

BOARD OF
ZONING AND BUILDING LAW APPEALS
PEMBROKE, MASSACHUSETTS
02359

Case #29-17

January 17, 2018

The members of the Zoning Board of Appeals hereby certify that the following is a detailed record of all the Board's proceedings regarding the petition of Richard Pugsley regarding property located at 27 Old West Elm Street, as shown on Assessors' Map B-13, Lot 19, said property owned by Richard and Donna Pugsley, which is the property affected by this requested special permit.

The petition to the Board is dated October 5, 2017. The petition requests a special permit as per Sec. V, 5. Non-Conforming Property of the Zoning By-Laws of the Town of Pembroke to retain an existing shed that has been in the existing location for years.

A notice of the public hearing on this petition will be retained in the file. It was published in the Pembroke Mariner and Express, a newspaper of general circulation in the Town of Pembroke on November 3, 2017 and November 10, 2017, posted in a conspicuous place in the Town Hall and mailed on November 6, 2017 to abutters whose property is located within 300 feet of the property line of the property in question. The notice was mailed to the names of the persons at the addresses as provided by the most recent tax list kept by the Town Assessor.

The public hearings on this petition were held on Monday, November 20, 2017 at 7:10 p.m., Monday, December 11, 2017 at 7:00 p.m. and Monday, January 8, 2018 at 7:00 p.m. in the Pembroke Town Hall Hearing Room at which time opportunity was given to all those interested to be heard in favor or opposition to said petition. The following members of the Board were present at the hearing: Rick Casavant, Vice Chairman, Christine Griffin, Alternate, and Linda MacDonald, Alternate. The tape recording of the hearing is attached to the file and a copy of the tape will be provided upon request.

November 20, 2017 at 7:10 p.m.

Casavant:	Opens hearing by reading notice as it appeared in the Pembroke Mariner and Express and turns floor over to the petitioner for presentation of his request.
Pugsley:	I'm requesting a special permit to retain an existing shed that has been on my non-conforming property. It is a six foot by eight foot shed and under the 200 square foot for which no permit is needed. The shed is used for rakes, shovels etc., not harmful to the neighborhood and aestically appealing and pleasing to look at. It would be a financial hardship to move it. There's electricity involved, field stones around the base, and mature plantings all around the shed. Conditions in the back are wet and there is a

steep slope on the side yard. I have letters from my abutters in support of the shed being in its location and passes letters to the Board.

Casavant: The shed is completely on your property?

Pugsley: Yes, it is.

MacDonald: How old is the shed?

Pugsley: Roughly fifteen years old. A few years ago it was re-sided to match the house.

Casavant: So it was there when you bought it?

Pugsley: It was on the property when I bought it and I did move it to that location.

MacDonald: Why did you move it?

Pugsley: It is a more convenient location to get to and I built a new shed in the other location.

Dowling: I think the problem is this portion of her yard was all trees and shrubs and she took the trees and shrubs out and now she see the shed.

Pugsley: There were trees and brush behind the shed and before I moved it I spoke to my neighbor and she said there wasn't a problem with it being there.

C.French: You did not.

Pugsley: Shows the Board pictures of what it did look like. When I came home one day Carol and her brother had cut down the trees and brush and just left the stumps.

MacDonald: But that was on her property.

Pugsley: No, it wasn't. He presents pictures to the Board of what it looked like.

I try to be a good neighbor. I leave her wood for burning, when her house got broken into, I boarded up the window, I check on her during the winter time.

Casavant: Does the Board have any questions?

Griffin: Not at this time.

MacDonald: No.

Casavant: Then lets open the floor for questions or comments.

C. French: I have objected all along to the shed being so close to the lot line. It obstructs my view of the street. All I see from my dining room window is the back of his shed.

Dowling: Whom did you object to? The drawing with this petition is dated 2012 and the shed was there then and before that there was a tree there.

Pugsley: I was told to take the tree down as it was dying and would have fallen on either her house or my house.

Casavant: Anyone else have anything to say?

D. Turner: I'm from Norwell and a friend of Carol's. Your Zoning By-laws state that no building or structure shall be erected within 20 feet of

the side lot line. It may have been non-conforming in its original location, but not when he moved it.

Casavant: Anyone else have something to say?
(no response)
So we'll close the public portion.

Casavant: My issue is it was moved and placed in a spot closer than 20 feet from the side lot line.

Griffin: On the flip side its been there for four years and this is the first we've heard of it.

MacDonald: I'm concerned that all the shrubs were taken down near the shed.

Casavant: I think we all should take a look at the site.

Dowling: The hearing can be continued.
The hearing was initially continued to Tuesday, December 5th at 7:00 p.m. and later changed to Monday, December 8th at 7:00 p.m.

MONDAY, DECEMBER 8, 2017 AT 7:00 P.M.

Casavant: Reopens hearing and ask Mr. Pugsley if he had heard from this neighbor.

Pugsley: No.

Casavant: There are two issues in this. One, we're creating another non-conformity. In real relief this needed a variance as you're creating a new non-conformity.

Pugsley: I was told that as its been in that spot more than four years and twenty years on the property, all I needed was a special permit.

Casavant: But you've created a new non-conformity.

Dowling: How about if they plant a new buffer?

Casavant: Under 40A there's a grandfather clause where when certain structures are up for a certain amount of time and no one challenges them, they can be grandfathered in.

Dowling: The way this has been done in Pembroke is you go to the Building Department and ask if you need a building permit. You're told that if it is under 200 square feet, the answer is no you just have to meet the setbacks. If it's a non-conforming lot and you can't make the setbacks, then you need a special permit.

Casavant: I believe it should have been a variance as it is a new non-conformity.

Casavant: The difference in this is you have a direct abutter in attendance who says they have a problem with this. So, if there's any way you can work something out with them say with screening.

Pugsley: We'd be up with that.

Casavant: You may be grandfathered in or you have to work something out with her.

Gallagher: How far is the building from the property line?

Pugsley: About ten feet.

Gallagher: She wanted it moved another ten feet?

Pugsley: No, she didn't want it there at all.
MacDonald: When it first went up, the shrubs were there and the shrubs came down recently?
Pugsley: Yes, I have the pictures.
MacDonald: And the shrubs were on your property?
Pugsley: Yes.
MacDonald: And she took down your shrubs?
Pugsley: Yes, as she said it was blocking her view.
Mrs. Pugsley: I believe it was blocking her satellite dish.
Pugsley: It seems the problems started when she got the satellite dish about two months ago.
MacDonald: She had no problem with the shed when you put it there?
Pugsley: Correct. I've always looked after her and tried to help her on things she might find difficult.
Casavant: And you haven't had any luck talking to her since the last meeting?
Pugsley: No, and I haven't seen her.
MacDonald: The shrubs that were there, how tall were they? Did they cover the height of the shed?
Pugsley: They were taller than the shed and shows in the pictures.
MacDonald: And they were on their property and were blocking her view of the road.
Griffin: So either way she wouldn't see the street.
Pugsley: The problem is the satellite. She couldn't get a signal on the roof so she moved it to the ground a couple of month ago.
MacDonald: My point is if the shrubs were still it would still be the same obstruction.
Casavant: I'd like you to look into the grandfathering proposition. We must keep in mind that this is a direct abutter complaining. Board members have anything to add?
MacDonald: I agree with you regarding that this is a direct abutter, but I'm not sure of what her real issue is.
Pugsley: If she has a problem why is it coming out now, not four years ago?
Casavant: I really think you should look into the grandfathering as that would mean you need no relief. Also, maybe make one last attempt at settling with her and we'll continue this hearing.
MacDonald: When I asked her why she cut down the shrubs, she didn't answer me and I asked her more than once.
Gallagher: Did she ask the Pugsleys before she cut down the shrubs?
Pugsley: No, she just cut them down and I took pictures of her and her brother doing so.
MacDonald: If they put the shrubs back in, then the shed is a non-issue.
Casavant: Promise a decision will be made at the next meeting and when will that be?
Dowling: Monday, January 8, 2018 at 7:00 p.m.
Casavant: Hearing adjourned.

Monday, January 8, 2018 at 7:00 p.m.

Casavant: Reopens the hearing, and ask petitioner to bring Board up to date.
Pugsley: After the last meeting, at the suggestion of the Board, I wrote a letter to my abutter to see if any plantings would help alleviate the situation of the sight of the shed and I also enclosed a drawing of what it could look like.

Casavant: Did you get any response to the letter?
Pugsley: No.
Casavant: Michele, would they have to reapply if we said this should be a variance not a special permit

Dowling: We've done it before that we allowed him to verbally withdraw the special permit and request that it be a variance.

Casavant: That's my thought, do the other Members agree?
Griffin: Agree.
MacDonald: Agree.

Casavant: Anyone else here for or against this?
List of abutters attached in favor of Mr. Pugsley.

C.Dodge: The Pugsley purchased an aging piece of property and have made it beautiful.

C.French: All I'm saying is that he doesn't meet the setback.
Casavant: Okay, I believe everyone has had their say and I'm closing the hearing to the public.

Pugsley: My only question is why is this a problem now when it hasn't been a problem during the past four years.

Casavant: Christine, do you have anything?
Griffin: No.
MacDonald: We've already gone over the issues involved.

Casavant: I think it has to be a variance.
Griffin: We'll make a motion to withdraw the request for a special permit and ask for a variance of side yard requirements.


Casavant: In looking at the standards for a variance I think there is substantial hardship and it seems that all your neighbors, except your abutter, are in favor of his petition. I don't see it being a substantial detriment to the public good, it's a small shed. I don't think it takes away from the purpose of the bylaws. I'm inclined to allow the variance, but put it to a vote of the Board.


MacDonald: I agree.
Griffin: I also agree, but feel it should be conditioned on the plantings that within six months there should be plantings made.

Casavant: You want to make a motion.
Griffin: I make a motion to allow a variance as per Sec. IV, 1. D. 3. Side Yard Requirements of the Zoning By-Laws of the Town of Pembroke to retain the existing shed that has been in the existing location for approximately the last four years after finding a literal

enforcement of the bylaw would involve substantial hardship, financial or otherwise, to the petitioner. This does not substantially derogate from the purpose of the bylaw. Plantings, arborvitae or something of that nature six to eight feet in height to resemble that shown in the drawing presented to the Board at the January 8, 2018 meeting are to be planted within six months of the issuance of the variance and the shed to be no closer than ten and one-half feet of the side property line.

MacDonald:	Second.
Casavant:	All in favor.
Casavant::	Aye.
MacDonald:	Aye.
Griffin:	Aye.
Casavant	Motion carried.
	Hearing adjourned.


Frederick Casavant
Vice Chairman


Linda MacDonald
Alternate


Christine Griffin
Alternate