

APPROVED
TOWN OF PELHAM
PLANNING BOARD MEETING MINUTES
April 15, 2019

Chairman Roger Montbleau called the meeting to order at approximately 7:00pm.

PLEDGE OF ALLEGIANCE

Secretary Cindy Kirkpatrick called the roll:

PRESENT: Roger Montbleau, Paul Dadak, Tim Doherty, Jim Bergeron, Blake Clark, Cindy Kirkpatrick, Selectmen Representative Hal Lynde, Alternate Richard Olsen, Alternate Bruce Bilapka, Planning Director Jeff Gowan

ABSENT: Alternate Derek Steele, Alternate Paddy Culbert, Alternate Samuel Thomas

MEETING MINUTES

April 1, 2019

MOTION: (Lynde/Doherty) To approve the April 1, 2019 meeting minutes as amended.

VOTE: (7-0-0) The motion carried.

NEW BUSINESS

PB Case #PL2019-00007

Map 16 Lot 12-105

NEW ENGLAND BAPTIST CHURCH – 15 Webster Avenue - Seeking Planning Board to clarify and/or modify Planning Board Notice of Decision dated September 21, 2010, Condition #7 which reads “*Plan note that describes the preservation of the existing farmhouse*” Applicant proposes to utilize the farmhouse as a two-family dwelling

Ms. Kirkpatrick read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Mr. Doherty asked if the abutter’s list was the original list from when the plan was submitted as a conservation subdivision or if the abutters living next to the parcel of land was included. Ms. Kirkpatrick stated she read the list of abutters contained in the stack of documents (from the Planning Department). Mr. Doherty asked Mr. Gowan if it was the original abutter’s list. Mr. Gowan replied the list was everyone within 200ft. of the subject parcel, which is the legal definition of abutters. Mr. Doherty questioned if the names of everyone on Lady Slipper Avenue were read, or if the names of those living around the conservation subdivision were read. Mr. Gowan replied (they read) every property owner within 200ft. of the subject lot (parcel), not the whole subdivision. Mr. Doherty wanted to know if it was the abutters around the conservation subdivision, the original parcel of land, or if the abutters list was for those (properties) around the one lot (Lady Slipper Avenue and Webster Avenue). Mr. Gowan stated (the list) was every property owner within 200ft. of the subject parcel, not the whole subdivision. Mr. Doherty confirmed Mr. Gowan wasn’t considering the ‘subject parcel’ the ‘conservation subdivision’. Mr. Gowan replied the ‘subject parcel’ was the ‘subject parcel’ and the properties notified were within 200ft.

Representing the applicant was Senior Pastor of New England Baptist Church Joseph Hawkins. He said the purpose was to make the existing property at 15 Webster Avenue a legal two-family property and clarify the original documents from 2010. He said they wanted an understanding of what they could and could not do regarding renting the property out.

Mr. Montbleau asked if it would be a condominium-style ownership or if it would be rented out for two families. Mr. Hawkins explained there were currently three floors with a third-floor dwelling. He said they were going through the process so they could make (the structure) a legal two-family. He noted there were already amenities in place (i.e. kitchen), they were going forward to see if they could make it legal as far as zoning is concerned. Mr. Gowan explained that the farm house was set up to be a working farm house with residents who worked the farm. He said they had some code issues with people living there. The applicants would have to spend some money on the structure. The acreage and frontage would allow for it to be brought up to code for a duplex, but because of the plan restriction, Mr. Gowan felt it was appropriate for the applicant to come in front of the Planning Board and explain their goal and find out whether or not they needed relief from the restriction. Mr. Montbleau believed the Board was concerned with maintaining the 'look' of the structure. Mr. Hawkins stated he had the Building Inspector review the building to see what they needed to do to make it a legal dwelling. He discussed the items they would need to correct and the fact that they contacted the Planning Department to understand the process.

In reviewing the conservation subdivision regulations, Mr. Clark said it was clear conservation subdivisions were intended to only be single-family residences. He inquired if the parcel had been subdivided out (of the development) prior to the Lady Slipper Avenue subdivision, or if the parcel was included in the conservation subdivision. Mr. Doherty explained when the parcel came in front of the Board it was one large parcel of land. He stated when the yield plan was presented to the Board there were three yield plan lots that had either frontage or acreage as part of the plan. The amount of lots that were able to be built included the acreage and frontage along Webster Avenue (associated with the lot being discussed); Mr. Doherty added that the applicant (at the time of approval) was given bonus lots because the structure was considered historical. Mr. Doherty believed three or four of the existing houses wouldn't be there (in the development) if the 'subject parcel' had been subdivided out and the remainder of land was built as a conservation subdivision. He noted they probably would have had enough land to build a conservation subdivision, but it would have had three to four less houses. Mr. Doherty pointed out if another unit was allowed, the development would be in excess of the 20% density grant that is allowed by a conservation subdivision. This would not only violate the section of zoning brought up by Mr. Clark; it would also violate the granting of 20% bonus density. Mr. Clark wondered if the submission was a zoning relief situation. Mr. Doherty commented there were pessimists over the years that had voiced concerns that conservation subdivisions would come back to the Board trying to seek more units (density lots) than were granted under their yield plan. He said the proposal in front of the Board was to try and do so.

Mr. Clark questioned if it was a Zoning Board or Planning Board issue. Mr. Doherty replied it was under Innovative Land Use for the Planning Board to decide.

As it stood today, Mr. Lynde understood they were all individual lots. Mr. Doherty replied they were individual lots built out within a conservation subdivision. Mr. Lynde believed as an individual lot it satisfied the criteria to have a duplex. Mr. Doherty noted it wasn't a conventional lot, it was a conservation subdivision lot included with a conservation subdivision development. He said the number of lots contained on Lady Slipper Avenue would have been greatly reduced if the 'subject lot' wasn't part of the (original) yield plan. He reiterated that the frontage and acreage was used to prove a yield plan; on top of proving the yield plan, the 'historical building' was used to get additional bonus density. Mr. Doherty said this was an after-the-fact situation for additional bonus density. He explained the reason he asked about the abutter's list was because the entire development was a conservation subdivision.

Mr. Gowan had no disagreement with what Mr. Doherty represented. He said the thing that made the situation a little unusual was the lot contained 3.09 acres and the other lots were each approximately a half acre. He said

the only thing that stopped the Planning Department from signing off on a duplex was that the topic being discussed had come up in the past and he wanted to see how the Board felt before they took action.

Mr. Clark asked how many square feet of the house would become the duplex portion. Mr. Hawkins replied they weren't adding anything to the house. Mr. Clark was trying to understand if the Accessory Dwelling Unit Ordinance ('ADU') would be a way of creating a unit inside the house without creating a duplex. Mr. Hawkins believed it may be 700SF. Mr. Clark believed the square footage fell under the ADU, which may be the most straight forward approach.

Mr. Doherty noted the Stagecoach Circle lots (frontage lots) would have been preserved (for view shed) in a conservation subdivision. He said the developer indicated that the structure (farm house) was historic and received bonus lots. He said the large parcel of land was carved out to be preserved so the out-buildings would look remain looking like a farm.

As he came to the meeting, Mr. Montbleau understood that note #7 on the Notice of Decision was included because the Board wanted the structure to maintain its appearance as a historic farm. Now he heard from members: 1) the original applicant received a density bonus through the conservation subdivision, 2) it had enough land (3.09 acres) for a duplex and 3) had qualifications for an ADU. Mr. Clark pointed out that the conservation subdivision regulations prohibit multi-family/duplex homes. Mr. Doherty read aloud a portion of the regulation - Section 307-106 – General Requirements – that indicates only single-family detached residential units shall be permitted. He said it also indicates there shall be 30ft. between units in the development. He stated having a duplex didn't qualify within a conservation subdivision, which the 'subject lot' was part of. He was unsure if the Board could or would stop an ADU in a conservation subdivision because the home would still be considered 'single-family'. Mr. Doherty didn't feel the Board should grant a duplex at the location and spoke about a case involving the property across the street.

Mr. Clark discussed the request and explained that he asked if the lot had been separated out so he would know if it was a conservation subdivision lot. He now understood that the 'subject lot' was included in the formation of the conservation subdivision as a conservation subdivision lot. Mr. Doherty believed if it wasn't included in the conservation subdivision a couple of the other lots wouldn't have been included either. He felt the applicant was 'had' by the developer because of the way the development was done.

Mr. Bergeron asked if the applicant was the owner in title at the time the conservation subdivision originally came to the Planning Board and was approved. Mr. Hawkins answered no. Mr. Bergeron felt if the conservation subdivision was predicated on the farm house being preserved it was a black and white restriction because only single-family dwellings are permitted. He said converting to a duplex would violate Zoning. He believed if the original applicant indicated they were going to put a duplex on the lot there would have been an increase in the land size that went against the calculation for the density offset. He'd need to see the homeowner's documents and meeting minutes to see if the area was kept in preservation, but at this point agreed with the statements of Mr. Doherty and Mr. Clark that the proposal would be a subdivision of a subdivision. He said the request of changing the lot (from the original approval) was precisely the concern of people that he'd spoken with. Mr. Bergeron believed note #7 on the Notice of Decision was clear. He understood the request but didn't feel it was in the power of the Board to allow it because of how the lot was part of a conservation subdivision. He also reiterated that duplexes were prohibited in conservation subdivisions.

Mr. Lynde understood that the applicant wasn't involved in the original conservation subdivision. He asked if it was the only property the applicant owned. Mr. Hawkins answered yes; his predecessor (Pastor Michael Thomas) purchased the property (5-6 years ago) with the intent of possibly starting a church at the location. He said nothing ever came from that, so the first two levels had been rented out. Since he became the pastor (July 2018), Mr. Hawkins stated he was trying to get the best use out of the property without selling it to someone else. Mr. Lynde said legal advice may be needed to find out if the applicant had a right to treat the property as a stand-alone lot; if it is, they might be entitled to a duplex. He understood the arguments brought up by Board

members but felt the question should be settled. Mr. Gowan spoke on the request. Mr. Clark noted that an ADU had to be owner-occupied. Mr. Gowan agreed that the owner had to live in one half or the other. In this case the dwelling is owned by a church. Mr. Clark felt that was an interesting question.

Mr. Doherty read aloud a portion of the regulations, Section 307-102 that addressed density offsets being based on the number of lots or units being achievable under the yield plan base line. He went on to read in no instance shall the Planning Board grant density offsets totaling in excess of 20% beyond the density established in that yield plan. He pointed out the original applicant was at the 20% threshold when they received their density offset. He stated granting another unit would put the development over the 20% (density offset) threshold.

Mr. Bergeron questioned if ADUs were allowed in conservation subdivisions. Mr. Clark answered yes. Mr. Gowan stated they were allowed; nothing in the Town's language prohibited them. Mr. Bergeron believed it could be restricted based on language in the Innovative Land Use Ordinance.

Mr. Montbleau opened discussion to public input. No one came forward. Mr. Montbleau asked the Board how they wanted to proceed and if they wanted Town Counsel's opinion. Mr. Doherty didn't feel legal opinion was needed; he believed a single-family house with an ADU remained a single-family house. Mr. Clark noted the ADU had an 'owner occupied' requirement. Mr. Doherty believed that restriction could go to the Zoning Board for variance consideration. Mr. Clark noted he owned a single-family home with an ADU and when he refinanced it was considered a 'single-family' home. Mr. Doherty pointed out if the structure was turned into a duplex each unit could be sold separately (through condominium ownership). He believed doing this would give an additional unit to an already established conservation subdivision, which was never the Board's intent.

Mr. Montbleau stated good points had been raised. Mr. Lynde wanted clarification regarding how the applicant ended up coming in front of the Board. Mr. Gowan replied in reviewing the record the Planning Department advised the applicant that the Planning Board made the restriction (on the plan) therefore only the Board could lift that restriction. He said it fell under Innovative Land Use and the Board had a lot of leeway. He felt the owner-occupancy aspect for the ADU was worthy of asking for legal opinion.

Mr. Doherty made a motion to not accept the applicant's request for consideration and that the conservation subdivision will remain in tact the way it is. Mr. Clark seconded. Mr. Lynde first abstained and then changed his vote to not accept the plan.

MOTION: (Doherty/Clark) To NOT accept the applicant's request for consideration. The conservation subdivision will remain intact the way it is.

VOTE: (7-0-0) The motion carried.

Mr. Gowan asked for clarity. He understood not accepting the applicant's request was effectively a denial. In the event there is a challenge he asked for further clarification. Mr. Doherty stated his motion was to have the conservation subdivision remain in tact the way it was (previously) approved. Mr. Gowan suggested the Board members voting in favor agreed with both the motion and the reasoning behind it. He hadn't seen the Board fail to accept a plan for consideration. Mr. Doherty stated it was an already approved plan. Given the Board's discussion he didn't feel they should 'reconsider' an already approved plan. For the record he pointed out that the plan had already been approved and fully built-out and didn't think the Board needed to change it. Mr. Bergeron believed there were plans that the Board had not accepted for consideration.

Mr. Lynde understood the motion was to confirm the existing subdivision, which he didn't feel was being challenged by the applicant. He didn't see it as a valid motion. He believed the applicant was asking for interpretation of note #7 of the approval conditions. He said maybe the Board should accept the applicant's question and then tell them the answer is 'no'. He noted the applicant wasn't asking anything about the conservation subdivision. Mr. Doherty asked Mr. Lynde if he would like the Board to make another motion to

accept the plan for 'reconsideration'. He said the applicant was bringing the Board a conservation subdivision which the applicant was part of. He said to make changes to the plan the Board would have to first reconsider it. He discussed the process the Board took regarding 'reconsideration' during review of a development on Spaulding Hill Road. Mr. Doherty said the Board could also re-approve the plan the way it currently was.

Mr. Lynde wanted to know what the applicant was asking from the Board. Mr. Bergeron stated the applicant wanted the Board to take note #7 out of the approved (and filed at the Registry) subdivision plan and to not preserve the farm house. Mr. Doherty pointed out that the plan remained intact. Mr. Bergeron added that attached buildings (duplexes) weren't allowed in conservation subdivision.

Mr. Gowan felt Mr. Doherty clarified his motion and it was clear for the record.

Mr. Hawkins thanked the Board.

PB Case #PL2019-00008

Map 17 & 24 Lot 12-223-2

HARRIS, George III & John - 51-55 Ledge Road - Proposed 2-Lot Subdivision

There was no one present to discuss the proposed 2-lot subdivision. Mr. Gowan suggested date specifying the case to a future meeting after the reading the abutters list.

Ms. Kirkpatrick read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Mr. Gowan stated the Board had two options, they could have the applicant re-notify abutters or they could date specify the case.

Mr. Doherty said the proposal looked like an extremely simple plan. In the past they've accepted/approved some plans in one meeting. He was familiar with the property and made a motion to accept it for consideration and then date specify (to a future meeting). There was no second. Mr. Doherty withdrew his motion.

Mr. Bergeron felt if the Board liked the plan when it was presented, they could approve it in one meeting. He pointed out there was a member of the public present for the case. He didn't feel they should ever consider a plan if an applicant wasn't present to speak for it. He said he spoke with the applicant and they knew the case was on the agenda.

Mr. Lynde felt the Board should accept the plan for consideration so the abutter would be allowed to speak.

Mr. Montbleau asked Mr. Gowan if the application was complete. Mr. Gowan replied everything was appropriate with the application and felt it was more than complete to accept for consideration. He said if the Board decided to accept the plan it would give the public an opportunity to speak.

MOTION: (Doherty/Clark) To accept the plan for consideration.

VOTE: (7-0-0) The motion carried.

A member of the public came forward, looked at the plan and left the meeting. Mr. Gowan said when the gentleman saw what was on the plan, he indicated he had no problem with it.

The case was date specified to the May 6, 2019 meeting.

DISCUSSION

Zoning Discussion – Review ideas submitted from the public and Board members and establishment of priorities for Board’s zoning development/amendments

Mr. Montbleau explained he wanted the Board to discuss the submitted items and decide what (priority) they would work on. Mr. Gowan compiled a list of submitted items for the Board’s review.

The items on the list and brought up for discussion were: (*in no specific order*)

- 1) Workforce Housing
- 2) Detached Accessory Dwelling Units
- 3) Starter homes for teachers, first responders, seniors
- 4) Discontinue duplex housing
- 5) Not allow mini junkyards visible from the road in residential areas, unregistered trailers, vehicles and metal collection
- 6) Restrictions to development in areas with water problems
- 7) Revisit Illicit Discharge Ordinance – regulating pre- and post-development stormwater regulations
- 8) Housekeeping items within Zoning (submitted by Zoning Administrator)
- 9) Interpretation of Conservation Subdivision and Mixed-Use Zoning District
- 10) Livestock Article (approved during March 2019 Town Meeting)
- 11) Density within Conservation Subdivision only allowed for Workforce Housing

The Board discussed the items and decided on the following priorities:

- 1) Workforce Housing
- 2) Detached Accessory Dwelling Units
- 3) Livestock
- 4) Water problem areas

Mr. Mike Sherman, Old Bridge Street was the only person seated in the public. Mr. Montbleau invited him forward to comment. Mr. Sherman understood the idea of creating the zoning issues list was to have them on next year’s ballot. Mr. Montbleau said they would work on the items in hope of putting something on the ballot, but at this point they didn’t know what it would be. Mr. Sherman questioned at what timeframe an item would have to be reviewed by legal in order to go to the first public hearing. Mr. Gowan didn’t have the legislative calendar but believed items should be ready by the beginning of December. Mr. Sherman cautioned the Board that they should choose one major item and possibly some ‘house cleaning’ items for the ballot. He said it would be difficult to accomplish anything if they had too many items.

Mr. Gowan announced that Pelham would have a ‘workforce housing charette’. Actions will be taken on the following dates – people are encouraged to participate:

- May 8th – 6pm-8pm showing of ‘Communities & Consequences’ at Chunky’s Cinema
- May 13th – 1pm-2pm – showing of ‘Communities & Consequences’ at Hobbs Community Center
- May 21st – 3pm – site walk at 9 Main Street
- May 21st – 4pm-6pm – Community Listening Session at Hobbs Community Center
- May 23rd – 8am-4pm – Working Session at 1st Congregational Church
- May 23rd – 4pm-6pm – Community reveal at Hobbs Community Center

MOVIE PRESENTATION – “Community and Consequences: The Unbalancing of New Hampshire’s Human Ecology and What We Can Do About It” (55 minutes)

The Board watched the movie. (approximately 9:11pm)

NON-PUBLIC SESSION - If requested in accordance with RSA 91:A:3

Not requested.

DATE SPECIFIED CASE – May 6, 2019

PB Case #PL2019-00008 - Map 17 & 24 Lot 12-223-2 - HARRIS, George III & John - 51-55 Ledge Road

ADJOURNMENT

The reconvened. There was no further business/action taken.

MOTION: (Clark/Dadak) To adjourn the meeting.

VOTE: (6-0-0) The motion carried. (Mr. Lynde left the meeting just prior to adjournment)

The meeting was adjourned at approximately 10:15pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary