Chairman David Wing called the meeting to order at approximately 7:00pm.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**PRESENT ROLL CALL:**  David Wing

Danielle Masse-Quinn

Matthew Welch

Alternate Shaun Hamilton

Alternate Nicole Pigeon

 Planning Director/Zoning Administrator Jennifer Beauregard

**ABSENT:**  Ken Stanvick

Recording Secretary Cassidy Pollard

**MINUTES**

**January 8, 2024**

Approval of minutes postponed until all the members who were in attendance of the meeting are present.

Mr. Wing appointed Ms. Pigeon and Mr. Hamilton to vote for all cases this meeting.

Mr. Wing informed the public and Zoning Board Members that the Town of Pelham Master Plan is complete. He stated that the Planning Board cordially invites them to attend a public hearing on the presentation and adoption of this important document, on March 18th, 7:00 PM. He encouraged the Zoning Board Members to attend. He explained that there is also a Pond Conference being held by the Conservation Commission in March or April and encouraged Members to attend that as well.

**REQUEST FOR REHEARING**

**ZO2023-00015**

**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 (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 explained that the applicant has requested a continuance. He read the letter requesting the continuance into the record.

“Good morning. As we discussed, I'm requesting that the Board continue my clients, Andrea Page and Bruce Bilapka’s request for rehearing in case number ZO2023-00015 which is scheduled to be heard tonight until the June ZBA meeting. This request is being made because my clients currently have an appeal pending at the Superior Court regarding the issue of the Board's jurisdiction in case number ZO2023-00016 involving the same issue. The outcome of that matter I believe would have a direct bearing on the board's ruling on the pending rehearing quest. Thank you, Laura J. Gandia, Counsel”.

**MOTION:**  (Masse-Quinn/Hamilton) To continue the case until the June 10th, 2024 Meeting.

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

**CASE DATE SPECIFIED TO JUNE 10th, 2024**

**CONTINUED 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 recused herself from the case.

Mr. Joseph Maynard of Benchmark LLC approached the Board with Ms. Julie Michaud owner of Salon 38, LLC.

Mr. Wing stated that this was a continuance from the December Meeting. Mr. Maynard added that at the prior meeting the Board asked that they attend the Conservation Commission’s Meeting, which they did, and that a site walk was held. He explained that the Conservation Commission Meeting came after the last Zoning Board Meeting and that is why they asked for a continuance until this meeting. He stated that they subsequently went back to the Conservation Commission who issued them a letter.

Mr. Wing stated that the abutters had been read into the record at the previous meeting and that if Mr. Maynard would like to read the letter into the record then he could do so.

Mr. Maynard stated that the piece of property is 135 Bridge Street and that it's owned by his client, Salon 38 LLC. He explained that the property is in the business district and it was previously developed with a gas station building. He stated that the gas station tanks were removed around 2015, and that the State has been monitoring it through wells that they have on the property to see if there's any contamination from those wells. He explained that there's nothing that has shown up in any of the testing that's been done for about 20 years. He stated that the property itself is 2.06 acres in size, and it actually has 200 feet of frontage. He explained that they're looking to redevelop this lot by raizing the existing structures that are on the property. He stated that there is an A-frame type building on the lot now with a couple of sheds and reiterated that the tanks have been removed from the property. He explained that they made a couple of modifications based upon some comments that came up from the Conservation Commission. He stated that the initial building was 120’ by 32’ and that after some extensive deed research, some of the easements that were on the original plan have been extinguished. He explained that there's actually a newer easement to the bank property that's on the front to the right. He stated that the new plan proposes a 90’ x 32’ box with a 24’ x 30’ jog. He explained that there'd be a small entrance to that jog as a separate rental unit for the time being. He stated that the overall the building height on the street side of this property would be about 30 feet. He explained that they’re estimating about a 10-to-12-foot ceiling height on the 1st floor and that a twelve pitch on a 32 foot wide span would put the building height at about 26 to 28 feet tall at the peak and then a little bit of exposed foundation would leave some leeway so that the structure would be under 30 feet in height. He stated that the lot would receive a new well and that there would also be a new septic system installed. He explained that as part of the site walk with the Conservation Commission, they had them stake out the original plan for the building as well as the 100-year flood elevation that's behind the structure.

Mr. Maynard read the letter from the Conservation Commission into the record, “Dear Zoning and Planning Board Members. We reviewed this case on December 13th, 2023, and again on January 10th, 2024. The Commission conducted a site walk on December 16th. This case is a proposed redevelopment of the site from a retired gas station to a hair salon/retail office space. The gas tanks were removed from the site in 2015. In addition, the site has been monitored by the state for any chemical gas residues for almost 20 years, monitoring will be done still for another few more years. The monitoring wells have measured levels within the acceptable standards for the state. There is no wetland impacts on the site. There will be approximately 4,000 square feet of wetland conservation district impacts for the construction of the proposed building and installation of the underground detention system. The permanent WCD impacts will be about 2,000 square feet for the building and about 2,000 square feet of temporary WCD impacts will be for the installation of the underground detention system and grading. Blueberry bushes are proposed to be planted within the WCD impact area behind the building after construction of the buildings is complete. The initial proposal called for a septic tank to be within the WCD, along with approximately half of the building. The building could not be moved from the WCD, but Mr. Maynard was able to move the septic tank to the north side of the building. Outside the WCD, he was also able to add two additional parking spaces for a total of 14 parking spaces. Commission Members appreciated these changes from the applicant. Commission members voted seven in favor and zero opposed to recommend the revised plan for this project”.

Mr. Maynard explained that as the letter stated he originally had the septic system on the west end of the site and with the changes that the Commission had him do and the easements that we ultimately were able to establish on the lot, the septic would now go to the easterly side of the site. He stated that with the request of the Conservation Commission to move the septic system out of the WCD, including the tanks, he has submitted a letter that withdraws that portion of the original application to the Board. He explained that now it would just be the building and drainage within it and that the septic components are outside of any of the jurisdiction that would be required as as part of this.

Mr. Maynard asked if the Board had any questions. Ms. Pigeon stated that she had no questions but that she appreciated the willingness of the owner and the designer to work with the Board. She explained that the septic in the WCD was her only comment at the last meeting and that it had been addressed in a stellar manner. She thanked the Conservation Commission for the work that they did on this. Mr. Wing added that he also appreciated their input and their willingness to take this on at their last meeting and on short notice.

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

**DISCUSSION**

*1. The variance will not be contrary to the public interest because;*

Mr. Wing explained that the criteria is that it doesn’t alter the essential character of the neighborhood, nor does it threaten public health, safety or welfare.

Mr. Hamilton agreed and doesn’t believe it’s contrary to the public interest and thinks that it would be an improvement on an existing eyesore.

Mr. Welch concurred with Mr. Hamilton and explained that what is there now is just an absolute eyesore right on our main road through town. He stated that people traveling through Town see this abandoned building there and having this nice brand-new building with this very well thought out plan that they were gracious enough to accommodate all of the issues that we had with it. He explained that is is a difficult lot and that they’ve really done everything that they could with it to meet all the criteria and still get a usable building out of it and he thinks that this is in the public interest.

Ms. Pigeon agreed with Mr. Welch and Mr. Hamilton.

Mr. Wing agreed that this would only be an improvement on the character of the the neighborhood there and that the applicant has gone through a good deal of effort to improve the safety of the waterway there.

*2. and the spirit of the ordinance is observed because:*

Mr. Wing stated that it's difficult to define, but if they feel that the ordinance is not being observed then he would like to know why.

Ms. Pigeon stated that the WCD is there to protect the wetlands themselves, and as long as there is a minimal disturbance, and it can be contained, then the spirit of the ordinance is observed. She explained that as far as the setback to lots and given that there's no neighbors then she believes that the spirit of the ordinance is observed.

Mr. Welch stated that he believes this is in the spirit of the ordinance.

Mr. Hamilton explained that he completely agrees. He stated that he thinks that they've figured out a great way to coexist with the WCD on the lot. Mr. Wing agreed and added that it was quite a challenge to Mr. Maynard to get this one in.

*3. Substantial justice is done because:*

Mr. Wing explained that the criteria is that any loss to the individual that is not outweighed by a gain to the public is considered an injustice. He stated that he thinks this is only a gain to both the individual and the public. He explained that in this case the individual gets their business, the public gets a building that has more curb appeal.

Mr. Welch stated that he would echo those thoughts and that there would be no reason that anybody would benefit to deny this. He explained that it was as Mr. Wing said, it's in the public's interest, it's in the property owners' interest, so yes, substantial justice is done.

Mr. Hamilton stated that he agreed.

Ms. Pigeon stated that it is good for the public, so nobody loses anything there and the owner gets a building for themselves.

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

Ms. Pigeon stated that they are not diminished and that it is improved.

Mr. Hamilton, Mr. Welch and Mr. Wing all agreed.

*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. Wing explained the criteria as being a special condition of the property that prevents it from being used in strict conformance with the ordinance.

Mr. Hamilton stated that the hardship is the footprint of the property itself.

Mr. Wing agreed that the hardship is the footprint. He stated that they’ve done well working with the Conservation Commission, with this Board and with what’s there to deal with the hardship and present the best product.

**CASE# ZO2023-00018**

**ROLL CALL VOTE**

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

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

Mr. Wing– 5 yesses, final vote “YES”

Mr. Welch– 5 yesses, final vote “YES”

**VOTE:** (4-0-0) The motion passed.

Variance was **GRANTED**.

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

**ZO2024-00001**

**Map 18 Lot 12-7**

**BUDGE, Alonso & Haley – 2 Indian Valley Road – Seeking a Special Exception concerning: Article XII Section 307-76 III of the Zoning Ordinance to permit applicant/owner to conduct a landscaping business from their home, with no more than 2 registered business use vehicles kept in view, and all other business related equipment garaged or screened from neighboring view, and a maximum of 2 non-resident employees.**

Ms. Masse-Quinn rejoined the Board.

Mr. Wing explained that this case had been continued from the last meeting and that the abutters had been read into the record at that time.

Attorney David Groff and Alonso and Haley Budge of 2 Indian Valley Road approached the Board. Mr. Groff stated that this is an application for a general home occupation and that he has furnished the Board with the application as well as photographs of the site. He explained that the house was built in 1976 according to the tax card and that the previous owners bought the property in 2002. He stated that they operated a business from the property without coming before the Board because they didn’t know if any special exceptions were granted. He explained that the property was advertised to his client as a large private area used to store heavy equipment, RV's, additional parking for parties or businesses, a beautiful neighborhood business location. He stated that the previous owner had been operating his landscaping business for quite some time. He explained that he has given the Board a couple of pictures of what the property looks like from the street, from the air, and across the street as well as a site plan which depicts what is on the property. He stated that there's a fence that surrounds the entire backyard area, so basically the entire part of the lot that's used to store the landscaping equipment is screened from the neighbors used by that fence which has been the case since before my client bought the property. He explained that the reason they're before the Board is because he has more than two business vehicles there, but that he doesn't operate anything on site. He stated that it’s a landscaping business and, in the offseason, they do snow plowing. He explained that he has his equipment there and then he goes off and does his landscaping and snow plowing off site. He stated that the only people that work there are Mr. and Mrs. Budge, and they live there with their kids. He explained that there is a small 10’ x 10’ office and that all the equipment, which consists of a couple of trucks, a bobcat, some trailers, some lawn mowers, commercial lawn mowing equipment and their snow plowing attachments to the trucks are all stored in the fenced in area behind the house.

Mr. Wing asked if the photos were recent and if they were of the current or previous owner’s equipment. Mr. Groff replied that Mr. Budge took all those photos when they were getting together the application information.

Ms. Pigeon asked if there were employees. Mr. Groff replied that there are employees of the business, but they don't operate at this location, they come and pick up the equipment. Ms. Pigeon asked if they would come with their cars and take the equipment out and come back to pick up their cars and go home. Mr. Budge replied that three out of the four employees take trucks home and the fourth employee brings his own vehicle.

1. ***The occupation is clearly secondary and subordinate to the primary residential use and shall not change the residential character of the neighborhood.***

Mr. Groff explained that from the photographs, you can't really see the business use and that it is secondary to the residential use. He stated that there's a detached garage, there's the pool in the back and a landscaped front yard. He explained that it is a single-family residence.

1. ***It shall not consume more than 49% of the gross residential living space, including accessory structures, and shall not change the residential character of the property.***

Mr. Groff explained that there's a small office there, but other than the storage of the equipment that's all that's on site.

1. ***A maximum of two on-site non-resident employees.***

Mr. Groff stated that here aren't any on-site non-resident employees.

1. ***Not permitted in a duplex or multi-family dwelling.***

Mr. Groff stated that It's a single-family residence.

1. ***One sign which advertises the business is permitted. It shall be unlighted and shall not exceed three square feet.***

Mr. Groff stated that there's no sign.

1. ***All outdoor storage, display, and any other external indication of the business activity shall be screened from neighboring view.***

Mr. Groff stated that that's all contained within the fenced in area behind the house.

1. ***Any use that may be objectionable, noxious or injurious by reason of the production of emission of odor, dust, smoke, refuse matter, fumes, noise, vibration, heat or excessive illumination is prohibited. In addition, the use, storage, or disposal of hazardous materials, chemicals, by-products, medical waste or similar items considered dangerous to health and safety shall not be permitted without full local and state regulatory approval.***

Mr. Groff explained that there's none of that on this property. He stated that there's just the storage of the equipment, and then they take it off site to where they're going to perform their work.

1. ***A maximum of two registered vehicles related to the business may be kept in view. All other business-related equipment must be garaged and screened from neighboring view.***

Mr. Groff stated that he didn’t believe that there are any vehicles that are kept in view, so that's not really an issue.

1. ***Delivery of goods and materials is limited to vehicles customarily associated with residential deliveries.***

Mr. Groff explained that there's no delivery of goods or materials connected with this business and that it's just simply landscaping and then in the off-season snow plowing.

1. ***Customer parking shall be provided off-street and may not be located within the required front, side or rear setbacks of the property.***

Mr. Groff stated that there's no customers that come to the business.

1. ***No retail sales other than those that are incidental to and customarily associated with business use for which the permit was issued.***

Mr. Groff explained that there aren't any retail sales, so nobody comes to the business to to do business with this company.

1. ***An accessory structure built or converted for home occupation purposes shall be a size, style and type that is compatible with the surrounding neighborhood and capable of reversion to uses that are customarily accessory to residential.***

Mr. Groff stated that the owners didn’t plan to construct anything.

1. ***Where the proposed General Home Occupation shall result in an increase of the amount of wastewater to be discharged it shall be shown by the applicant that there is subsurface wastewater disposal system that has been approved by the New Hampshire Water Supply and Pollution Control Commission (NHWSPCC) or that a system adequate for the proposed use shall be installed as a condition of issuing a Special Exception.***

Mr. Groff stated that there aren't any additional bathrooms or additional strain on the existing septic system.

Ms. Pigeon asked if Mr. Groff could explain how the contours of the property are screening the equipment. Mr. Groff stated that the backyard is lower than the street level, so it's below the fence level. Ms. Pigeon stated that there’s not berms on on the edges and that it’s just that the back is lower. She asked if the fence in the back is transparent. Mr. Budge replied that the fence in the back has privacy slots that are made to look like vegetation. Ms. Pigeon stated that when she was looking at the picture that she could kind of see the top of the fence, but that she could kind of see the trees behind it or that maybe the trees are in front and that it looks like she can see the trees from the the overhead pictures. Mr. Budge explained that that's a portion of fence that they recently repaired and that they hadn't put the privacy slots back in at that time that this picture was taken. He stated that it now has the same privacy slots as what is there on the sides. Ms. Pigeon asked if they did any fertilizing. Mr. Budge replied that they did not. Ms. Pigeon asked if any gas or oil was kept on the property. Mr. Budge explained that the enclosed trailer has two gas containers inside of it. Ms. Pigeon asked if they had salt rock or sand for the winter plowing. Mr. Budge replied that they did not. Ms. Pigeon asked if they wash the equipment on site. Mr. Budge replied that he rarely did. Ms. Pigeon stated that it would be an increase of wastewater if they washed the equipment.

Ms. Pigeon asked if they were to give a special exception for a landscaping business, even though they may not be doing fertilizer right now, would that allow fertilizer to be done in the future. Mr. Groff replied that they could put reasonable restrictions on the special use exception according to the Statute and if that's something that they're concerned with, that would be something that the Board could discuss. He stated that this would go to the Planning Board for a Site Plan review if approved.

Mr. Wing stated that this Board could make that stipulation, or they could make that suggestion to the Planning Board. Ms. Beauregard explained that the Planning Board would weigh in on any lighting or parking and hours of operations but that this Board could have reasonable conditions as well.

Mr. Welch asked if they repair any of the equipment on site. Mr. Budge replied that they repair only the small mowers and that any of the trucks would go out to mechanics. Mr. Welch asked if the mechanic comes out to the site. Mr. Budge stated they don’t and that they go to them. Mr. Welch asked what the average time a day that the equipment is coming and going. Mr. Budge replied that the guys usually come in at 7:00/7:30am and are rolling out by 8:00am and they never come back later than 6:00pm. Mr. Welch stated he would be more so concerned in the morning with disrupting the neighbors. Mr. Budge stated that they also live in this neighborhood and doesn’t want people to hate them, so they are very conscious of the of the noise thing. Ms. Budge added that they have small children and that she would be upset if they left at six in the morning.

Mr. Wing asked if they operate on weekends. Mr. Budge replied that they don’t work on Saturdays, maybe rarely for snowstorms.

Mr. Hamilton asked if they had private contracts for snow plowing or if they plow for Pelham. Mr. Budge stated that they currently plow for the Town of Salem and a couple of private contracts. He explained that everything that is associated with the Town of Salem stays in the yard at the DPW in Salem and and then they do have private contracts on site. Mr. Hamilton asked how big the containers of gas are that are on site. Mr. Budge replied that they were five gallons and that there isn’t a refueling station or anything like that.

Mr. Wing opened the floor to the public to anyone who was in favor of this proposal.

Mr. Ivory Macklemore of 5 Koper Lane approached the Board. He explained that he’s been a resident for 23 years and that they are very nice neighbors. He stated that they’ve been doing whatever they can do to help the neighborhood. He explained that he’s seen trash trucks come earlier than they leave for work. He stated that he’s seen no problems since they've been there and doesn’t see why there would be a problem. He explained that in the neighborhood you’re familiar with who your neighbors are because the walk up and down the street with their kids. He stated that it’s a family business in his eyes and they’ve only added to the neighborhood.

Ms. Cynthia Gibbon of 9 Koper Lane approached the Board. She explained that since these people have moved into the neighborhood, they've helped so many people and neighbors with small little things. She stated that they're always willing to help. She explained that they don't make any noise and that she never hears them coming and going. She stated that she’s lived there for 50 years and that she welcomes them into the neighborhood.

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

Mr. Welch asked if the applicant kept the large loaders on site in the offseason. Mr. Budge stated they did not and that a friend of his in Salem lets them borrow an area for their large loaders, and that the only thing that's ever kept at the house is a bobcat or a mini excavator. He added that as they grow this becomes a temporary solution and that the size of this property only allows for so much. He stated that right now it works for them and in the future it may not. He explained that he is very conscious that this is his neighborhood and that this is where he lives. He stated that his idea was if they were going to run a business out of the home then the front of the property would need to be pristine and that they’ve put a ton of money into trying to make that the case.

**DISCUSSION**

Mr. Wing stated that the applicants have read through the 15 criteria and as long as the 15 criteria are satisfied, which is up to this Board to decide, then the request for a special exception has been satisfied and it proceeds to the Planning Board.

Mr. Wing stated that Ms. Pigeon had a comment on the chemicals stored on the site. Ms. Masse-Quinn stated that that could be a reasonable restriction out on by the Planning Board but that it’s self explanatory in 307-76 that the conditions have been met. She explained that Mr. Groff walked them through all the criteria and would like to vote to approve the special exception.

**MOTION:** (Pigeon/Hamilton) Recommendation to the Planning Board that there is a restriction on the use of chemicals.

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

**Case #ZO2024-00001**

**ROLL CALL VOTE**: Mr. Welch - “YES” with recommendation

Mr. Hamilton - “YES” with recommendation

Mr. Wing - “YES” with recommendation

Ms. Masse-Quinn - “YES” with recommendation

Ms. Pigeon - “YES” with recommendation

(5-0-0) The Special Exception was **APPROVED**.

Mr. Wing informed the applicant and the public that there is a 30-day right of appeal.

Ms. Beauregard reminded the public and the Board that they are in need of more members. She stated that there is an open spot for a member and that they are in need of alternates as well.

**DATE SPECIFIED CASE(S) – June 10, 2024**

*Case #ZO2023-00015 – Map 31 Lot 11-20 – PAGE, Andrea & BILAPKA Bruce – 37 Woekel Circle*

**ADJOURNMENT**

**MOTION:**  (Welch/Masse-Quinn) To adjourn the meeting.

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

The meeting was adjourned at approximately 7:50pm

Respectfully submitted,

Cassidy Pollard

Recording Secretary