



TOWN OF FRAMINGHAM  
ZONING BOARD OF APPEALS

150 Concord Street B2  
Framingham, MA 01702

2016 NOV -7 P 4: 32

TOWN CLERK  
FRAMINGHAM

BOARD OF APPEALS CASE NO. 16-28

PETITION OF PELHAM LIFE LONG LEARNING CENTER, INC.

DATE OF DECISION: OCTOBER 24, 2016

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of PELHAM LIFE LONG LEARNING CENTER, INC. (hereinafter the Applicant), for property located at 103 & 65 SECOND ST. This Decision is in response to a Petition for a Variance from front yard setback and corner clearance requirements of the Zoning By-Law (hereinafter the Application) for the construction of a new educational community center.

2. Property Owner

The Pelham Corporation  
165 Grandview Road, Suite 207  
Braintree, MA 02184

Applicant

Pelham Life Long Learning Center, Inc.  
165 Chestnut Hill Ave, Ste. 2  
Brighton, MA 02135

3. Location

Property is located at 103 & 65 Second Street and identified by Assessors' Parcel IDs 136-35-2238-000 and 129-36-2238-000 (hereinafter the Site).

4. Board Action

After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on October 24, 2016 the Board voted to GRANT the requested VARIANCES by a unanimous vote in favor of the petition of three (3) members sitting on the Application. The record of the vote is stated as follows:

PHILIP R. OTTAVIANI, JR.	YES
SUSAN S. CRAIGHEAD	YES
STEPHEN MELTZER	YES

5. Proceedings

The Application was received by the Board on August 30, 2016 pursuant to MGL, Ch. 40A, §10, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on October 24, 2016 at 7:45 PM in the Ablondi Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, and Alternate Robert Snider were present throughout the proceedings. The Application was opened and deliberated concurrently with case no. 16-27, an Appeal of the Building Commissioner's determination that Variances were required, for the same project. The minutes of the public hearing and submissions on which this Decision is based, which

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together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

The Applicant's counsel, architect, and representatives were present at the hearing and explained that the requested placement of the structure was necessary due to the constrained space on the site and the nature of the structure's use as a community gathering place. A board was displayed showing the Intersection Sight Distance analysis prepared by Vanasse and Associates (Exhibit 6.10), which demonstrated that the intersection would operate safely with the requested placement of the structure. Board members had no concerns.

## **6. Exhibits**

Submitted for the Board's deliberation were the following exhibits:

- 6.1. Letter of determination from the Building Commissioner stating that the proposed project would require Variances for front setback and corner clearance, dated August 5, 2016.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on August 30, 2016.
- 6.3. Filing fee in the amount of \$500.
- 6.4. "Continuation Sheet" summarizing the Applicant's submittal, stamped "Received" by the ZBA office on August 30, 2016.
- 6.5. Correspondence from the Applicant's counsel to the Building Commissioner dated August 1, 2016.
- 6.6. "Exhibit A" to the Application containing articles of incorporation for Pelham Life Long Learning Center, Inc.
- 6.7. "Exhibit B" to the Application containing a brief description of the proposed facility.
- 6.8. "Exhibit C" to the Application, a plan set containing site plan, floor plans, and architectural drawings, numbered 1 to 9 of 9 and A-1 to A-3; prepared by Winslow Architects Inc., Arlington, Mass., dated June 28, 2016.
- 6.9. "Exhibit D" to the Application, a Quitclaim Deed to the property.
- 6.10. Memorandum of support of the Application, dated October 18, 2016, from Applicant's counsel, Peter L. Freeman, of Freeman Law Group, LLC.

Exhibit 6.8 shall be hereinafter referred to as the "Plan."

## **7. Findings and Conclusions**

Based upon its review of the Application, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1. The property is located within the General Residence (G) zoning district.
- 7.2. On August 5, 2016, the Building Official denied the Application to construct the proposed educational facility, ruling that the Town's front setback and corner clearance requirements (Zoning Bylaw §IV.E.2 and §IV.E.5.c) were "reasonable regulations" under M.G.L. c. 40A §3 (the "Dover Amendment").

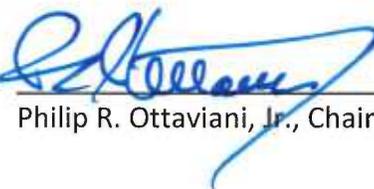
- 7.3. On August 30, 2016, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining Variances from the Zoning By-Law. The Applicant simultaneously filed a separate Application to Appeal the Building Commissioner's interpretation of the Dover Amendment, arguing that Variances could not be required.
- 7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on October 9 and October 16 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11. One Town Meeting Member from the affected precinct, Laura Keith, was present and spoke in support of the project.
- 7.5. The required front setback in the G district is 30 feet. The proposed structure would be placed 10 feet from Taralli Terrace and 12 feet from Second Street. The Building Commissioner determined that the corner clearance requirement would not be met, as sight lines may be impeded with the structure closer to the street than allowed.
- 7.6. The Variance standard established by the G.L. c. 40A §10 and the Framingham Zoning By-Law is a demanding criterion. The Board must find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures, which especially affect such land or structures but do not affect generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Also, the circumstances under which a Variance may be granted are not unlimited.
- 7.7. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variance is being sought. *The Board finds that this parcel is unique given the space constraints and location on a corner lot within the neighborhood.* Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located.
- 7.8. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner. *The required front setback of 30 feet applies to the frontage on Taralli Terrace and Second Street. If enforced, this would render much of the lot unusable and would make the project impossible.*
- 7.9. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law or from the intent of the district in which the Variance is being sought. *The Board is satisfied with the traffic consultant's analysis that sight lines will not be impeded. Therefore, the requested relief may be granted without detriment to the public good. The proposed community learning center is different than the intended residential use of the zoning district, but it is protected under the Dover Amendment.*
- 7.10. The Board grants these Variances with the following condition:
  - 7.10.1. The proposed structure shall be located and constructed as shown on the Plans.

- 7.11. This Decision applies only to the requested Variances. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- 7.12. If the rights authorized by these Variance are not exercised within one year of the date of grant of such Variance, such rights shall lapse. The Applicant may request an extension to the one year period by submitting a written Application for extension prior to expiration of the one year period. However it is solely within the discretion of the Board to grant such an extension. An extension shall be for a period not to exceed six (6) months. If the Board fails to act on the request for extension within thirty days of the date of the requested extension, all rights authorized by this Variance shall lapse at the expiration of the one year period. If the Variance lapses, such rights pertaining to the Variance may only be reestablished after notice and a new hearing pursuant to G.L. c. 40A, §10.
- 7.13. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official
- 7.14. The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the Town of Framingham.

**8. Appeals**

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the Town Clerk.

ZONING BOARD OF APPEALS

By:   
Philip R. Ottaviani, Jr., Chairman