gaston Street and the 8-foot setback in the back could be flipped. He stated that putting the driveway that close to road didn't make sense to him, because that was the only place that they could make the road wider. He was concerned since the whole right-of way is being used during a snowstorm because that side of the road is where the snow always gets plowed to. He stated that he didn't want the project to be put to a stop, but if there was going to be a 3-foot setback on Gaston Street then he would. Mr. Crooker expressed frustration over the applicant not changing the plan after input from abutters. He mentioned how the road is like a funnel in that area due to how narrow it is. He stated that he believes that it would be making a situation worse and would cause a life safety issue. Mr. Crooker also explained that many people can't make the hill on Campbell Drive during a snowstorm. He stated that he's trying to be a voice for not just himself but for some of his neighbors who don't feel comfortable addressing the Board. He inquired about who determines what setbacks would diminish property values and what doesn't.

Mr. Hennessey explained to Mr. Crooker that zoning laws and setbacks are concrete and that this board is created to act as a safety valve on those requirements. He stated that there are very few properties on Little Island Pond that meet all the dimensional requirements of the zoning law and that is it part of the boards job to look at each and every applicant who comes before them asking for relief on its merits. He stated that if the board didn't grant variances, then nothing would ever be built or rebuilt on Little Island Pond. He continued that the board is there to hear the bending of the rules on these dimensional requirements and that the board must look at each individual case and make a decision on it based on the five criteria.

Mr. Crooker agreed with Mr. Hennessey then continued on to question the house in the back of the property and if they didn't want it at a 3-foot setback because of devaluation on the house. He reiterated that he doesn't have a problem with the 3-foot setback in the back and believes that is where it belongs because of the road and safety. Mr. Crooker expressed that he wished this application was filed for a three-foot setback in the front and 8-foot setback in the rear. He stated that if the applicant can't move the building further off the road, then maybe the building is too big for the lot. Mr. Hennessey explained to Mr. Crooker that the board must accept the application as presented to them at the time of submittal. Mr. Crooker then responded that the variance should be denied.

Mr. John Patterson of 7 Gaston Street came forward to address the board. Mr. Patterson stated that he that he approved of the structure but that he disapproves of where it is located. He continued that he thinks it makes a hardship on everybody in the neighborhood and any emergency vehicles getting down there. He stated that the structure would be too close to the road. Mr. Patterson thanked the board.

Mr. Hennessey asked Mr. Gendron if he had any questions. Mr. Gendron replied that the issue that they have with adjusting the application that much is that the property owner of 11-153, and 11-149, has said that he doesn't want to garage pushed any closer. He stated that the board got to see that the garage would be well into the tree line, so there would be no snow being pushed there. He continued that there is currently a driveway that exists there where they currently park vehicles and the garage would be behind and beyond the driveway. Mr. Gendron stated that it would just be a small garage and would never be a house and that Mr. Thissell would just like to have some use out of his property and a place to be able to park his cars out of the weather.

Mr. Bergeron asked Mr. Gendron if there was a difference in the setbacks that are on file and if he could clear them up. Mr. Bergeron stated that on file the setbacks are three feet from Gaston Street and five feet from Campbell Drive and was looking for clarification because Mr. Gendron had mentioned one being wider than the other. Mr. Gendron replied that they are asking for a three-foot setback on Gaston Street and due to a deck that's on the second story, but that the corner of the foundation closest to Gaston Street is going to be five feet away from the right of way.

Mr. Caira asked Mr. Gendron if the three-foot setback encroaches on the right of way at all. Mr. Gendron replied that it was not in the right of way, but it is to the front of the right-of-way and that it is a small little four by six deck on the second floor. Mr. Caira then asked if the deck encroach into the right-of-way at all. Mr. Gendron replied no it does not.

Mr. Hennessey closed the floor to the public.

Mr. Hennessey informed the board that they were going to go through the five criteria and once they were done, they would do a “straw” vote to determine what the sense of the board is. He stated that a member of the majority in the “straw vote” would then articulate the reasons of record for determining their decision. Mr. Caira asked Mr. Hennessey if alternates were allowed to participate. Mr. Hennessey explained that for the purpose of discussion that alternates could participate, but that they were not to articulate the reasons of record because they are not voting members.

DISCUSSION:

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

Mr. Wing stated that he has a hesitancy to say yes on this for two reasons being health and safety. He stated that the board has heard from several neighbors regarding the safety of that corner and from a health perspective that there were some questions regarding runoff. He continued that the health of the pond has come into question by neighbors, the Conservation Commission, as well as the Board of Selectmen. He stated that they all have commented on the decaying health of the pond and that would be his hesitations to vote yes. Mr. Stanvick voiced similar concerns about the health of the pond and public safety do to how narrow the road is for emergency access.

Mr. Westwood stated that he was not at the last meeting, or the site walk and recused himself from voting. Mr. Hennessey appointed Mr. Stanvick to vote in his place.

- 3. Substantial justice is done because:*

Mr. Bergeron explained that when he looks at the substantial justice aspect of the zoning criteria, he thinks about what is involved with that property. He questioned the substantial justice criteria, as there is no current use on the property. He continued that since there is no current usage – there would be no taking of property if the request were to be denied. He stated that when looking at substantial justice, he looks at what is there and what should continue, what has rights and what has vested rights to continue. He stated that he doesn't see that substantial justice would be done because there isn't anything established and questioned what made this piece of property any different than any other piece of property that doesn't have anything on it. He noted that there was not a vested use so there is no injustice being done. Mr. Bergeron commented on the spirit of the ordinance and how he viewed it as the physical aspect of the ordinance, or the dimensional aspect of the ordinance and the spirit is to create separation for orderly development and room from the right-of-way. Mr. Hamilton explained that they're not just looking at the justice of the landowner, but that we're looking at the people surrounding that property and that it has to be justice for everybody involved. He stated that he doesn't think that this property and using it that way would be justice for anybody surrounding.

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

Mr. Hennessey stated that based off his real estate experience and experience on this board that he believed the values of 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. Hennessey stated that the board must look at what makes this lot unusual. He continued that this lot is about the same size as some of the houses that are built in this town. He stated that it being a small lot and the location on the pond go into the stew of whether this is a hardship that runs with the land and asked what are the special conditions of the property that would make this lot special and deserving of a variance.

Mr. Bergeron answered that this is an empty parcel of land with no vested use so it is no different than any other parcel that would come for any other building permit as it doesn't qualify.

Mr. Hennessey asked the voting members of the board to do a straw vote. He explained to the voting members that if they've found that they've voted one no, then their final vote would be no. He then asked how many members are going to vote no. All voting members raised their hands.

FINDING OF FACTS:

MOTION: (Wing/Caira) To deny the request for variance based on the following finding of facts:

- Threat to the public health, safety, and welfare of the neighborhood
- Threat to the health of the pond
- Access for emergency services
- Health and safety issues will diminish property values
- No current structure so no vested use
- Current use is no use
- Property is similar to others in the neighborhood, so no special conditions
- No hardship on something that doesn't exist in the first place

VOTE: (5-0-0) The motion passes

VARIANCE DENIED.

Mr. Hennessey explained there is a 30-day right to appeal.

NEW BUSINESS

CASE#ZO2023-00001

Map 22 Lot 8-26

BONUGLI, Vincent – 160 Main Street – Seeking a Variance concerning: Article VII Section 307-37 & 307-39 & Article III Sections 307-8 C & 307-12, Table 1 of the Zoning Ordinance to permit: A 18'10" x 48'4" addition that consists of a garage with living space above, on a lot with less than 1 acre and less than 200' of frontage, that encroaches on the WCD and lot line setbacks. The building is proposed 26.1' from the front property line where 30' is required and the right rear corner of the proposed building is 14.6' from the side lot line where 15' is required and 44.7' from the edge of wetland where 50' (WCD) is required.

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

Mr. Vincent Bonugli, the applicant, came forward to address the Board. Mr. Bonugli stated that he would like to do an addition with a garage and living space above. He continued that he doesn't meet the setbacks by three feet eleven inches on the front, six inches on the right side, and five feet five inches for the wetlands. He stated that where he doesn't meet the setbacks, there are woods, so he has no abutters or neighbors on that side.

Mr. Bonugli read the five criteria for the variance into the record.

Mr. Hennessey read the applicants letter of intent into the record. The letter states that Mr. Bonugli intends to add a 20 foot by 50-foot addition on the driveway side of his residence closest to the wetlands. He has lived in Pelham for the last two years and intends to remain here for many years. The addition will not only increase his property value but will increase the tax revenue for the town as well. He explained that the addition will be aesthetically pleasing to the neighborhood and that it makes financial sense to do the addition with the way that the current housing market is. He stated that his reason for doing the addition is that his family is currently expanding and that he would like to stay in Pelham to keep the kids in the Pelham school system.

Mr. Hennessey asked Mr. Bonugli about the wetlands on his property to determine if a site walk would be needed. Mr. Bergeron stated that he took note on the Planning Directors' comments and there are no wetlands on the property, but that it does fall into a WCD district. Mr. Bonugli responded that there's not actually a wetland on the property, but that there is a small stream that runs through a rare portion of the property. He continues that the wetland doesn't actually run through his property but that he is in the setback. He goes on to say that the wetland is a stream or a runoff from the powerlines that he lives by. He states that it could be a man-made stream or a gully and that it's about three feet deep and maybe four or five feet wide.

Motion: (Stanvick/Bergeron) To conduct a site walk of the property.

Vote: (5-0-0)

Mr. Hennessey stated that he knows that it is an encroachment rather than in a wetland. He mentioned that the plan from Promised Land Surveying shows 44.7 feet from the tip of the proposed addition, which is the distance from the delineated wetland boundary to what is required in Pelham which is a 50-foot Wetland Conservation District. He stated that the difference is maybe six feet. Mr. Bonugli responded that it was actually less than that and that if he shrunk the addition by 10 feet and made it 40' by 20' then he wouldn't have to go through this process. Mr. Bergeron questioned whether a special permit was required through the Planning Board. Ms. Beauregard explained that those are usually for travel ways and wetlands crossing and that structures usually have to get a variance through this board.

Mr. Hennessey explained that this case is a little different since it is a self-imposed hardship and understand that it would require the applicant to expend additional money for new plans. Mr. Bergeron explained that this may not have a huge impact on the WCD. He continued that he wanted to discuss what is being looked at for the new members pertaining to the WCD and that there are areas to be protected and that they also have conditions to them. Mr. Stanvick voiced his concerns about encroaching within the WCD and that the board needs to take a hard look and make sure that it makes sense to grant a variance and to support a variance that encroaches in the WCD.

Mr. Hennessey informed the Board and the public that there is no statutory requirement to include the Conservation Commission. He then extended an invitation to the Conservation Commission to attend the site walk. Mr. Bergeron asked if the applicant would be able to show the members of the board the corner of the building on the site walk. Mr. Bonugli stated that the proposed addition is already marked out for them. Ms. Beauregard asked the applicant if he was adding a bedroom with the addition. The applicant responded that he was adding a third bedroom and was in the process of getting a state approved septic design.

SITE WALK – January 14, 2023

Case #ZO2023-00001 00024 – Map 22 Lot 8-26 – BONUGLI, Vincent – 160 Main Street

DATE SPECIFIED CASE(S) – February 13, 2023

Case #ZO2023-00001 00024 – Map 22 Lot 8-26 – BONUGLI, Vincent – 160 Main Street

ADJOURNMENT

MOTION: (Wing/Bergeron) To adjourn the meeting.

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

The meeting was adjourned at approximately 8:25 pm.

Respectfully submitted,
Cassidy Pollard
Recording Secretary